

Governance as a Process to Reconstitute the State

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Abstract:

In the context of political and economic liberalization that witness Algeria, the actors of governance (effective civil society, competitive private sector ...) have a fundamental role in the promotion of the public service and the dissemination of the principles of the State of Law. Because they are considered as new sectors and actors that can be distinguished from the State. Algeria's interest in the process of construction the State of Law has been evident. The present paper aims to highlight the role of governance actors in Algeria and the obstacles that stand in the way of its adoption as a part in the construction and establishment of the State of Law and the enshrinement of Algeria's principles and values.

Keywords: Actors of governance, Governance, New Algeria, The State of Law.

الملخص:

في إطار الانفتاح السياسي والاقتصادي الذي شهدته الجزائر أصبح لفواعل الح وكمة (مجتمع مدني فعال ، قطاع خاص تنافسي...) دورا أساسيا في ترقية الخدمة العمومية ونشر مبادئ ومقومات دولة القانون باعتبارها قطاعات وفواعل جديدة يمكن تمييزها عن الدولة ، لذا نجد اهتمام الجزائر بدا جليا بهذا الدور الداعم والمساند لدور الدولة في مسار بناء دولة القانون. وبذلك تهدف هذه الورقة البحثية إلى تسليط الضوء على دور فواعل الح ولئمة في الجزائر ، والمعوقات التي تقف في مسار اعتمادها كطرف مشارك في بناء دولة القانون وتكريس مقوماتها وقيمها بالجزائر. الكلمات المفتاحية: الجزائر الجديدة؛ الحوكمة؛ دولة القانون؛ فواعل الحوكمة.

I. INTRODUCTION

An introduction that presents the specific problem under study and describes the research strategy.

The aspiration and desire to build a new Algeria and establish the rule of law as required by local and regional developments is one of the most important challenges facing Algerian society nowadays.

These challenges, which pose many problems and difficulties at the community and institutional levels, that's why the starting point to build the State of Law or the rule of law in the state _New Algeria_ depends on effective factors of good governance (an effective civil society, partnership with the private sector...).Engaging the latter (private Sector) directly in the consolidation of the rule of law that seeks to improve the quality of public service performance and the effectiveness of the General Facility and the promotion of human rights.

Based on the foregoing factors, the following research problematic can be raised:

To what extent does governance contribute to the establishment of the rule of law - State of Law- in Algeria?

To answer the research question, we will divide the study into the following axes:

- Basic concepts of governance and the Rule of Law.
- Establishment of the Rule of Law in Algeria
- Difficulties in governance in establishing the Rule of Law.

1- Concepts of Governance and the Rule of Law

The definitions of governance and the Rule of Law varied due to the evolution of the two concepts from time to time, and the different views between researchers and international bodies and organizations as well.

1-1 Governance

A-Definition of Governance

It should be noted that there is a problem with the translation of the concept and the transfer of the meaning of the term from foreign languages to Arabic. Most studies agree that there is no single translation, so that it has been translated into many terms: governance, community management, broad governance and public governance, State and community affairs, governance, and governance derivate concepts.

Mohammed Sayed Ahmed considers governance as: "an expression of issues, determined as a system of governance without prior planning and without drawing up or analysing a particular system. It is a system that stems from necessity rather than a system that has been established as previously conceived, and it uses the term globalized governance as an expression of a system of governance under a system that is not the system of nation states." (الكايد، 2003، صفحة 9)

The United Nations Development Programme (UNDP) defines the concept as: "A situation that reflects the progress and development of management from a traditional administration to a department that is responsive to citizens' requirements and that uses appropriate mechanisms and processes to achieve the desired objectives of projects transparently and responsibly to citizens".(أزروال، 2016، الصفحات 43-47)

From the foregoing definitions, we conclude that governance is "a set of processes and practices relating to the management and conduct of public affairs in a State, which fall within the respect of the law and the promotion of accountability and transparency, and in the interest of the general public in society. The principle of partnership with civil society and the private sector for development is taken in consideration too."

2-State of Law

2-1- Definition of the State of law

The phrase "State of law" has been frequently cared for and used by many rulers, particularly in developing countries, either for propaganda and electoral reasons, or to shine their image before the rest of the international community and spare them the contribution of criticism.⁽⁰¹⁾ (هاملي، 2012، صفحة 01) The concept has noticed a huge instability for its significance in the beginning before we get to what we can see as some sort of stability around the concept. Here are some of the definitions that many researchers and scholars have come up with.

According to the jurist F.ARDANT the State of law is "a State which accepts to act by respecting the rules and respecting the freedoms of citizens as a restriction of its liberty". (Ardant, 1989, p. 36)

J.RIVERO defined it as "a State where public authority is bound by the legal rule that it is bound to respect and aims to protect citizens from arbitrariness." (fatahine, 2002, p. 15)

There are those who consider that the legal State is "the State in which all individuals and groups are subject to the law. Such a State differs from the police State in which prevails the authoritarianism and the will of the Governor, a State where certain persons or bodies are not subject to rules that determine and frame their actions." (نباي، افريل 2010، صفحة 142)

We conclude from the above definitions regarding the concept of State of law that it is "a legitimate institution governs and governed by law." (اعراب، افريل 2010، صفحة 287)

B. The Principles of the State of Law (حمودة، 2014، صفحة 177)

The characteristics of the State of law are characterized by the exercise of power without coercion or intimidation on the one hand, and the exercise of public rights and freedoms without recklessness and intransigence on the other.

The State of law seeks to reconcile the individual's considerations with that of a dignified human entity, and to consider power as responsible for safeguarding and protecting the public interest aimed at collective interest, committed to serving the interests of the sovereign people which is the source of power. The State of Law committed also to the application of law to both the ruler and the sentenced, the rules of which are derived from moral and human values and the requirements of social life.

Thus, the establishment of the State of Law requires guarantees as: **the primacy of the Constitution and the principle of the incorporation of laws, the control of the constitutionality of laws, the independence of the judiciary, the separation of powers, multiparty pluralism, the succession to power, the recognition of individual rights and freedoms.** They are all principal elements that cannot be established without the availability of the State of Law, as well as the progressive development and support of the law in both its internal and external manifestations.

2- Algeria's State of Law: what role does governance play?

Many States have incorporated the governance approach into the functioning of public utilities, especially after increasing the burdens and needs of different categories of society, the high demand for services in terms and quality, and the changing functions of the State as new actors or partners (The private sector and civil society organizations) can contribute to the promotion and protection of women's rights and freedoms. In addition to the conduct of public affairs in order to improve the public service and achieve citizens' satisfaction, thereby moving towards the establishment of the State of Law in Algeria.

2.1 The State

We cannot deny the role of the State and its institutions in the realization of development projects and policies. The State with all its institutions are considered as the primary source of issuing resolutions and legislators of laws and institutions that enable members of society to benefit from the outputs of preparation, and above all raise the level of popular satisfaction with the delivery of public services.

In this context, it may be noted that Algeria's legislation on the public service emphasizes the improving of relationship between the administration and the citizen and ensuring their participation in the management and administration of the public service. A ministerial circular was issued on 14 November 2012 on improving the relationship between administration and citizens and rehabilitating public facilities, followed by the establishment of a ministry responsible for the reform of the public service. A package of measures to alleviate administrative and bureaucratic constraints and to enable citizens to communicate with the local unit and a desire to modernize Algerian public administration . In this regard, we notice the efforts like the issue of civil status documents from any municipality, the cancellation of security investigations into passport files exempts citizens from submitting civil status documents available in the National Automated Civil Status Register. (النور و لتيم، ديسمبر 2015، صفحة 94)

With a view to expanding Algerian women's representation in elected councils and supporting the case of their participation in decision-making, the most important concerns of the official discourse were to promote women's rights and enable them to participate in public and political life in order to meet the requirements of the State of Law by:

- Respect for the Constitution's fundamental principles guaranteeing equal rights and duties for men and women in political participation and public life.

- Provide an appropriate environment for upholding the values of equality and affirming the spirit of citizenship in order to achieve women's effective participation in political life free of discrimination.

- Ensuring Algerian women's rights in the structure and mechanisms of power and decision-making at various levels; The "United Nations Convention on the Elimination of All Forms of Discrimination against Women" All Member States to take all appropriate measures in all fields, in particular in the political, social, economic and cultural fields including legislation to ensure women's full development and advancement, to ensure the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men The Convention also requires Member States to take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to eliminating prejudices, traditional practices and all other practices based on the idea of inferiority or superiority of one of the sexes, or on stereotypical roles for men and women.(السيباني، مارس 2016، صفحة 154)

2-2 Civil society

The most common and accurate definition of this concept is that provided by Dr. Saad Eddin Ibrahim: Civil Society is "The group of autonomous voluntary organizations that dictate the public sphere between the family and the State, and they are non-profit in pursuit of the benefits or interests of society as a whole or some of its marginalized groups or in the interests of its members is committed to the values and norms of respect, consent, high management of differences, tolerance and acceptance of others."(قنديل، 2008، صفحة 64)

Participatory democracy is considered as an episode of Algeria's democracy-building series aims to create functional integration with the levels of representative democracy, The future of this integration cannot be guided by the logic of a conflict of roles. civil society is one

of the most important mechanisms for achieving this democracy. Contributing to improving the quality of the relationship between citizens and State institutions by strengthening the effectiveness and effectiveness of public policies. The work in a manner based on dialogue, shared responsibility, listening, proximity and mobilization's trust in public institutions due to the slow and progressive erosion in the quality of public services, the curtailment of freedoms, the lack of transparency, justice and equal opportunities. (MCRP, 2018)

Civil society in its various institutions or so-called "third sector" contributes to the involvement of individuals in economic and social activities and their organization in groups with influence in local public policies. It also helps to overcome failure and achieve a competitive advantage in commercial transactions by giving competitive prices to civil incomes through direct selling without intermediaries (373 صفحة، 2015، لعبيدي). In addition to demanding social justice and addressing violations of the economic, social and cultural rights of families and individuals, ongoing awareness-raising campaigns have been carried out to strengthen the framework for cooperation between State institutions and institutions of society and its members by providing information in both directions, thus helping to effectively address citizens' issues and thereby improving public service(2012، ياسين) .

Among these institutions are syndicalism unions as an example, which are enshrined by the Algerian Constitution under the article 70 of Act No. 16-01 above-mentioned. By stipulating that the right of syndicalism is recognized for all citizens, and therefore that syndicalism unions contribute to the reform and indirect promotion of the public service, Its meaning is essentially linked to the protection and defence of the interests and rights of its employees. In other words, the purpose of the organization of trade unions is to protect the rights relating to public office and in this way the interest advocated by the trade union is a private interest of the members of the office. It had no direct bearing on the public service, but the union's contribution to the development of the job, the promotion of working conditions and the guarantee of the employee's rights, particularly fair and adequate remuneration, inevitably resulted in the public servant performing his service better and more efficiently.

The constitutional enshrinement of the right to syndicalism and the allocation of its own organic law which is a strong guarantee of an effective State of law that contributes to the improvement and advancement of the public service.

It is worth to mention that creating syndicalism unions , associations, and political parties are all right enshrined in legal texts as fundamental freedoms guaranteed by the Constitution, thus allowing for the improvement of public service and the establishment of the State of Law.

In order to enhance the contemporary political role of Algerian women, civil society institutions are protecting women's rights and freedoms and trying to support their participation in political and social life through their role in:(115-114 الصفحات، 2014، المكي)

- Civil society organizations conduct training courses to develop women's capacities in communication, communication and human relations.

- Civil society organizations conduct awareness-raising campaigns for society on the importance of women's participation in activities that qualify them for future political participation.

Civil society is working to change the culture of women's work in various areas.

- Civil society organizations help to eradicate women's legal illiteracy through ongoing awareness-raising and the holding of seminars and conferences.

The civil effort and the State's achievements in improving the social and political rights of Algerian women are undeniable such as the access to power structures and decision-making positions in society and in Parliament. The promotion of their role in these sites is not an issue of slogans, nor a set of ideas promoted by the media at meetings, conferences and various means of communication. The importance of this lies in the seriousness of putting them forward

and addressing them as an issue that has a prominent place in our societies.

2-3 Private sector

The private sector is an actor whose integration has become more than necessary after the failure of public institutions to manage public utilities through improper patterns and trends. This mechanism has given partnerships with the private sector real opportunities to manage public utilities through agreements that facilitate partnership and legitimate cooperation and create patterns of (mixed economy, devolved measure, concession contracts), so that the implementation of development policies by the private sector can be more developmentally effective. (بوحنية، بن ناصر، و العوادي، 2015، صفحة 74)

The private sector contributes to the improvement of the public service as one of the new actions under the participatory approach, which was enshrined by the Algerian constitutional founder pursuant to the constitutional amendment promulgated by Law 16-01. This new trend is termed economic decentralization - decentralization of the market -. That is the creation of conditions that would produce services and goods according to market mechanisms (لعيدي، 2015، صفحة 371). In an other word, this means the local public institutions delegate some activities to private sector which are related to management and production through so-called partnership contracts. Which are one of the most effective means of reforming the public service owing to the private sector's high qualifications and competencies that ensure a high-quality and adequately resourced public service.

The desire for better and more efficient services in addition to the need for additional sources of funding that increasingly lead governments to embrace public-private partnerships to deliver these services. Public-private sector partnerships have become a dominant phenomenon over the past 10 years as a result of inadequate investments and increasing pressures on government budgets, as well as public concern about the inefficient services provided by government institutions and agencies economic infrastructure. Where public-private partnerships have been applied mainly in economic infrastructure areas such as (wireless communication, power, water and roads), but recently began to pay attention to social infrastructure such as (Health, education and other services). It is recognized that these services were mainly provided by the public sector and most of them require substantial investment, and they need a long time before you start giving a return in economic term. Usually governments are willing to continue their capacity to control the delivery of such services because of their necessity for modern societies. The process of pricing these services as a result of social considerations tends to be inflexible infrastructure services provided by the public sector have in many cases been characterized by low efficiency, high prices, low prevalence and neglect of maintenance. (متولي، د.س.ن، صفحة 04).

In this context, the Algerian State has increased its partnership with the private sector in many areas and the concession contract has translated this partnership prominently. The promotion of the role of the private sector in the provision of public services was emphasized through the constitutionality of the Algerian constitutional founder of freedom of investment and trades work to improve the business climate, promoting the prosperity of institutions without discrimination in the service of national economic development. The State role consists on ensuring market control and protecting consumers' rights, in addition to prohibiting anti-competitive practices.¹ The state issued also a law, Act No. 16-09 of 03 August 2016, on investment promotion. Finally, in the context of the resurgence of the national economy, the General Federation of Algerian Workers and employers' organizations signed the present Charter on Inter-institutional Partnership.

We conclude that the emphasize on the right of private sector to participate in governance and investment as well as freedom of industry and trade, in addition to the establishment of

legal frameworks regulating this partnership is a clear enshrinement of the State of Law through relying on the recognition of rights and freedoms in various legal texts and its various grades from the highest to the lowest for a major goal which is the improvement of public service and citizens aspirations and satisfaction.

3- State restructuring:

The establishment of the State of Law in Algeria and the involvement of governance actors in the enshrinement of its components are hampered by many obstacles, the most important of which are:

*Obstacles related to management and means of achieving objectives (bureaucratic mindset) (عميرات، مارس 2016) :

- The proliferation of legal texts, the intensity of procedures and the lack of effective mechanisms for their implementation would be an obstacle to the improvement of the public service. The centrality of decisions and the long distance of public service facilities to citizens would lead to a growing bureaucracy.

* Algeria's participation crisis; particularly through the exclusion of women and youth categories, which cannot be said to be a reluctance of them. It can be argued that this important category of Algerian society is excluded and marginalized by political parties that have not attracted them or by power and decision-making centres. While the State tends to promote women's political rights and freedoms through the constitutional amendment of 2008, so the reality acknowledges the unwillingness of political society to do so. Young people are still far from political parties, even if some of them raise slogans of suspicion. The slogans of the parties remain because they themselves do not have the principle of power trading as one of the cornerstones of the State of Law.(الصفحات 385-386، 2012، فريش،)

* Governance components (civil society institutions and the private sector) in Algeria remain fragile actors and sectors has not contributed or rather paid off as desirable in the process of promotion of the public service. Protection of citizens' rights and freedoms, including support for the rights of Algerian women and their participation in political life, commensurate with the public's aspiration towards a legal State. This is due to the group of obstacles that the state suffers from, the most important of which are:(الصفحات 15-16، 2014، سنوسي، أكتوبر)

- Lack of awareness of the private sector's importance in advancing progress and prosperity and the impact of its contributions to development and employment.

- Lack of incentives to work outside the dominant public sector.

- Weak public awareness among communities and individuals of the importance of participation.

- Lack of funding sources, weak institutional teams, and lack of capacity and human skills of some civil society organizations in Algeria (lack of funds, care and support from the authorities for associative and participatory action programmes) (الصفحات 708-709، 2011، علوان،)

- The problem of Algeria's weak culture of participatory volunteerism, which has led to the reproduction of the subordination of civil society institutions to power. (إخوان، 2015، صفحة 134)

In general, Algeria's State of Law restructuring continues to have two pivotal difficulties; The first is the structural divergence between what is official and real, the second relates to the content of domestically applicable law. Does it protect rights and freedoms, based on a higher normative rule of international law in the field of human rights. (المساوي، 2018، صفحة 43)

II. Conclusion:

At the end of this study, governance as an instrument for the re-establishment of the State and the consolidation of the State of Law and the obstacles to its adoption as a participating party in the construction of a new Algeria, a number of conclusions can be summarized in the

following points:

The legal State is a State with guarantees and principles: the primacy of the Constitution, the principle of the State of Law, the independence of the judiciary, the principle of separation of powers, multiparty pluralism, recognition of individual rights and freedoms.

The creation of State of Law in Algeria imposes the need to create a democratic culture and establish a governance approach that allows the involvement of new actors (civil society, the private sector). The latter has become a tool that supports the role of power in the State in order to enshrine the State's legal foundations.

However, there are several obstacles that adversely affect the role of governance in the establishment of the rule of law in Algeria. Perhaps the most important of these is the crisis of participation, the lack of transparency in oversight, accountability and the rule of law, the divergence between the law and reality, the proliferation of legal texts and the intensity of procedures.

A series of suggestions and recommendations could be included that would help to avoid obstacles to governance and to uphold Algeria's State of Law:

- Supporting participatory governance and democracy mechanisms by strengthening the role of civil society and the private sector, both through the creation of incentives and the development of their working methods in the interest of Algerian citizens' rights and freedoms;
- Provide a clear vision of a society project that meets citizens' aspirations for democratic practice and social and economic prosperity.
- Promote a culture based on governance standards and principles (transparency, participation and participation, accountability, justice, responsiveness, rule of law...).
- Formulation of a democratic culture based on dialogue, social justice, equal protection of citizens' rights and freedoms regardless of gender, creed and religion.

The need to the execution of the partnership between the State on the one hand, and the private sector and civil society organizations on the other hand in order to establish governance and reflect the concept of the State of law.

- Bringing the administration closer to citizens in order to serve the quality of Algeria's public service.

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