



***The High Authority for Transparency, Prevention and Fight against  
Corruption in Light of 2020 Constitution Amendment  
(An analytical legal study of its structure and powers)***

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**Abstract:**

*Following the 2020 constitutional amendment, Algeria's constitutional creator formed the High Authority for Transparency, Prevention, and Fight against Corruption to replace the National Authority for the Prevention and Fight Against Corruption.*

*The aforementioned authority was elevated to the status of an independent constitutional institution, and its role was strengthened by Law No.22-08, which specified its structure and powers, with the legislator aiming to broaden its composition and grant it broad supervisory powers in order to achieve the highest levels of integrity and transparency in public affairs administration.*

**Keywords:** *anti-corruption; declaration; high authority; property; supervisory powers; transparency...*

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## **Introduction :**

Corruption has become a perilous global phenomenon that all societies face, though the severity varies by country, particularly administrative corruption, which is regarded as one of the most visible and dangerous scourges that all countries have agreed to combat due to its ability to undermine societal stability and security and influence policies. Countries' growth and transgressions of moral norms and standards jeopardize governmental institutions and the rule of law.

This scenario compelled the international community to collaborate in developing solutions and measures to prevent and combat corruption, including legal and institutional frameworks that enable states to coordinate their efforts to combat this phenomenon. Many international and regional agreements have been negotiated to tackle this phenomenon, including the adopted United Nations Convention against Corruption. The General Assembly in New York on October 31st, 2003, and the African Union Convention on Preventing and Combating Corruption, enacted in Maputo on July 11th, 2003, to which the majority of nations acceded, established ambitious anti-corruption plans based on their contents.

Algeria is one of the countries that has seen a terrible increase in the phenomenon of corruption and has created an environment conducive to its spread in various forms, in all fields, and at all levels, as it ranked first in international corruption indicators, indicating low levels of transparency and good governance.

Algeria joined international efforts to combat corruption by ratifying the African Union Convention to Prevent and Combat Corruption. In addition to the United Nations Convention against Corruption (by Presidential Decree 04-128 of April 19th, 2004, which includes the ratification with a reservation of the United Nations Convention against Corruption, 2004), the latter requires countries that regulate it to establish bodies responsible for preventing corruption, provided that this is done in accordance with the principles fundamental to each country's legal system.

Algeria established the National Authority for the Prevention and Combating of Corruption in accordance with Law 06-01, which contains the Law for the Prevention and Combating of Corruption, amended by Order No.10-05 of August 26th, 2010, amended and supplemented by law No.11-15 of August 2nd, 2011), while affording it legal independence from an organic position as a natural outcome of this body's subordination to executive power, job limitation, and restriction of its connection with the judiciary, as well as its standing with the president of the republic. All of this would restrict its efficacy in exercising Important, notwithstanding the legislator's recognition of it as a legal organization.

To correct these shortcomings that disrupted the role assigned to the National Authority for the Prevention and Combating of Corruption, the text of 2020 constitutional amendment (the Algerian Constitution issued pursuant to Presidential Decree 20-442 of December 30th, 2020 regarding the issuance of the constitutional amendment approved in the referendum of November 1st, 2020, 2020), establishing a new body that replaced this body, granting it the status of

an authority and developing the broad structure of its powers, known as the "High Authority for Transparency, Prevention and Fight against Corruption".

As a result, in this article, we will present the high authority for transparency, prevention and fight against corruption and examine its powers in light of the amendment.

We raise concerns regarding the High Authority for Transparency's efficiency in combatting and preventing against corruption in light of the powers provided to it by the 2020 constitutional amendment, as a problematic.

To address the issue at hand, we decided to use a descriptive approach to present and define concepts, as well as analyze and discuss relevant legal texts, in order to identify the benefits of 2020 constitutional amendment and appreciate them, as well as the shortcomings that should be addressed, forcing us to divide the research topic into two sections:

***Section one: The essence of the high authority for transparency***

***Section two: The powers of the high authority for transparency***

## **Section One: The essence of the authority for transparency**

As an embodiment of the national anti-corruption strategy, the Algerian legislator created a national body for preventing and combating corruption under law No.06-01, especially after the failure of many bodies that were established within the framework of combating corruption in previous years, such as the National Observatory for Combating and Preventing Bribery, which was established in 1996 (under Presidential Decree-96-233 of July 2,nd 1996 regarding the establishment of the National Observatory for the Control and Prevention of Bribery, 1996), which was dissolved in 2000 due to its abject failure in combating corruption (in accordance with Presidential Decree 2000-114 of May 11th, 2000, which included the abolition of the National Observatory To Monitor and Prevent Bribery, 2000), and perhaps the most important reason for this is his lack of independence in performing the dangerous tasks assigned to (Nouri Ahmed, 2021/2022, p.55).

As well as the Financial Inquiry Processing Cell established pursuant to Executive Decree 02-127 (Executive Decree 02-127 of April 7th, 2002 includes the establishment, organization, and functioning of the Financial Inquiry Processing Cell, 2002, amended and supplemented by Order No.12-02 of February 13th, 2012), as well as the Central Bureau for the Suppression of Corruption (Presidential Decree No.11-426 dated December 8th, 2011 was issued specifying the composition of the Central Bureau for the Suppression of Corruption, its organization and the modalities of its operation, amended and supplemented by Presidential Decree No.23-69 of February 7th, 2023, 2023), which the Algerian legislator considered a body supports and strengthens the work of the National Anti-Corruption Authority. (Komeri Hamidiya, June 2022, p.187).

In order for the fate of the National Authority for the Prevention and Combating of Corruption to be different from that of the National Observatory for Combating and Preventing Bribery, the legislator granted the authority

several powers that increase its effectiveness, are in line with international agreements, and achieve the goal for which it was established (Zawi Ahmed and Lohani Habiba, 2020, p.393), but the achievements The investigator did not live up to the ambitions and aspirations expected of her, especially with the corruption issues that came to the forefront in light of the lack of transparency and accountability in the management of public affairs matters (Maabara Mahmoud Muhammad, 2011, p.120) (Al-Shammari Hashim and Al-Fatli Ethar, 2011, p.85), and senior officials dared In the state, corruption is practiced in many sectors (Amzian Karima, 2019, p.116).

This pushed The Algerian authorities to implement political, economic, and legal changes. The High Authority for Transparency, Prevention, and Fight against Corruption was formed as a "oversight institution" under Article 204 of the 2020 constitutional amendment.

We shall analyze the notion of the high authority for transparency, prevention and fight against corruption (the first subtitle), its features (the second subtitle), and its composition (the third subtitle) as follows:

### **1.The notion of the high authority for transparency**

To give a clear concept of the high authority for transparency and the prevention and fight against corruption, we divided this subtitle into two: The first: includes the legal basis for the high authority for transparency, while the second: includes the definition of the high authority.

#### **1.1. The legal basis of the high authority for transparency**

The high authority for transparency has its legal basis in Article VI of the United Nations Convention against Corruption, which establishes a preventive anti-corruption body and requires each state party to the agreement to establish a body responsible for preventing corruption. The state must allow the body the independence needed to carry out its tasks successfully and independently, the requisite material resources and skilled staff must be given.

Law 06-01 was issued in accordance with the content of the aforementioned article, and article 17 established the National Authority for the Prevention and Combating of Corruption. Then the constitutional legislator stipulated the authority for the first time in the constitutional amendment of 2016 under Article 202 thereof (the amendment The Constitutional Amendment of 2016, issued pursuant to law no.16-01 dated 03/06/2016 including the Constitutional Amendment, 2016), and the Constitutional Founder quickly changed its name in accordance with Article 204 of the Constitutional Amendment of 2020 and described it as the high authority for transparency. The fact is that the legislator's constitutionalization of the High Transparency Authority is seen as an essential step in providing this authority with new momentum and a more effective perspective of its mission in fighting corruption.

In implementation of the text of the last paragraph of Article 205 of the 2020 Constitution, which was referred to the law to determine the organization and formation of the High Authority for Transparency, law 22-08 was issued specifying the organization of the High Authority for Transparency (law no.22-08 dated May 5th, 2022 determines the organization of the High Authority for Transparency, Prevention and Fight against Corruption), constitution and its powers, 2022).

#### **1.2.The definition the high authority for transparency**

Article 204 of 2020 Constitution defines the High Authority for Transparency, Prevention and Fight against Corruption as a "independent institution," while Law 22-08's Article 02 confirms its legal personality as well as financial and administrative independence.

Thus, it is a constitutional entity that replaced the National Authority for the Prevention and Combating of Corruption, with the requisite independence to carry out the aims for which it was established.

Some describe the High Authority for Transparency as "an independent constitutional oversight institution charged with embodying transparency in public life and preventing and combating corruption" (Gharbi Ahsan, 2021, p.692).

The High Authority for Transparency can be defined as a constitutional oversight institution that enjoys independence and is granted sufficient legal personality to achieve its goals of preventing and combating corruption, moralizing public life, and enhancing transparency.

## **2. The high authority Characteristics**

We can summarize the characteristics of the high authority for transparency, in the following points:

First, The constitutional legislator described the high authority as an "institution" instead of an "authority" and raised it to the rank of regulatory constitutional institutions and granted it supervisory powers in addition to its advisory powers, as it was entrusted with investigating the methods of using material means, public funds and managing them (article 184 of the constitutional amendment of 2020), which confirms the legislator's intention to strengthen its role in combating corruption, and therefore it is a constitutional mechanism that has an important place in the state's legal system, contrary to the National Authority for the Prevention and Combating of Corruption, as the constitutional founder included it in the 2016 Constitution among the advisory institutions.

Second, the constitutional legislator changed the title of "The National Authority for the Prevention of Corruption" to "The High Authority for Transparency, Preventing and Combating Corruption," linking corruption prevention and control with transparency, which is the foundation of integrity in public fund management and information provision, so that each of these elements plays a role. Its role in fighting corruption, which is an extremely important step that expresses the true will of the governing body to fight corruption with a new and more effective concept, and an approach that, in our opinion, deserves to be appreciated given that transparency is considered an essential component in the approach to preventing and combating corruption. The link between corruption and transparency. It is an inverse connection in which the greater the transparency indicators, the more corruption indicators are restricted and disclosed. Transparency allows us to detect and minimize corruption hotspots, allowing us to solve them (Bin Alloush Farid, 2010, p.115); (Al-Khanaq Nabil Muhammad, 2006, p.52); and (Talib Alaa Farhan and Al-Amiri Ali Hussein, 2014, p.56).

Third, the High entity for Transparency is regarded as an autonomous administrative entity with both administrative and authoritarian characteristics. It is a novel organization that does not fit into the classic administrative pyramid, which divides public administration into central and decentralized administrations (Haja Abdel-Aali, 2012/2013, p.485). They differ from conventional authority in that they are neither subject to administrative or custodial supervision, nor to the notion of hierarchical hierarchy that defines the administration in all its forms (Labad Nasser, Don Sunna, p.97). It is an administrative authority that is not controlled by the government, as well as independent of the legislative and judicial branches (Abdo Muhammad Jumaa, 2019, p.47).

According to Osmani Fatima (2011, p.42), giving the high authority legal personality and financial and administrative independence is crucial in confirming its independence from the executive authority. (Aarab Ahmed, 2010, p.06).

The authority's independence is essential in order for it to carry out its tasks and functions properly. Furthermore, independence is compatible with the High Authority for Transparency's role as an oversight mechanism for promoting transparency and integrity and evaluating job performance.

Any oversight mechanism is only effective if it is available. The effectiveness of any oversight device is not achieved unless it is available. The agency has sufficient freedom to carry out its tasks (Zawi Ahmed and Lohani Habiba, p.394).

Fourth, The high authority has legal personality and financial and administrative independence. However, its own budget is recorded in the state's general budget (Article 36 of Law 22-08).

According to Article 38 of law no.22-08, the high authority maintains accounting in accordance with public accounting rules and is subject to oversight by competent agencies. This is what led some academics to assume that the authority's financial independence is restricted since it is susceptible to financial oversight, making it financially subordinate to the executive authority (Haha Abdel-Aali, p.486). (Bin Obaid Siham, 2023, p.344),

However, we believe that financial control does not undermine the authority's independence, but rather serves as monitoring over public monies. It also demonstrates the authority's independence in exercising the powers assigned to it by law, particularly because its members are authorized to access any secret material. The higher authority is also provided with all of the human, financial, and material resources required for its operation (Article 37 of Law 22-08), with the requirement that its employees be Specialists and that they have the necessary qualifications and training to do their jobs (Sabeeh Ahmed Mustafa, 2016, p.707).

Fifth, the highest authority for transparency is independent and not affiliated with any party, including the guardianship of the highest hierarchy representing the executive authority. This ensures impartiality in performing its duties objectively and effectively, free from pressures and threats, and independent in dealing with all authorities in the state, while it is an administrative authority with autonomy and legal standing.

In our opinion, this is a trend that demonstrates a genuine political will to combat corruption, particularly in light of the arrows of criticism previously directed at the National Authority regarding its relationship with the President of the Republic, which, according to many researchers, contradicts the Authority's status as an independent administrative authority and implies that the Authority is subordinate to the executive authority. (Qarnash Jamal, 2022, p.905) (Amiri Ahmed, 2021; p.65).

On the other hand, some argue that her position with the President of the Republic allows her to carry out her duties with rigor and strength, granting her sovereignty (Hawaydiq Othman and Salkh Muhammad Lamin, April 2022, p.475).

Sixth, Members of the Authority have legal protection:

The third paragraph of article 24 of law no.22-08 stated that members of high authority must have all necessary facilities to carry out their tasks, as well as state protection from defamation, threats, and attack of any kind that might interfere with their work.

As a result, the legislator's obligated members receive special protection so that they can fully carry out the tasks entrusted to them, and the High Authority for Transparency is a truly independent authority free of all external pressures, and its decisions are issued with complete conviction by its members. In exchange, members of the High Authority have a commitment to carry out their jobs with honesty.

Seventh, the lawmaker addressed the subject of forming the ultimate authority for transparency, as well as specifying its composition and powers, to legislation. Perhaps this would provide actual independence for the highest authority in order to combat corruption and promote openness.

Many researchers appreciated this reference to the law because it is one of the guarantees of the high authority's independence (Malaykiah Asia, 2022)., p.860) (Gharbi Ahsan, p.693), in addition to granting the authority the necessary constitutional and legal power to carry out its tasks with integrity and rigor. In contrast to the organization (Presidential Decree 06-413).

However, the legislator frequently expressly specifies measures that appear to demonstrate independence on the surface, but in exchange, imposes some constraints that undermine independence in fact. As a result, determining the true independence of the Higher Authority for Transparency necessitates a review of various connected issues, including the Higher Authority for Transparency's composition. Submit comments Lateral panels History Register Contribute Translation results available

### **3.The structure of the high authority for transparency**

The composition is regarded as one of the most important factors influencing the authority's activity and independence. As a result, we conclude that the constitutional founder stated, in the final paragraph of article 205 of 2020 Constitution, that the law determines the organization and formation of the High Authority for transparency rather than regulation, and that the Constitutional Founder made a significant error in doing so.

It is irrational to delegate a critical task, such as establishing the composition of the high authority, particularly the head of the authority, and its members, to the executive authority to organize in accordance with a rule. Stipulating the judicial system

Indeed, law 22-08 was enacted, and its third chapter addressed the establishment and structure of the highest power. According to the language of article 16, the high authority shall be formed of the following two bodies: the President of the High Authority and the Council of the High Authority.

### **3.1.The Head of the authority**

According to article 21 of law 22-08, the president of the republic appoints the head of the highest authority for a five-year term that is renewable once. From our perspective, it would have been preferable if the president had been elected by the members and subsequently appointed by the president of the republic, as stated in article 21 of law 22-08. On the grounds that the president of the republic appointing the head of authority, there will may be a detrimental impact on the high authority's integrity and independence.

To ensure the independence of the high authority for transparency and corruption prevention, as well as to establish the principles of transparency and integrity, the second paragraph of the aforementioned article 21 states that "the President's term of office shall be incompatible with any other electoral term, position, or professional activity." Perhaps the goal of this method is to avoid conflicts between the President's personal interests and the objectives he intends to achieve. The high authority strives for transparency.

The high authority's head is regarded its legal representation and oversees the authority's administrative management process. As a result, legislation 22-08 awarded him the rights that are appropriate for his position, as specified in article 22 of this legislation

What is notable about these powers is that the head of the high authority, according to law 22-08, can now transfer files that include a penal description directly to the regionally competent public prosecutor instead of transferring them to the Minister of Justice, as was the situation under the repealed Presidential Decree 06-413, which is It is something that the legislator takes into account, given that it granted the authority broader authority and cut the link of subordination to the executive authority.

On the other hand, it enabled the President of the Authority to refer files that constitute management breaches to the President of the Accounting Council, a procedure whose aim is to involve bodies active in the field of corruption prevention, especially since the Accounting Council is considered a high institution for the subsequent oversight of state funds, regional groups, and public facilities. The control it exercises leads to the mandatory promotion of account submission and the development of transparency in public finance management (Order No.95-20 of 07-17-1995 relating to the Accounting Council, 1995, amended and supplemented by Order No.10-02 of August 26th, 2010, 2010).

### **3.2. The High Authority Council**

According to the context of article 23 of law 22-08, the high authority council consists of 12 members, although the National Authority only has 6 members. In our perspective, this is a tiny number that is insufficient to carry out all of the National Commission for the Prevention of Corruption's functions, and



this may have been one of the National Commission's weaknesses. However, law 22-08 specifies the makeup of the High Authority Council as follows:

- The legislature mandated the variety of the bodies tasked with choosing members by adopting the principle of participation among the numerous authorities in the state.
- The legislator considered the level of financial and legal competence, integrity, and experience in the field of preventing and combating corruption that must be present in the personalities chosen by the Speaker of the National Assembly, the President of the National People's Assembly, the Prime Minister, or the Prime Minister. Unlike law 06-01, which was revised and augmented, it did not establish any standards to be satisfied. As a result, members are appointed.
- The legislator supported the formation of the high authority with the judicial component, and thus the judicial authority became represented within the Council, which is a commendable trend, especially since preventing and combating corruption necessitates the presence of judges within the Council due to their knowledge of corruption cases, which may carry a penal description in a way that allows for proper dealing with them in order to save time.
- The selection of four members by the executive authority (the President of the Republic has the capacity to nominate three members and the Prime Minister has the authority to appoint one) to the Council's composition would jeopardize the high authority's independence and transparency.
- The Council's composition includes three civil society representatives chosen by the president of the National Observatory for Civil Society from among those renowned for their interest in topics connected to preventing and combatting corruption.

To increase the efficacy of the aforementioned creation, numerous entities and professional bodies linked to the highest authority's jurisdiction were represented. For transparency, the President of the Republic no longer has a monopoly on the ability to choose members of the high authority, therefore he may only choose three members, although the legislator has not limited him. This covers any requirements or restrictions that the member must meet, save for being one of the independent national personalities.

Thus, in law 22-08, the legislator corrected the flaws that marred the method of appointing members of the Commission in light of Presidential Decree 06-413 amended and supplemented (repealed pursuant to article 12 of Presidential Decree 23-234 mentioned earlier), as the high authority is not subordinate to the President of the Republic or any other authority. A higher administrative authority or any constitutional power is seen as a guarantee of its independence, allowing its members to carry out their tasks without interference or influence from any party.

Members are appointed by presidential decree for a non-renewable period of five years, according to the language of article 24 of law 22-08. In this regard, we feel that the legislator was proper in restricting the members' custody to one term, since a five-year period is adequate for the members to carry out their obligations. It is a sensible duration that is neither too short nor too long, and

restricting membership terms to one non-renewable period helps members escape pressure from the party with the authority to renew their membership.

The fundamental premise in entities designated as independent administrative authority is that they must be The covenant is not renewable (Boujmline Walid, 2011, p.75).

However, some believe that appointing members by presidential decree would jeopardize members' independence, whereas membership independence requires that its members be concerned with a method of appointment that does not allow any authority to refer and remove them from their jobs, and appointment by presidential decree undermines the authority's independence. Al-Ulayya (page 346 of Ibn Ubaid Siham).

Finally, members' responsibilities are terminated by presidential order (article 24-02 of law 22-08), and according to article 26 of Law 22-08, situations of loss of membership in the highest authority can be traced back to two types:

- ***Common causes of membership loss:*** term expiry, resignation, and death.
- ***Unusual cases of loss of membership:*** loss of the capacity under which a member was appointed for any reason, conviction for a felony or intentional misdemeanor, exclusion due to absence from three consecutive Council meetings without a legitimate reason, and engaging in dangerous acts that contradict his obligations as a member of the highest authority.

However, the question here is what level of severity is required in the member's acts to warrant terminating his duties? As a result, it was reasonable for the legislator to set a threshold for these activities in order to avoid any misuse against members of the authority, knowing that the lawmaker has given the authority to issue the decision to lose status in the last two cases to the Council of High Authority, and stipulated for this an absolute majority of its members (last paragraph of article 26 of law 22-08). This is a guarantee to protect members from any arbitrariness that may be issued by the appointing authority.

In terms of meetings, the Council holds regular sessions at least once every three months in response to a summons from its President. It can also assemble in extraordinary sessions on an automatic summons from the president or on a request by at least half of its members (article 31 of law 22-08), and the Council's deliberations are invalid unless at least half of its members are present (article 32-01 of law 22-08).

Within the framework of Council meetings, the president can invite any experienced person whose contribution is useful in the issues presented to the Council (article 35 of law 22-08), which is a commendable approach by the legislator, considering that seeking assistance from unqualified individuals from outside the nominal list.

The High Authority Council affirms the unique and specific character of some corruption instances, necessitating the involvement of an expert who is best suited to provide the required clarifications. The Council's decisions are made by a majority of the members present, and in the event of a tie, the session president's vote prevails (article 34-02 of law 22-08).

It should be emphasized that the Council's discussions are confidential (article 32-02 of law 22-08), and no member of the Council may deliberate on a matter in which he has a kinship, affinity, or direct or indirect interest, current or

past, during the five-year period coming before the discussions (article 33 of law 22-08).

As for the powers of the Council, they were stipulated in article 29 of law 22-08, and what is notable from these powers is that the latter is responsible for studying and approving the draft work plan of the high authority that is presented to it by its president, as well as approving the internal regulations of the high authority, which is an order of It would strengthen the authority's constitutional and legal independence while also enabling it to play a role in preventing and combatting corruption.

### **3.3.The high authority's structural organization**

Article 18 of law no.22-08 states, "The high authority includes structures determined by organization." Indeed, Presidential Decree No. 23-234 was issued defining the structures of the highest authority (Presidential Decree No.23-234 of June 27th, 2023 defining the structures of the high authority for Transparency, Prevention and Fight against Corruption, 2023), and according to article 2 of this decree, the authority's organization includes: The following structures constitute the framework of the responsibilities given to it under the jurisdiction of the head of the high authority:

#### **First, The General Secretariat**

It is managed by a secretary-general, who, under the authority of the head of the high authority, is specifically charged with the following: activating and coordinating the work of the high authority's structures, ensuring the organization and good conduct of the high authority's interests, implementing the high authority's budget, coordinating the work of preparing the high authority's annual report, preparing and organizing the work of the three sub-directories support the Secretary-General: the Sub-Directorate for Human Resources and Public Means, the Sub-Directorate for Budget and Accounting, and the Sub-Directorate for Automated Information, Documents, and Archives ((Article 04 of Presidential Decree 23-234).

#### **Second, Property Declarations, Compliance, and Notifications Department**

The legislator included this section because of its importance in the fight against corruption, as it tracks the sources of wealth of employees and officials, as well as the extent to which wealth is inflated or not, revealing the crime of illicit enrichment, as well as cases involving acts of corruption, such as violations of transparency and corruption prevention systems or incidents of integrity-related rule violations. This section also suggests contacting the appropriate legal authorities at the regional level if monitoring leads to occurrences with a criminal description, or the Accounting Council if it reaches activities within its authority.

In any case, this section is specifically charged with the following tasks: receiving declarations on the property of public employees subject to the obligation to declare and ensuring that they are treated and monitored, ensuring compliance with the obligation to conform to transparency standards and regulations, preventing and combating corruption and integrity rules, receiving notifications and reports related to corruption cases, processing and using information; it prepares monthly reports on its activity. This department is divided into two directorates: Managing and Processing Property Declarations

and Conformity, Notifications, and Notifications (article 06 of Presidential Decree 23-234).

**Third, Department of Awareness, Training, and Cooperation**

This department is specifically charged with the following tasks: raising awareness of the dangers of corruption and its effects, spreading a culture of its rejection and ethics in public life, strengthening the capabilities of public officials and civil society in the field of combating corruption, conducting studies and ensuring legal vigilance related to transparency and preventing and combating corruption, strengthening and developing international cooperation.

Following up on activities and work related to preventing and combating corruption, as well as reports and indicators issued by international, regional, and non-governmental organizations on the situation of corruption in Algeria, preparing draft periodic reports on the implementation of transparency measures and procedures and preventing and combating corruption in accordance with the provisions included in international charters and agreements, preparing periodic reports on its activities. This department includes two directorates: the Directorate of Awareness, Training, and Legal Vigilance and the Directorate of Cooperation (article 07 of Presidential Decree 23-234).

**Fourth, a specific framework for administrative and financial investigations against the illegal enrichment of a public employee**

In accordance with article 17 of law 22-08, which mandated that the higher authority be provided with a specialized structure for administrative and financial investigation into the illicit enrichment of a public employee, Presidential Decree 23-234 was issued, and pursuant to article 2 thereof, this structure was established due to its importance in combating corruption, through which investigations are carried out to gather evidence and information connected to a public employee's unlawful enrichment in order to discover the crime of illicit enrichment.

This structure is specifically charged with the following: conducting investigations and collecting evidence in the files of illicit enrichment of a public employee, coordinating with other specialized agencies in the field of investigation, proposing every measure that would maintain the proper conduct of the investigations carried out by the specialized structure on the head of the high authority, collecting centralized documents and information related to the....etc.

The specialized structure for administrative and financial investigations into a public employee's illicit enrichment is led by a department head and consists of two directorates: the Directorate of Standards and Data Processing and the Directorate of Investigations and Investigations (article 08 of Presidential Decree 23-234).

**Section two: The powers of the high authority for transparency**

The High Authority was founded to achieve the greatest levels of honesty and openness in the conduct of public affairs (article 04 of law 22-08), which necessitates providing it vast powers commensurate with the gravity of the phenomena it is addressing. The High Authority for Transparency's powers are specified in article 205 of 2020 Constitution, as well as other powers in chapter two (articles 04 to 15) of law 22-08, which are divided into preventive, supervisory, and advisory powers.

## 1. The preventative powers

The High Transparency Authority has preventative powers before corruption offenses occur, which are primarily embodied in the following:

### - *Developing a national plan for transparency and anti-corruption:*

It is critical for the state to have a comprehensive plan for combating corruption. This strategy sets out the general, long-term goals of the state in terms of combating corruption, provides a comprehensive vision for all public and private agencies, and directs its activities to interact and work to reduce all forms of corruption (Sadiq Muhammad, 2014, p.111). To achieve these goals, the constitutional founder entrusted the High Authority for Transparency, Prevention, and Combating of Corruption with the task of developing a national strategy (article 205 of 2020 constitutional amendment) promotes openness, prevents and combats corruption, and ensures implementation and follow-up. The high authority agrees on a plan to increase transparency that it feels will also help to avoid and battle corruption. This plan is compulsory on all involved parties in the state, who must follow it.

While the role of the National Authority for the Prevention and Combating of Corruption was limited to proposing a comprehensive policy for the prevention of corruption without the aspect of combating it, and without directly proposing a comprehensive policy related to transparency, but rather proposing it within the rules of corruption prevention, provided that the government is responsible for developing the comprehensive policy, with the possibility of violating The National Authority regards the comprehensive policy since nothing obligates the government to consider the National Authority's suggestion (Gharbi Ahsan, p.701).

However, under 2020 Constitution, the highest authority has the only ability to determine the regulations that it considers acceptable to prevent and combat corruption. In addition, the transparency rules corroborate the tendency. The legislator works toward exercising the highest authority's responsibility in combating corruption.

- Gather, centralize, utilize, and publicize any information and suggestions that would assist public administrations or any natural or legal person in preventing and detecting acts of corruption.

- Follow up, implement, and disseminate a culture of transparency, prevention, and anti-corruption (article 205-06 of 2020 Constitution), as it has become the High Transparency Authority's responsibility to make public policy that enshrines transparency in public life, particularly in terms of the need for clarity in the relationship with the public regarding service provision procedures. And making public the policies implemented by the relevant authorities in accordance with the language of article 55 of 2020 Constitution. Therefore, the Constitutional Founder entrusted the ultimate power with the job of following up, implementing and disseminating the culture of transparency, prevention and anti-corruption with the aim of reducing the spread of the phenomenon of corruption and forming generations that reject and fight corruption.

- Periodically assessing the efficiency of legal tools relating to transparency, preventing and combatting corruption, and administrative measures, as well as suggesting appropriate procedures to enhance them (article 04-02 of Law 22-08).
- Coordinating and following up on activities and actions related to preventing and combating corruption that have been carried out on the basis of periodic and regular reports supported by statistics and analysis and directed to them by the sectors and concerned stakeholders (article 04-04 of Law 22-08).
- Contributing to enhancing the skills of civil society and other players in the sphere of combatting corruption (article 205-05 of 2020 constitutional amendment), which is notably expressed in the establishment of an interactive network aimed at involving civil society.

Within the framework of the role of the high authority in promoting the rules of transparency and integrity, the legislator has extended its powers in this framework to charitable, religious, cultural, and sporting activities in public and private institutions by preparing and putting into effect appropriate systems to prevent corruption (article 04-06 of law 22-08). This is because this form of operation has become a breeding ground for financial corruption (Sarbah Ahmed and Jabbari Zain al-Din, 2023, p.783).

As an embodiment of the role of the higher authority in promoting the principles of transparency, it is responsible for monitoring the extent to which public administrations, local groups, public institutions, economic institutions, associations and other institutions comply with the commitment to comply with the transparency and corruption prevention systems, the content of which is determined as well as the conditions and methods for their implementation through regulation.

This follow-up includes ensuring the existence of transparency systems and the prevention of corruption and the extent of its quality, effectiveness, and suitability of its implementation. In this context, the higher authority issues recommendations to the concerned authorities aimed at helping in developing appropriate measures and procedures for each concerned body or institution (articles 07 and 08 of law 22-08).

Within the framework of the role of the high authority in promoting the rules of transparency and integrity, the legislator has extended its powers in this framework to charitable, religious, cultural and sporting activities in public and private institutions by preparing and putting into effect appropriate systems to prevent corruption (article 04-06 of law 22-08), This is because this type of activity has also become a fertile field for the spread of the scourge of financial corruption (Sarbah Ahmed and Jabbari Zain Al-Din, 2023, p.783).

## **2.The supervisory powers**

The High Authority for Transparency exerts significant supervisory powers to successfully combat corruption and fulfill its mission, which is to attain the greatest levels of integrity and transparency in public affairs management. Law 22-08 assigns a set of supervisory authorities. We shall explain this in the following sections:

### **2.1. Receiving Property Declarations**

Within the framework of the supervisory role of the higher authority, and with the aim of ensuring transparency in political life, protecting public property, and preserving the integrity of employees, the legislator entrusted it with the

matter of receiving property declarations and ensuring their processing and monitoring (article 04-03 of law 22-08).

The property declaration includes an inventory of real and moveable property possessed by the subscriber or his minor children, whether they live in Algeria or abroad (article 05 of law 06-01).

However, not every public employee, as defined by article 2 of law 06-01, makes a statement of his property to the public:

The President of the Republic, members of Parliament, the President of the Constitutional Council and its members, the Prime Minister or Head of Government and its members, the President of the Accounting Council, the Governor of the Bank of Algeria, ambassadors, consuls, and governors all submit a declaration of their properties before the First President of the of the High Court (article 06-01 of law 06- 01 previously mentioned).

Employees who are obligated to submit a declaration of their properties before the Higher Authority for Transparency are the heads and members of the local popular councils elected in accordance with the text of article 06-02 of law 06-01, amended and supplemented, as well as public employees not stipulated in this article and who were specified in accordance with article 02 of Presidential Decree 06-415 (Presidential Decree No.06-415 of November 22nd, 2006 determines the procedures for declaring property for public employees not stipulated in article 6 of the law on preventing and combating corruption, 2006)

In fact, the limitation of the higher authority's role in receiving declarations of the properties of members of the elected councils, as well as employees whose list is determined by a decision of the director of the public service, and employees who hold high positions and functions in the state only, is, in our opinion, a weakening of the authority's role in preventing corruption.

Maybe this issue is justified under the previous law because the National Authority for the Prevention of Corruption was not included among the constitutional oversight institutions; however, after the legislator proceeded to describe the National Authority as the high authority for transparency and raised it to the rank of supervisory institutions in accordance with 2020 constitution, the legislator must subject the categories mentioned in the first paragraph of article 06 of the law on preventing and combating corruption regarding declaring their properties to the High Transparency Authority, given the importance of this mechanism in combating corruption and enhancing confidence in state agencies and employees, as it serves as administrative and financial oversight to preserve public funds.

The property declaration is completed within the month after the employee's assignment to his position or the start of his electoral term. This statement is made promptly following an increase in financial assets. Property disclosures are also made at the conclusion of the election term or at the end of employment; otherwise, the public employee commits the crime of non-declaration or fraudulent declaration of property (Busaqia Ahsan, 2008, p.140).

## **2.2. Conducting administrative and financial inquiries into cases of unlawful enrichment.**

Investigation means collecting data and information that are useful in detecting and researching the crime and its perpetrators (Abu Sweilem Ahmed Mahmoud Nahar, 2010, p.77), and that task is undertaken by the Higher Authority for Transparency in accordance with the first paragraph of article 05 of law 22-08, and in this framework, investigations may be conducted by the highest authority on any person potentially involved in concealing the unjustified wealth of a public employee in the event that the latter is found to be the real beneficiary of it (article 05 of law 22-08).

To get specific information, a higher authority may request written or verbal clarifications from a public employee or the individual affected. In order for the inquiry to proceed with honesty and transparency, the final paragraph of article 05 of law 22-08 states that professional or banking secrets will not be regarded in the face of the case.

The highest authority that is favorable to the law, so that the public employee does not use the responsibility to keep professional secrets as a reason to escape and conceal crimes or acts of corruption.

In fact, we believe that the legislator should be grateful for the approval of the administrative and financial investigation authority in cases of illicit enrichment of a public employee who cannot justify a significant increase in his financial liability (Bodhan Moussa, 2010, p.93), given the importance of this mechanism in combating illicit gain. And eliminating tampering with public office values and ethics, especially now that the lawmaker has broadened the scope of inquiries to include anybody who may be involved in concealing the public employee's unjustified riches.

Perhaps this step would eradicate or significantly minimize the phenomena of administrative and financial corruption that has afflicted organizations and institutions.

It is worth noting that the legislator, under article 06 of law 22-08, authorized any natural or legal person with information, data, or evidence related to acts of corruption to inform or notify the higher authority, as long as the notification or notification is in writing and delivered in full. Methods have been approved and accepted. He also demanded that the report be signed by the owner and contain aspects relevant to corrupt activities, as well as enough information to identify the identity of the informant or notifier.

That is, he rejected anonymous reports if the notifier or informant is legally protected. This would give a type of confidence to the informant while reinforcing The function of the top authority in the morality of public life and its contribution in directing citizen behavior to reject corruption and participate in combating it.

### **2.3. Procedures taken in the event of proved acts of corruption**

To activate the role of the High Authority for Transparency in combating corruption and to strengthen the national strategy for preventing and combating corruption, law 22-08 recognized the High Authority with the powers to take the following measures if acts of corruption are discovered:

#### **2.3.1. When identifying an unwarranted rise in the wealth of a public employee**

In the case that severe components indicate the unjustifiable wealth of a public employee, the higher authority may submit a report to the Public



Prosecutor at the Sidi M'hamed Court for the aim of imposing preventative measures to freeze banking activities or confiscate property for a period of three months through a judicial order issued by the president of the same court, and the precautionary order shall be communicated to the prosecution by all legal means, to the authorities responsible for its implementation.

This order may be challenged before the same authority that issued it within five days of notification to the affected party. The ruling that rejects the objection may also be appealed within five days after its notice. The President of the Court shall determine whether to lift or prolong the precautionary measures automatically or on the request of an agent. The competent Republic (aforementioned paragraphs 01, 02, 03, 04, article 11 of law 22-08).

In the event that the public lawsuit expires due to the statute of limitations or the death of the accused, the public prosecutor, considering the elements available to him, can notify the judicial representative of the Treasury with the intention of requesting the confiscation of the frozen or reserved property through a civil lawsuit, taking into account the rights of bona fide third parties. This is a provision we support because it enshrines the protection of property originating from corruption, even in the case of a public litigation, so saving public funds.

To improve the national strategy for preventing and combating corruption, and to activate the role of the higher authority in this field, the legislator authorized the higher authority, when it discovers facts that bear the criminal description, to notify the regionally competent Public Prosecutor and the Accounting Council, if it finds actions that fall within its jurisdiction, while providing the notified authority with all documents and information relevant to the subject of the notification (article 12 of law 22-08).

In fact, the legislator's approval of this step is worthy of our praise, given that the higher authority, under the new law, can now directly notify the Public Prosecution in order to initiate a public lawsuit, which strengthens the higher authority's powers in the field of combating corruption and does not limit its role to being advisory. Previously, the National Authority did not have the authority to transfer corruption files of a criminal nature to justice; instead, the Minister of Justice had to be notified, who then had the discretion to notify the public prosecution or save the case, limiting that authority.

### **2.3.2. Witnessing a breach of the quality and efficacy of the processes used inside the concerned institutions or entities**

When a higher authority observes a violation of the quality and effectiveness of procedures used within public bodies, administrations, associations, and institutions to prevent and detect acts of corruption, either on its own initiative or after being informed or notified, it makes recommendations with the goal of putting an end to these violations in the short term. It determines the extent to which these suggestions are followed, and all relevant institutions and bodies must report to the higher authority on their compliance. If the institution or responsible body fails to reply, the higher authority shall issue an order requiring it to adopt the suggestions within one year. In the event of

noncompliance with the order, the higher authority must notify the responsible authorities so that appropriate steps can be taken.

### **2.3.3. In the case of a violation of the rules of integrity**

When a higher authority finds a violation of the standards of integrity, it can take the following actions:

- Issuing an excuse to the person concerned if the answers he made were ineffective, given that the higher authority had asked the person concerned about the violation to make particular statements and his response was ineffective.

- If the high authority notices a delay in providing statements, defects or errors in their substance, or a failure to fully reply to the request for clarification, it will issue orders to the appropriate authority or institution (article 10-02 of law 22-08).

- If the individual concerned fails to disclose after being notified, or if the property is falsely declared, the higher authority must inform the regional competent public prosecutor.

In an emergency, the head of the high authority may issue the same orders to the relevant authority or institution, provided that he reports the actions taken to the high authority's council at its earliest session (article 10-04 of law 22-08), knowing that the legislator has obligated public institutions and bodies. Similarly, any natural or legal person, public or private, must cooperate with the higher authority and provide it with the information and documents it requires to carry out tasks, or face the penalties prescribed for the crime of obstructing the good conduct of justice.

It should be noted that the high authority prepares an annual report on its activities and submits it to the President of the Republic, as well as informs the public of its content (article 04-10 of law 22-08), but some researchers believe that submitting an annual report to the president of the republic undermines the authority's independence, The highest level of openness and an evidence of its reliance on the latter (Sarbah Ahmed and Jabari Zain al-Din, p.783).

In terms of alerting the public about the content of this report, the lawmaker believes that not releasing the report will add uncertainty and ambiguity to such reports. Furthermore, publishing the report would keep the public informed about the authority's actions, reinforcing the principles of The rule of law, which reflects the integrity, transparency, and credibility that must be present in the management of public affairs and funds, as well as the work of the highest authority (Sheikh Bakhta, 2007, p.104).

Finally, we conclude, through the tasks delegated to the higher authority and determined within the framework of the procedures followed in the event of proven acts of corruption, that the powers of the higher authority have expanded to the point where it now exercises a supervisory role, in contrast to what was the case in the previous organization of the National Authority for the Prevention of Corruption, when it was predominantly Consultant, which is a logical shift.

What confirms this transformation is the higher authority's ability to transfer corruption files of a penal nature directly to the judicial authority without going through the Minister of Justice, so it can now apply directly to the Public Prosecutor requesting the issuance of precautionary measures to freeze banking operations in the event of proven unjustified wealth of a public employee, in

addition to the authority to notify the representative. In the event of property failure or false declaration, the regionally competent general is contacted.

This transition is also confirmed by the fact that the higher authority has begun to conduct administrative and financial investigations and request answers regarding manifestations of illegal enrichment among public employees, knowing that professional or banking secrets are not considered when confronting this authority.

Any natural or legal person with information about corrupt activities may report it to the higher authority, and it may also witness a violation of the quality and efficacy of anti-corruption measures used inside public bodies and administrations.

In addition to its role in the morality of public life and its contribution to directing citizen behavior to reject corruption and participate in combating it, it also seeks to protect property resulting from corruption even after the public lawsuit is resolved.

It may also issue warnings and orders if declarations are not submitted on time. This is to prevent property and monies from being withdrawn, hidden, smuggled, or changed. Its function is to notify the Public Prosecutor directly rather than the Minister of Justice, leaving the latter with the discretionary right to send files to justice from Not thereof.

Despite these capabilities, we cannot conclude that the higher authority has gained punitive power or is issuing deterrent or oppressive judgments or instructions. Law 08.22's powers, on the other hand, remain far broader than those granted by the previous body.

### **3. The powers of an advisory nature**

In line with article 205-06 of 2020 constitution, the High Authority for Transparency shall give its views on law texts pertinent to its scope of authority. Every draft legislation filed by the government or a proposed law submitted by representatives relating to transparency or preventing and combatting corruption must include the authority's view.

However, this authority does not go beyond the legal texts, as the authority's opinion is not taken into account regarding regulations related to its field of jurisdiction, and expressing an opinion regarding the legal texts does not imply taking into account the opinion of the government or Parliament, as they may take it as it is issued by an authority. Constitutionally competent, and they can exclude it, as it is a non-binding advisory opinion.

What is notable about the highest authority's advising duty is its limited reach, since it does not extend beyond legal documents. The legislature should have broadened the scope of this consultation to include regulation texts pertaining to the highest authority's area of competence, therefore activating its function in this respect.

In addition to the advising authorities specified in the Constitution, law 22-08 establishes the following advisory powers undertaken by the High Authority for Transparency:

- Providing an opinion on topics brought to it by the government, parliament, or any other entity or institution under its authority.

- Providing feedback on international cooperation initiatives in the sphere of corruption prevention and combat (article 29-09 of law 22-08).

What is notable about the subject of expressing an opinion on topics given to a higher authority is that, despite the importance of the authority's view in this respect, it appears to be a non-binding consultation for the parties that sought it.

**Conclusion:**

We conclude from this study that, in light of the new trend aimed at preventing and combating corruption, the Algerian legislator not only constitutionalized the high authority for transparency and preventing and combating corruption, but also elevated it to the rank of oversight institutions and assigned it a prominent role in the 2020 constitutional amendment to establish the principle of transparency and prevention of corruption. Corruption and battling it, and this function was enhanced by the issuing of law 22-08, which specifies the organization, creation, and powers of the High Authority for Transparency, Prevention, and Fight against Corruption.

This study yields a collection of findings and suggestions that are summarized as follows:

***First, findings:***

- The authority responsible for openness, prevention, and combatting corruption is autonomous and not subservient to the executive. The diversity of constitutional powers in charge of selecting members of the ultimate authority, which is no longer restricted to the President of the Republic. This strategy would provide members more independence.
- The Higher Authority for Transparency has a diverse composition, including judicial members with competence, specialization, and professional experience. It has the authority to prepare and approve internal regulations, ensuring independence from the executive authority.
- The high authority is in charge of establishing the national transparency and corruption prevention policy, whereas the National Authority was merely responsible for suggesting it.
- The high authority can issue orders and warnings to relevant institutions and agencies, as well as provide suggestions to combat corruption. However, it lacks the authority to impose penalties for violations of integrity rules, making its supervisory powers incomplete.
- The high authority is responsible for informing the Accounting Council and the appropriate judicial bodies. It has the authority to send corruption case files directly to the Public Prosecution, whereas the National Authority's responsibility is restricted to alerting the minister of justice, who determines whether or not to notify the judicial authorities.

***Second: Recommendations***

- The necessity of granting the High Authority for Transparency the power to impose administrative penalties on the concerned public and private institutions and agencies commensurate with their nature and tasks, in addition to the orders and recommendations they provide.
- The need to publish the annual report submitted to the President of the Republic in the Official Gazette.
- The necessity of expanding the jurisdiction of the higher authority in receiving property declarations by receiving statements from all categories of employees

without exception, including the leadership and senior category mentioned in the first paragraph of article 6 of the amended and supplemented law on prevention and combating of corruption, with the necessity for the property declaration to include a complete inventory of all Real estate and movable property of the employee, his wife and all his children in Algeria or abroad.

- The requirement that the head of the High Authority for Transparency be elected from among its members and then appointed by the President of the Republic by presidential decree.

Reactivating and digitizing the property disclosure procedure is crucial for preventing and combatting corruption. Additionally, new deterrent mechanisms should be implemented by higher authorities to promote transparency and combat corruption.

- Strengthening international collaboration in the fight against corruption and exchanging expertise and experiences across countries.

- Strengthening the role of different media sources in anti-corruption efforts, as well as promoting educational and cultural curriculum through them, in order to foster an integrity culture and save public funds.

- Creating a digital platform to receive related- corruption issues reports and complaints.

- Creating regional chapters of the High Authority for Transparency to strengthen its involvement in anti-corruption efforts.

- Activating the role of academic institutions in public morality by engaging in media initiatives that promote intolerance of corruption.

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***2- Constitutions***

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