Combating Corruption in Algerian Legislation: Between International Obligations and National Mechanisms

مكافحة الفساد في التشريع الجزائري: بين الالتزامات الدولية والآليات الوطنية



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Abstract:

This article examines the legal and institutional framework adopted by the Algerian legislator to combat corruption by analyzing the various legislative, preventive, and punitive mechanisms established in accordance with Algeria's international commitments, particularly the United Nations Convention against Corruption (UNCAC). It explores the evolution of Algeria's criminal policy through the enactment of the Law on the Prevention and Fight against Corruption, which expanded the scope of criminalization to encompass new forms of corruption offences, while also addressing international cooperation mechanisms and the recovery of proceeds of crime. Furthermore, the article highlights the role of specialized anti-corruption institutions,

notably the High Authority for Transparency, Prevention and Fight against Corruption and the National Office for the Suppression of Corruption, and evaluates the effectiveness of their mandates in preventing, detecting, and combating corruption.

Keywords: Corruption; Law No. 06-01 on the Prevention and Combating of Corruption; High Authority for Transparency, Prevention and Combating of Corruption; National Office for the Suppression of Corruption; United Nations Convention against Corruption (UNCAC).

ملخص:

يبرز هذا المقال الإطار القانوني الذي اعتمده المشرع الجزائري لمكافحة الفساد، من خلال تحليل مختلف الآليات التشريعية والوقائية والقمعية التي أقرها في ضوء الالتزام بالاتفاقيات الدولية، وعلى رأسها اتفاقية الأمم المتحدة لمكافحة الفساد. ويتناول المقال تطور السياسة الجنائية في مجال مكافحة الفساد من خلال استحداث قانون الوقاية من الفساد ومكافحته، وتوسيع نطاق التجريم ليشمل صورًا جديدة من جرائم الفساد، إلى جانب دراسة إجراءات التعاون الدولي واسترداد العائدات الإجرامية. كما يسلط الضوء على الدور الذي تضطلع به الهيئات المتخصصة، وفي مقدمتها السلطة العليا للشفافية والوقاية من الفساد ومكافحته والديوان الوطني لقمع الفساد، مع تقييم مدى فعالية اختصاصاتها في الوقاية من الفساد والكشف عنه ومكافحته .

كلمات مفتاحية: الفساد، قانون الوقاية من الفساد ومكافحته، السلطة العليا للشفافية والوقاية من الفساد ومكافحته، الديوان الوطني لقمع الفساد، اتفاقية الأمم المتحدة لمكافحة الفساد.

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INTRODUCTION

Corruption is widely recognized as one of the most serious challenges confronting States and societies in the modern era, owing to its far-reaching adverse effects on political, economic, social, and administrative spheres. No longer confined to the borders of a single State, corruption has evolved into a transnational crime with complex international dimensions, driven by the expansion of economic and financial activities, the growth of international trade and investment, and rapid advances in technology and modern means of communication. These developments have led to increasingly diverse and sophisticated forms of corruption, making its prevention and suppression a priority for the international community. This is attributable to its detrimental impact on the principles of transparency and integrity, the misappropriation of public resources, the erosion of public confidence in State institutions, and its direct role in hindering sustainable development and undermining the foundations of good governance. [1]

Corruption is generally understood as the abuse of public authority or influence for private benefit, including practices such as bribery, embezzlement, abuse of office, and illicit enrichment. Due to its secretive and complex nature, combating corruption requires not only criminal sanctions but also preventive, supervisory, institutional, and international cooperation mechanisms. In this context, the adoption of the United Nations Convention against Corruption (UNCAC) in 2003 established a comprehensive international framework aimed at preventing corruption, criminalizing its various forms, promoting judicial cooperation, and facilitating the recovery of illicit assets, prompting States to reform their legal and institutional systems accordingly.

Within this context, the Algerian legislator has attached increasing importance to combating corruption by adopting a comprehensive legislative and institutional policy. This approach has been reflected in Algeria's ratification of the relevant international and regional anti-corruption instruments and in the enactment of Law No. 06-01[2] on the Prevention and Combating of Corruption, which marked a significant turning point in the country's criminal policy. The law not only reorganized the traditional corruption offences but also introduced new offences, established preventive measures and innovative procedural mechanisms, and strengthened international cooperation in the areas of freezing, seizure, confiscation, and recovery of assets derived from corruption. Furthermore, the legislator reinforced the institutional framework by establishing specialized bodies, notably the High Authority for Transparency, the Prevention and Combating of Corruption and the Central Office for the Suppression of Corruption, thereby reflecting a comprehensive approach that integrates prevention, detection, investigation, and repression.

The significance of this topic lies in its close connection with the protection of public funds, the promotion of the principles of transparency and integrity, the consolidation of the rule of law, and the achievement of sustainable development. It also provides an opportunity to assess the effectiveness of the legislative and institutional policy adopted by the Algerian legislator in combating corruption offences and to evaluate the extent to which this framework complies with the international obligations assumed by Algeria, particularly in light of the increasingly sophisticated methods of corruption and their growing threat to the State and society.

In light of the foregoing, the central research question may be formulated as follows :To what extent has the Algerian legislator succeeded in establishing an effective legal and institutional framework for combating administrative corruption, and how adequate are the mechanisms adopted to prevent, detect, and combat corruption in light of Algeria's international obligations?

1. Legal Mechanisms Established for Combating Corruption

The Algerian legislator recognized that combating corruption cannot be achieved solely through criminalization and punishment. Rather, it requires the establishment of a comprehensive legal framework that combines preventive measures with repressive mechanisms and is supported by international cooperation, which has become an imperative due to the transnational nature of corruption offences. Accordingly, Algeria has sought to harmonize its domestic legislation with international standards by acceding to the relevant international and regional conventions, foremost among them the United Nations Convention against Corruption (UNCAC), and by incorporating the obligations arising from these instruments into binding domestic legal rules[3].

Within this framework, the legal architecture for combating corruption in Algeria is founded upon two fundamental and complementary pillars. The first is active engagement in the international anti-corruption regime through the ratification of international and regional conventions, thereby strengthening international cooperation in areas such as information exchange, mutual legal assistance, and the recovery of criminal proceeds. The second pillar consists of establishing a comprehensive national legislative framework through the enactment of the Law on the Prevention and Combating of Corruption, together with the adoption of legal provisions criminalizing the various forms of

corruption and introducing preventive and procedural mechanisms aimed at curbing its spread, safeguarding public funds, and promoting the principles of transparency and integrity in the management of public institutions[4].

1.1 Participation in International Conventions and the Promotion of International Cooperation in Combating Corruption

In its contemporary forms, corruption has become one of the most serious transnational crimes owing to its increasing connection with technological advancement and modern digital technologies, which have provided extensive opportunities for concealing illicit proceeds and transferring them across national borders. Consequently, corruption can no longer be regarded as a purely domestic issue affecting only a single State; rather, it has evolved into a transnational phenomenon requiring coordinated international action and effective cooperation among States. The prevention and suppression of corruption have therefore become a shared responsibility of the international community, a principle expressly affirmed by the United Nations Convention against Corruption.

Within this context, Algeria has actively engaged in international and regional efforts aimed at combating corruption and transnational organized crime through the ratification of a number of relevant conventions and protocols. Pursuant to Presidential Decree No. 02-55[5], Algeria ratified the United Nations Convention against Transnational Organized Crime. It subsequently acceded to the Protocols supplementing the Convention through Presidential Decrees No. 03-417 and No. 03-418, both dated 9 November 2003, relating respectively to the Protocol to Prevent, Suppress and Punish Trafficking in Persons,

Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air. This commitment reflects the determination of the Algerian legislator to harmonize the national legal framework with international standards and to strengthen mechanisms for international cooperation in the exchange of information, mutual legal assistance, and the prosecution of perpetrators of transnational crimes.

As part of its commitment to international efforts to combat corruption, Algeria ratified the United Nations Convention against Corruption (UNCAC) through Presidential Decree No. 04-128 of 19 April 2004. The Convention, adopted in 2003, represents the first comprehensive international legal framework addressing corruption through an integrated approach based on prevention, criminalization, international cooperation, and asset recovery. In line with these commitments, the Algerian legislator incorporated its main principles into Law No. 06-01 on the Prevention and Combating of Corruption, reflecting an effort to harmonize national legislation with international standards. The Convention is based on four main pillars: preventive measures, the criminalization of corruption offences, international cooperation, and the recovery of illicit assets. Although Algeria expressed reservations regarding certain provisions related to dispute settlement before the International Court of Justice, its accession to the Convention significantly influenced the development of its domestic legal framework, particularly in light of the constitutional recognition of the supremacy of ratified international treaties over national legislation.

Algeria's international cooperation has not been confined to global conventions; it has also extended to the regional level through its accession to several relevant regional instruments.

Among the most significant are the Arab Convention against Corruption, the African Union Convention on Preventing and Combating Corruption, and the Riyadh Arab Agreement for Judicial Cooperation. These conventions seek to unify Arab and African efforts in combating corruption by strengthening the exchange of information and expertise, facilitating extradition procedures, enhancing mutual legal assistance, and promoting the recovery of assets derived from criminal activities.[6]

In addition to these conventional legal frameworks, Algeria has sought to strengthen practical cooperation among law enforcement authorities. In this regard, the National Office for the Suppression of Corruption joined the GlobE Network, established under the auspices of the United Nations Office on Drugs and Crime (UNODC). The GlobE Network is a specialized international platform designed to facilitate secure and rapid direct cooperation among anti-corruption authorities worldwide. It enables the immediate exchange of information and expertise, supports cross-border investigations, and coordinates efforts to trace, freeze, confiscate, and recover assets derived from corruption, without relying on the often lengthy procedures associated with traditional diplomatic channels. Consequently, the GlobE Network has emerged as one of the most significant operational mechanisms for enhancing the effectiveness of international cooperation in combating corruption, accelerating the prosecution of corruption offenders, and facilitating the recovery of illicit proceeds.[7]

1.2 The Evolution of Legislative Policy in the Criminalization of Forms of Administrative Corruption

The Algerian legislator formally adopted a comprehensive legal framework for corruption through Law No. 06-01 on the

Prevention and Combating of Corruption, although several corrupt practices had already been criminalized under the Penal Code as offences against public office, such as bribery, embezzlement, and abuse of influence. This law represented a major shift in criminal policy by reorganizing existing offences and introducing new forms of corruption, including illicit enrichment, acceptance of gifts, conflicts of interest, false asset declarations, and illegal political party financing. However, the legislative approach was not limited to expanding criminalization, as certain offences, such as the granting of unjustified advantages in public procurement, were later narrowed through amendments introduced by Law No. 11-15, reflecting a partial restriction of criminal liability in this area.

The legislator also narrowed the category of potential offenders with respect to the offence of unlawful taking of benefits by limiting criminal liability to a public official who is wholly or partially responsible for the administration, management, supervision, or oversight of contracts, auctions, tenders, or public procurement projects.[8] ...or is entrusted with issuing a payment authorization or approving the settlement of a particular transaction. Consequently, the legislator excluded other public officials who fall within the broad definition of a public official set forth in Article 2 of the Law on the Prevention and Combating of Corruption. The legislator also departed from the rule previously established under Article 124 of the Penal Code, which criminalized the unlawful acquisition of benefits by a public official even after the termination of his or her public service, during the five-year period following the end of the employment relationship.

In contrast to this restrictive approach, the legislator expanded the scope of criminalization with respect to other corruption offences, most notably bribery. Bribery is no longer confined to the

bribery of domestic public officials but has been extended to include the bribery of foreign public officials and officials of public international organizations, in addition to criminalizing bribery in the private sector. This expansion reflects Algeria's commitment to implementing the provisions of international conventions, particularly the United Nations Convention against Corruption (UNCAC), which calls upon States Parties to harmonize the criminal treatment of the bribery of domestic public officials with that of foreign public officials.

The Algerian legislator adopted an expansive approach to corruption criminalization by extending passive bribery provisions to foreign public officials, without limiting prosecution to the law of the official's State of origin or making the offence dependent on territorial or nationality requirements. This approach reflects the intention to protect international transactions and address cross-border corruption. The legislator also redefined the offence of embezzlement by introducing destruction as a punishable act while removing theft from its expressly listed elements, thereby reshaping the offence in accordance with the protection of public funds and assets entrusted to officials. In addition, Law No. 06-01 introduced the offence of accepting gifts under Article 38, which applies when a public official receives a gift or benefit while handling a file, procedure, or transaction involving the donor and is aware of this relationship. The purpose of this offence is not to prohibit gifts themselves, but to prevent their use as a means of influencing the official's impartiality, integrity, and proper exercise of public duties.[9]

The offense of receiving gifts differs from the offense of passive bribery in that the legislator does not require the existence of an explicit or implicit agreement to grant a benefit, perform an act, or refrain from performing one. Rather, it is sufficient that the gift be capable of

influencing the handling of a file, procedure, or administrative transaction. Accordingly, the offense is not established where the gift is unrelated to any unlawful purpose and it is proven that it was offered in good faith and under circumstances that do not compromise the public official's independence or impartiality. It appears that, through this provision, the legislator sought to address certain shortcomings that might otherwise hinder the application of the rules governing passive bribery in cases where it is difficult to establish the existence of consideration or an agreement.[10]

The Algerian legislator also introduced the offense of failure to declare assets or submitting a false asset declaration, as provided for in Article 36 of Law No. 06-01. Asset declaration constitutes one of the most important preventive and supervisory mechanisms, as it enables the comparison of a public official's financial situation before assuming office, during the exercise of official duties, and after leaving office. It may also facilitate the detection of other offenses, most notably the offense of illicit enrichment.

Nevertheless, the asset declaration system raises a number of concerns, particularly regarding the authority before which the declaration must be submitted, which varies according to the status of the public official. While certain officials are required to submit their declarations to the authority responsible for corruption prevention and combating corruption, senior public officials and holders of high-ranking public positions must submit theirs to the First President of the Supreme Court. This arrangement raises questions concerning the effectiveness of oversight and the independence of the authority receiving the declarations, as well as the issue of the authority before whom the First President of the Supreme Court himself is required to declare his assets. Another criticism directed at the legislator is that the obligation extends only to the assets of the public official and his or her minor children, without expressly covering the assets of the spouse or adult children. This limitation may create opportunities to circumvent the declaration requirements by transferring assets to a spouse or adult children in order

to conceal them from scrutiny. It appears that this legislative choice was influenced by the principle of the separate property regime between spouses; however, its application in the context of corruption prevention may undermine the effectiveness of the asset declaration system.

Law No. 06-01 also introduced the offense of covert financing of political parties, as stipulated in Article 39 thereof. The purpose of this criminalization is to ensure transparency in political life and to prevent the use of illicit funds to influence political party activities or to finance political campaigns and activities through undisclosed means, given the serious consequences such practices may have for the integrity of the political process and the principle of equal opportunity among political actors.

Despite the importance of the provisions introduced by the Law on the Prevention and Combating of Corruption, the drafting of some of its provisions has occasionally lacked precision. This is largely attributable to the transplantation of certain terms and concepts from the United Nations Convention against Corruption (UNCAC) without sufficient adaptation to the particularities of the Algerian legal system. This is particularly evident in Article 51 concerning the freezing or seizure of the proceeds of corruption offenses, where the legislator employed the phrase "by a judicial decision or by an order issued by a competent authority" without clearly defining the nature of that authority or the procedures governing the issuance of such an order.

The provisions governing the freezing and seizure of corruption proceeds initially raised questions regarding the meaning of the “competent authority” empowered to order such measures and the distinction between provisional measures and confiscation following conviction. The Algerian legislator later clarified this framework through amendments to the Code of Criminal Procedure, particularly Articles 50 and 51, by authorizing the Public Prosecutor, either independently or upon a reasoned request from a judicial police officer during the preliminary investigation, to apply to the competent court for provisional measures such as asset seizure or the freezing of banking transactions

involving persons suspected of committing corruption-related offences. The application must be supported by sufficient reasons and evidence, and the Public Prosecutor may also request the intervention of the authority responsible for combating money laundering and terrorist financing to temporarily suspend suspicious financial operations. After examining the existence of reasonable indications that the assets constitute illicit proceeds, the competent court may order their freezing or seizure, with enforcement carried out promptly by the prosecution authorities to prevent their concealment, transfer, or disposal pending the completion of investigations and determination of their lawful origin.

2- Specialized Legal Institutions for Preventing and Combating Corruption

The Algerian legislator has adopted a comprehensive strategy to combat corruption that goes beyond criminalizing its various forms through substantive and procedural provisions, extending to the establishment of specialized institutions responsible for prevention, detection, investigation, and oversight. This approach reflects Algeria's commitment to its international obligations under the United Nations Convention against Corruption (UNCAC), which requires the creation of independent bodies equipped with the necessary resources to prevent corruption effectively. Accordingly, Law No. 06-01 on the Prevention and Combating of Corruption established the National Body for the Prevention and Combating of Corruption as a specialized administrative authority responsible for promoting integrity and transparency. Following constitutional and legislative reforms, this body was replaced by the High Authority for Transparency, Prevention and Combating of Corruption, which was granted constitutional status under Article 204 of the 2020 Constitution, thereby strengthening its institutional position within the national anti-corruption framework.

To implement the constitutional provisions governing this Authority, Law No. 22-08[11] of 5 May 2022 was enacted, defining its organization, composition, and powers, while conferring upon it broader competencies in promoting transparency, preventing corruption, and

detecting corrupt practices. This institutional development reflects the legislator's determination to elevate the body responsible for combating corruption from a purely administrative institution to a constitutional authority endowed with a stronger legal status, thereby enhancing its independence and reinforcing its effectiveness in implementing the national anti-corruption policy.

2.1. The High Authority for Transparency, Prevention and Combating of Corruption

The High Authority for Transparency, Prevention and Combating of Corruption constitutes the principal institutional body with a constitutional foundation in the field of corruption prevention and the promotion of transparency in Algeria. It replaced the former National Body for the Prevention and Combating of Corruption as part of a legislative effort aimed at overcoming the shortcomings that affected the operation of the previous body, strengthening the independence of the institution responsible for preventing corruption, and expanding the scope of its powers.

The Algerian legislator defined the legal nature of the High Authority in Article 2 of its governing law, which provides that it is an independent institution possessing legal personality as well as financial and administrative autonomy. This definition reflects the legislator's intention to confer upon the Authority a distinct legal status that, in principle, enables it to carry out its functions independently and without direct subordination to the various public authorities. This legal framework differs from that governing the former National Body for the Prevention and Combating of Corruption. Prior to its repeal, Article 18 of Law No. 06-01 on the Prevention and Combating of Corruption[12], together with Article 2 of Presidential Decree No. 06-413 of 22 November 2006, defined that body as an independent administrative authority enjoying legal personality and financial autonomy, while placing it under the authority of the President of the Republic. This arrangement created a clear contradiction between, on the one hand, granting the body the status of an independent authority and, on the other

hand, institutionally subordinating it to the President of the Republic, who is the head of the executive branch.

Such institutional subordination inevitably limited the former body's actual independence, particularly with regard to its freedom to make decisions, determine intervention priorities, and carry out supervisory functions without influence from the executive authority. Consequently, its placement under the authority of the President of the Republic was regarded as one of the principal factors that undermined its effectiveness in preventing and combating corruption, rendering its independence largely formal rather than genuine functional independence.

By contrast, through the new legal framework governing the High Authority for Transparency, Prevention and Combating of Corruption, the legislator sought to remedy this contradiction. The governing law does not expressly place the Authority under the supervision or tutelage of any administrative or executive body, thereby reinforcing, from a legal perspective, its institutional, administrative, and financial independence. This legal status affords the Authority greater autonomy in carrying out its functions and in proposing policies and programs aimed at promoting transparency and preventing corruption.

Despite its constitutional status, the High Authority for Transparency, Prevention and Combating of Corruption remains subject to certain practical limitations that may affect its effectiveness. Its obligation to submit periodic reports to the President of the Republic raises concerns about its operational independence, particularly when such reports are not made public or subjected to broader institutional scrutiny. Furthermore, the Authority's powers are largely preventive and advisory, focusing on preparing reports, issuing recommendations, and providing opinions on anti-corruption policies. Since it lacks the authority to impose sanctions or initiate criminal proceedings directly, the effectiveness of its work ultimately depends on the willingness of the competent authorities to act upon its findings and recommendations.[13]

2.2. The Effectiveness of the High Authority for Transparency in

Preventing and Combating Corruption

The Algerian legislator has sought to equip the High Authority for Transparency, Prevention and Combating of Corruption with a broad range of powers and responsibilities enabling it to perform its mandate in preventing and detecting corruption while promoting the principles of transparency and integrity in the management of public affairs. The establishment of this Authority represents a significant institutional development compared to the former National Body for the Prevention and Combating of Corruption, both in terms of its constitutional status and the scope of its powers. The constitutional framers incorporated the Authority into Chapter IV of the 2020 Constitution, concerning oversight institutions, and devoted a separate chapter to it, reflecting the prominent position it now occupies within Algeria's national system of governance and public oversight.

The legal status of the High Authority for Transparency, Prevention and Combating of Corruption differs substantially from that of its predecessor, whose functions were primarily advisory and limited to issuing opinions, recommendations, and reports. By contrast, Law No. 22-08 of 5 May 2022 grants the High Authority broader powers in the areas of prevention, oversight, evaluation, and anti-corruption reform. It is authorized to investigate indications of illicit enrichment, request information on the sources of public officials' assets where reasonable suspicions exist, and, where appropriate, refer cases to the competent authorities. The law also strengthens corruption detection by allowing both natural and legal persons to report corruption-related information to the Authority. In addition, the High Authority is responsible for monitoring the compliance of public institutions with transparency and anti-corruption requirements. However, the absence of clearly defined transparency standards and objective compliance criteria may limit the effectiveness of this supervisory function, highlighting the need for a more precise regulatory framework.

The High Authority for Transparency, Prevention and Combating of Corruption plays a central role in the asset declaration system, which

constitutes one of the principal preventive mechanisms for detecting illicit enrichment and promoting transparency in the exercise of public office. Through the electronic platform established for this purpose, the Authority is responsible for receiving, processing, and verifying asset declarations submitted by persons subject to this legal obligation, while also monitoring changes in their financial situation and assessing the accuracy of the information disclosed. Pursuant to Article 5 of Law No. 06-01, every declarant is required to disclose all movable and immovable property owned within Algeria or abroad, whether individually or jointly, as well as the assets of his or her minor children. However, the legislator did not extend this obligation to the assets of the declarant's spouse, a legislative omission that may undermine the effectiveness of the asset declaration regime by allowing certain public officials to conceal assets through their spouses or adult children in order to evade scrutiny and avoid liability for illicit enrichment. Although this legislative choice reflects the principle of the separate property regime between spouses under civil law, the objectives of an effective anti-corruption policy may justify reconsidering this approach in order to strike a more appropriate balance between protecting private property rights and ensuring effective financial oversight.[14]

CONCLUSION

This study demonstrates that the Algerian legislator has sought to establish a comprehensive legal and institutional framework for combating corruption by aligning domestic legislation with international obligations, particularly the United Nations Convention against Corruption (UNCAC). This has been achieved through the enactment of legal provisions criminalizing various forms of corruption, alongside the establishment of specialized institutions entrusted with the tasks of prevention, detection, investigation, and the promotion of transparency and integrity in the management of public affairs. The legislator has also strengthened procedural mechanisms relating to criminal

investigations, the tracing, freezing, and confiscation of criminal proceeds, reflecting a legislative policy aimed at developing a more comprehensive criminal justice strategy to address corruption.

Nevertheless, the effective fight against corruption cannot be achieved merely through the enactment of legislation or the establishment of oversight institutions. It requires the existence of a comprehensive system of good governance founded upon the principles of transparency, accountability, and the rule of law, while ensuring the participation of all stakeholders, including public authorities, the private sector, and civil society, in the formulation and implementation of a national strategy based on prevention, oversight, accountability, and punishment. Such an approach strengthens public trust in governmental institutions and promotes a culture of integrity throughout the state's institutions.

The effectiveness of Algeria's anti-corruption framework also depends upon several fundamental prerequisites. Chief among these are the establishment of effective coordination among the various legal mechanisms and specialized institutions in order to prevent overlapping jurisdictions or institutional gaps, the reinforcement of the genuine independence of these bodies from any influence that could compromise their impartiality or objectivity, and the provision of the political commitment, human resources, financial means, and technical capacities necessary to enable them to discharge their responsibilities efficiently and effectively. Furthermore, the continuous evolution of corruption techniques and emerging forms of corruption requires periodic legislative reform, together with greater reliance on technological developments and international cooperation mechanisms for detecting corruption offenses, prosecuting offenders, and recovering illicit assets.

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