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The Usurious Nature of Excessive Interest Rate in The Algerian Banking Legal System

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Abstract:

The Algerian banking law's omission of the term "Riba" is a notable feature, especially in a country where Islamic finance has garnered significant attention across various sectors. Despite the absence of direct reference to Riba, an analysis of Algeria's banking regulations reveals the presence of a concept that closely parallels it. Instead of Riba, the law employs the term "prepared interest" to govern credit operations. This terminology is strategically used to ensure customer protection and to establish clear accountability for banks in the event of regulatory violations. The term "prepared interest" appears to serve a dual purpose: it adheres to the practical requirements of modern banking while subtly incorporating principles that resonate with the Islamic prohibition of Riba. This study delves into the intricate relationship between the Algerian banking system and the concept of interest, arguing that while the term "Riba" is absent, the underlying principles that regulate interest in the Algerian context reflect a nuanced adaptation of Islamic financial tenets. The research highlights how this adaptation allows the Algerian banking system to align with certain Islamic values while maintaining the flexibility required for contemporary financial operations. By exploring this alignment, the study aims to shed light on the existence of a concept of interest that, although distinct from the broad and traditional notion of Riba in Islamic Sharia, remains consistent with its foundational principles. This analysis underscores the complexities involved in balancing Islamic financial ethics with the demands of modern banking in Algeria, offering insights into how the country navigates the intersection of religious values and economic imperatives.

Keywords: *Credit; Usury (Riba); Interest Rate (Mudarabah); Banking Responsibility; Banking Regulation.*

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Introduction:

Every loan or credit extended by banks or financial institutions carries a cost or price that the beneficiary must bear. This is an age-old principle, originally based on two key factors: time (the duration of the credit) and amount (the nominal value of the credit provided). However, for banks and financial institutions today, these two factors alone are insufficient. Additional elements are now considered when calculating the cost of bank credit, making this calculation more precise and complex.

In contrast, under Islamic law, credit (loans) cannot generate income for the lender. This is a fundamental principle in Islam, rooted in the prohibition of Riba, as mentioned in the Qur'an (Riba al-Nasi'ah) and the Hadith (Riba al-Fadl). It is also important to note that Islamic jurisprudence does not differentiate between the terms "interest" and "Riba."

In Algeria, influenced by its Islamic heritage, the Civil Code prohibits the charging of interest on loans exchanged between individuals[1]. However, this law makes an exception by allowing banks and financial institutions to charge interest on the loans they provide[2], as reflected in the Monetary and Credit Law, which defines the operation of bank credit[3]. Recently, however, the Bank of Algeria has issued regulations prohibiting interest in banking operations related to Islamic (participatory) banking[4].

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[1] See Article 454 of Ordinance No. 75-58, dated 20 Ramadan 1395 AH (26 September 1975), containing the Civil Code, as amended and supplemented, published in the Official Journal of the People's Democratic Republic of Algeria on Tuesday 24 Ramadan 1395 AH (30 September 1975), No. 78, Volume 12, p. 1017. [Original work in Arabic]

[2] See Article 456, same reference. [Original work in Arabic]

[3] See Article 68 of Ordinance 03-11, dated 27 Jumada al-Thani 1424 AH (26 August 2003), concerning currency and credit, as amended and supplemented, published in the Official Journal of the People's Democratic Republic of Algeria on Wednesday 28 Jumada al-Thani 1424 AH (27 August 2003), No. 52, Volume 40, p. 11. [Original work in Arabic]

[4] See Article 2 of Bank of Algeria Regulation No. 20-02, dated 20 Rajab 1441 AH (15 March 2020), specifying banking operations related to Islamic banking and the rules for their practice by banks and financial institutions, published in the Official Journal of the

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Does this inconsistency in adopting a unified stance on interest for loans suggest that Algerian legislators and regulators have overlooked this crucial issue? If Algerian legislation prohibits the collection of interest on loans between all natural civil persons in the context of consumer credit, does this imply that the issue of usurious interest related to credit transactions has not been adequately considered in the legislative and regulatory frameworks governing banking?

To answer this question, one can observe that Algerian banking regulations have established specific provisions that reflect a clear concern for addressing the issue of "usurious" interest related to the granting of bank credit or loans. The only difference is that, on one hand, the term "Riba" is not explicitly used in the regulatory provisions issued; and on the other hand, the stance taken on the "usurious" nature of legally prohibited interest is neither explicit nor clear. It can be argued that some foreign legal systems adopt a similar approach, but they do so within the framework of adhering to narrow theoretical and jurisprudential views of the concept of Riba.

In this context, several scientific methods have been employed to confirm the existence of banking regulations concerning usurious interest. The first method is analytical, focusing on the study of the concept of Riba and its various forms. The second is the comparative method, which draws parallels to compare the concept of Riba with the concept of interest as recognized by both the Algerian banking system and Islamic law. Additionally, the deductive method was used in exploring the scope of legal provisions related to excessive interest rates, particularly in relation to leasing contracts.

Given the seriousness of the topic, this study will delve into two critical issues: the concept of Riba (Chapter One) and the legal provisions

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People's Democratic Republic of Algeria on 29 Rajab 1441 AH (24 March 2020), No. 16, Volume 57, p. 33. [Original work in Arabic]See, for the previous regulation, the first paragraph of Article 1 and the first paragraph of Article 2 of Bank of Algeria Regulation No. 18-02, repealed, dated 26 Safar 1440 AH (4 November 2018), containing the rules for practicing banking operations related to participatory banking by banks and financial institutions, published in the Official Journal of the People's Democratic Republic of Algeria on 1 Rabi' al-Thani 1440 AH (9 December 2018), No. 73, Volume 55, p. 21. [Original work in Arabic]

regarding excessive interest rates (usurious interest) in the Algerian legal system concerning credit or loans (Chapter Two).

I. The Concept of Riba

To demonstrate the connection between the term "excessive interest rate" and one of the meanings of "Riba" as established by Islamic jurists, it is essential to arrive at a comprehensive and clear legal definition of the term Riba, which Islamic scholars do not distinguish from interest. This chapter aims to address this by examining the definition of Riba both linguistically and terminologically (Section One) and exploring the different types of interest, one of which aligns with the concept of "excessive interest rate," known in some legal systems as usurious interest (Section Two).

Section One: Definition of Riba in Language and Terminology

Linguistically, Riba means increase, growth, addition, and expansion[1]. It has also been used to signify elevation[2], referring to an increase in the essence of something. For example, "rabwa" refers to a rock that rises above its surroundings. This is reflected in the words of Allah (ﷻ): *"And you see the earth barren, but when We send down water upon it, it stirs and swells and produces every kind of delightful plant"* [Qur'an 22:5] [3], and also, *"And among His signs is that you see the earth still, but when We send down water upon it, it stirs and swells"* [Qur'an 41:39].[4]

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[1] Mohamed BEN YOUSSEF, *Riba and Real Economy*: Article published in *Global Islamic Economy Journal*, Issue 21, February 2014, p. 25. (Original work in Arabic)

[2] Aicha Cherkaoui Malaki, *Islamic Banks: The Experience Between Jurisprudence, Law, and Practice*: Arab Cultural Center, Casablanca - Morocco, Beirut - Lebanon, First Edition, 2000, p. 549; Ahmed Bazi Yassin, *Riba*, Third Session of the Islamic Fiqh Academy Conference, Organization of the Islamic Conference, Amman, October 11-16, 1986, published in *Islamic Fiqh Academy Journal*, Issue 3, Part 3, 1987, p. 1819. (Original work in Arabic)

[3] Quran, Surah Al-Hajj, Verse 5: Part 17, Hizb 34, p. 332. (Original work in Arabic)

[4] Quran, Surah Fussilat, Verse 39: Part 24, Hizb 48, p. 481. (Original work in Arabic)

According to the "Al-Munjid al-Abjadi" dictionary[1], Riba refers to the interest that a lender takes from their debtor. The dictionary explains that the root of the word Raba (رَبا) originates from "Ribaa" and "Rubuw" which relate to the increase and growth of wealth. The term "Raba" can mean to exceed or increase, as in "Raba 'ala katha," which means to surpass or add. It can also refer to something rising above, as in "Raba al-Rabiya," meaning it rose over it. Additionally, "Raba Rabwan" is used when a child grows, and "Raba Rabwan al-Faras" refers to a horse experiencing labored breathing. The term can also mean swelling, as in "Raba," meaning to inflate.

In legal terminology, Riba is defined as any excess that has no equivalent exchange when trading money for money of the same kind. This includes interest, which is understood as an increase in the principal amount of a debt without any compensation other than the time during which the debt remains with the debtor[2], whether the debt arises from a loan or a sale. Some also define Riba as the increase in money in exchange for time[3].

In encyclopedic terminology, Riba refers to any income or interest received where the rate or percentage is excessive, exorbitant, or unlawful[4].

French legal doctrine interprets Riba (Usure - Usury) as "exorbitant interest imposed on a debtor by a lender. This type of contractual injustice is particularly evident in interest-bearing loans but can also be seen in installment sales. Injustice arises not from the lack of equivalence between the exchanged goods, as is the case with damages, but from

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[1] Al-Munjid Al-Abjadi: Arabic-Arabic Dictionary: Dar Al-Mashriq, Beirut, Lebanon, p. 472. (Original work in Arabic)
[2] *Abdel Samir Al-Masri, Why Did Allah Prohibit Riba?:* Wahba Library – Dar Al-Tawfiq Al-Namudhaji for Printing and Mechanical Collecting, Al-Azhar, Egypt, First Edition, 1987, p. 57. (Original work in Arabic)
[3] Aicha Cherkaoui Malaki, *Islamic Banks: The Experience Between Jurisprudence, Law, and Practice*: Refer to the previous source, p. 549. (Original work in Arabic)
[4] Fares Massadour, *Islamic Finance – From Jurisprudence to Contemporary Practice in Islamic Banks*: Dar Houma for Printing, Publishing, and Distribution, Algeria, 2007, pp. 20 and 21. (Original work in Arabic)

comparing the stipulated rate with the normal interest rate to reveal the usurious nature." .[1]

In French legislation[2], a usurious loan (Prêt usuraire) is defined as one where the total effective rate exceeds, at the time of granting, by more than one-third the average effective rate charged by credit institutions during the preceding quarter for operations of the same nature involving similar risks, as determined by the administrative authority after consulting the National Credit Council.

In Islamic jurisprudence, Riba is defined as any excess without a corresponding exchange when trading money for money of the same kind. This includes the well-known interest, which is an increase in the principal amount of a debt without any compensation other than the time the debt remains with the debtor[3], whether the debt arises from a loan or a sale. Some define it as an increase in money in exchange for time[4]. In Islamic jurisprudence, Riba refers to any excess without compensation in any transaction between two items of the same kind. It is a type of Riba that is strictly prohibited by Islamic law and is considered one of the major sins, classified among the seven deadly sins. Its prohibition is

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[1] Jean CARBONNIER, Les obligations, 22e éd., PUF, n° 36, cité *in* Stéphane PIEDELIÈVRE, Usure, *in* Répertoire de droit commercial, Édition juin 2012 (actualisation : janvier 2016), n° 1 ; qui définit l'usure comme « l'intérêt excessif, stipulé du débiteur d'un capital. Cette sorte d'injustice contractuelle se conçoit surtout dans le prêt à intérêt, mais aussi pour la vente à tempérament. L'injustice ne résulte pas, comme dans le cas de lésion, d'un défaut d'équivalence entre les prestations réciproques : Il faut pour faire apparaître le caractère usuraire, comparer le taux stipulé au taux normal d'intérêt ».

[2] LAMY Droit du Financement : Titres et marchés - Ingénierie financières - Paiement - Crédit - Garantie du Crédit, Édition Wolters Kluwer France SAS, 2008, n° 3194 p. 1508 ; qui définit le prêt usuraire, selon l'*article L. 313-3 du Code de la consommation* et l'*article L. 313-5 du Code monétaire et financier*, comme étant celui « *consenti à un taux effectif global qui excède, au moment où il est consenti, de plus du tiers, le taux effectif moyen pratiqué au cours du trimestre précédent par les établissements de crédit pour des opérations de même nature comportant des risques analogues, telles que définies par l'autorité administrative après avis du Conseil national du crédit* ».

[3] *Abdel Samir Al-Masri, Why Did Allah Prohibit Riba?:* Refer to the previous source, p. 57. (Original work in Arabic)

[4] Aicha Cherkaoui Malaki, *Islamic Banks: The Experience Between Jurisprudence, Law, and Practice*: Refer to the previous source, p. 549. (Original work in Arabic)

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clearly and unequivocally stated in both the Qur'an and the Sunnah, leaving no room for doubt or ambiguity[1].

According to some definitions, Riba refers to an increase without compensation in exchange contracts or any excess over the principal amount of the debt, whether the excess was stipulated at the outset or determined at maturity for the deferral of payment[2]. In the Qur'an, Riba primarily refers to the increase on a debt or loan, meaning Riba in exchange for time[3]. Some jurists have defined it as any conditional increase in exchange for time or any loan that brings about a benefit[4], or as an excess amount without compensation in the exchange of money for money[5].

This terminological distinction seems to be based on the existence of a difference between Riba, interest, and usurious loans within the context of religions, despite all of these terms representing an increase on the amount received by the borrower or debtor. Generally, these terms are understood as "any unjustified monetary advantage or benefit without a corresponding service." The difference lies in the fact that "interest is the amount paid by the debtor to the creditor as compensation for the use of the borrowed funds," whereas Riba means "anything above what the debtor originally received," or, in other words, "any loan with excessive, arbitrary, or extortionate interest."

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[1] Ahmed Bazia El-Yassin, *Riba*: Refer to the previous source, p. 1820. (Original work in Arabic)
[2] Fares Massdour, *Islamic Finance – From Jurisprudence to Contemporary Application in Islamic Banks*: Refer to the previous source, p. 18. (Original work in Arabic)
Amin JAFARI, Droit bancaire islamique – Notions, mécanismes et protections pénales, L’Harmattan, Paris, 2014, n° 62 p. 52؛
Mohamed Ben Youssef, *Riba and Real Economy*: Refer to the previous source, p. 25. (Original work in Arabic)
[3]Fares Messadour, *Islamic Finance – From Jurisprudence to Contemporary Application in Islamic Banks*: Refer to the previous source, p. 18. (Original work in Arabic)
[4] Abdel Samie El-Masri, *Why Did Allah Prohibit Riba*: Refer to the previous source, p. 11. (Original work in Arabic)
[5] Aicha El-Charkawi Al-Malqi, *Islamic Banks: The Experience Between Jurisprudence, Law, and Practice*: Refer to the previous source, p. 549, section 93. (Original work in Arabic)

Thus, Riba differs from interest in that it refers to "an unusually high or legally prohibited rate of interest." [1] These terminological differences do not exist in Islamic jurisprudence[2], which generally does not distinguish between the concepts of Riba and interest. However, there is a narrow perspective held by some Muslim jurists who assert that the prohibited Riba is the excessive Riba, which leads to multiplied amounts, as mentioned in the Qur'an. They argue that any interest rate not reaching the level of multiplication is not considered Riba and remains outside the scope of prohibition[3].

Section Two: Types of Interest

Based on the legal system and Islamic Sharia, interest can be categorized into various types, whether under the law (Section One) or under Islamic Sharia, where it is generally referred to as "Riba" (Section Two).

1. Types of Interest in Law

In the legal domain, interest is classified into several types based on different criteria and standards, including:

- **From the Perspective of the Beneficiary of Interest:** Banking regulations distinguish between creditor interest granted by banks under deposit contracts and debtor interest that banks receive when providing loans to their clients.
- **Based on the Stability of the Interest Rate:** A distinction can be made between fixed rates, which remain stable and are not affected by changes in financial indicators, and floating rates (Taux flottants – Floating rates), which involve significant risk and uncertainty.

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[1] Amin JAFARI, Droit bancaire islamique – Notions, mécanismes et protections pénales, *op. cit.*, n°s 6 & 7 pp. 14 & 15.

[2] Among the Muslim scholars who believe that simple interest is not considered riba (usury) are Dr. Wafik Al-Qassaar, Egyptian Mufti Sheikh Mohamed Said Tantawi, Sheikh Mohamed Ghazali, Dr. Abdullah Al-Mashad, and Dr. Mohamed Shawky El-Fangari.

[3] For detailed information, see Aicha El-Charkawi Al-Malqi, *Islamic Banks: The Experience Between Jurisprudence, Law, and Practice*, previous reference, pp. 564–598. (Original work in Arabic)

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- **According to the Legal Source of Interest:** Interest can be categorized into contractual interest, which is determined by the contracting parties, and legal interest, which is regularly set by the Bank of Algeria. Legal interest is applied when the rate is not specified by the parties and is also determined by legislative or regulatory authorities.

- **Regarding Legal Compliance of Interest Rates:** Many legal systems differentiate between standard interest and usurious interest.

- **In Terms of Complexity in Calculating Interest Rates:** Numerous legal systems distinguish between simple or straightforward interest and compound or compounded interest (capitalization of interest or anatocism).

- **Based on Interest Rate Calculation:** Banking systems differentiate between the base bank rate (Taux de base bancaire) set by each bank before entering into a contractual relationship with a customer, the effective total interest rate determined after signing the contract, and the effective average interest rate, which is periodically set by the central bank based on rates used by banks and financial institutions during a previous period for credit agreements.

- **Concerning the Frequency of Interest Payments:** There are interest rates paid regularly on a monthly, quarterly, or annual basis, versus interest paid once at the time of repayment of the principal amount of the loan and at the end of the contract.

- **Regarding the Basis for Interest:** Legal systems distinguish between credit interest, which is based on credit (loan) or deposit contracts, and default interest, which arises from non-compliance or delays in fulfilling obligations such as late payments or failure to meet contractual commitments.

2. Types of Interest (Riba) in Islamic Jurisprudence

In Islamic jurisprudence, interest known as "riba" is divided into two main types: **Riba al-Nasi'ah** and **Riba al-Fadl**.

a. Riba al-Nasi'ah (Riba of Delay)

Riba al-Nasi'ah refers to the interest associated with delay or deferral. Linguistically, it derives from the Arabic verb *nasiya*, meaning to delay or postpone, but it can also imply the opposite, which is forgetting or neglecting[1]. This type of riba involves an increase in the principal amount of a loan due to the extension of the repayment period. It is often considered "obvious riba" (*riba al-jali*) because its prohibition is explicitly mentioned in the Quran and is intentionally forbidden[2].

Historically, Riba al-Nasi'ah took two forms[3]:

1. **Inherent in the Loan Contract:** This involves an increase that is either paid in installments while the principal remains unchanged or paid alongside the principal upon the loan's maturity.

2. **Increase Due to Further Extension:** This refers to additional amounts added to the debt when the repayment term is extended, whether the debt arises from a loan or a sale.

b. Riba al-Fadl (Riba of Excess)

Riba al-Fadl, also known as "riba of Excess[4]," is addressed in the Hadith (Prophetic traditions) [1] rather than explicitly in the Quran. It

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[1] See, *Al-Munjid Al-Abjadi*, previous reference, p. 1062. (Original work in Arabic) Mahmoud EL-GAMAL, Finance islamique : Aspects légaux, économiques et pratiques, Traduction et adaptation de Jacqueline HAVERALS, Préface de Marc DESCHAMPS, Édition de boeck, 1ère édition, Belgique, 2010, p. 78 al. 6.

[2] See, Hassan Abdullah Al-Amin, *Bank Deposits and Their Investment in Islam*, Dar Al-Shuruq for Publishing, Distribution, and Printing, Jeddah, Saudi Arabia, 1st edition, 1983, p. 273; Aisha Al-Sharqawi Al-Malqi, *Islamic Banks: The Experience Between Jurisprudence, Law, and Application*, previous reference, p. 557. (Original work in Arabic)

[3] See, Hassan Abdullah Al-Amin, *Bank Deposits and Their Investment in Islam*, previous reference, p. 274. (Original work in Arabic)

[4] Mahmoud EL-GAMAL, Finance islamique : Aspects légaux, économiques et pratiques, *op. cit.*, p. 79.

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concerns transactions involving exchange of goods of the same type but differing in quantity or quality, which was prevalent in pre-Islamic Arabia[2]. The Prophet Muhammad (peace be upon him) prohibited such transactions to prevent unfair exchanges. He said: "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, like for like, equal for equal, hand to hand. If these types differ, then sell as you wish, provided it is hand to hand."[3]

Riba al-Fadl is named for the "excess" or "advantage" in one of the exchanged items, with the term "fadl" (excess) used metaphorically to indicate the imbalance between the two sides of the exchange. This type of riba arises from an imbalance in the mutual obligations resulting from the increased value of one item over another of the same type, when exchanged hand to hand[4]. Scholars such as Ibn al-Qayyim al-Jawziyya refer to this as **"hidden riba" (riba al-khafi)** because its prohibition is based on the principle of preventing potential harm (sadd al-dhara'i). [5] The prohibition aims to prevent unfair practices by ensuring equitable transactions.The distinction between Riba al-Fadl and Riba al-Nasi'ah lies in their nature:

- **Riba al-Nasi'ah** involves additional amounts due to delays in payment.
- **Riba al-Fadl** involves excess or discrepancy in the exchange of goods of the same kind.

There is some debate among scholars regarding Riba al-Fadl, with some arguing it only applies to the six specific items mentioned in the

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[1] Amin JAFARI, Droit bancaire islamique – Notions, mécanismes et protections pénales, *op. cit.*, n° 112 p. 90.
[2] See, Hassan Abdullah Al-Amin, *Bank Deposits and Their Investment in Islam*, previous reference, p. 270. (Original work in Arabic)
[3] See, Sahih Muslim, Hadith reported by Ubadah ibn al-Samit – may Allah be pleased with him – hadith number 1587, authenticated by the hadith scholar. (Original work in Arabic)
[4] Fadi NAMMOUR, Activité bancaire islamique : L'expérience libanaise, *in* Revue juridique de l'USEK, n° 9, 2008, n° 8 p. 11 al. 35.
[5] See, Hassan Abdullah Al-Amin, *Bank Deposits and Their Investment in Islam*, previous reference, p. 273; also see in the same context, Aisha Al-Sharqawi Al-Malqi, *Islamic Banks: The Experience Between Jurisprudence, Law, and Application*, previous reference, p. 557. (Original work in Arabic)

Hadith[1], while the majority view holds that it applies more broadly to any similar goods that can be measured or weighed[2].

II. Legal Provisions on Usurious Interest in Loans within the Algerian Legal System

An examination of the general provisions related to consumer loans as outlined in the Algerian Civil Code, as amended and supplemented, reveals a clear prohibition against generating any form of remuneration or interest from loans between individuals. Any contractual clause that contravenes this principle is deemed void[3].

In its efforts to regulate Islamic or participatory banking practices, the Bank of Algeria has introduced a modern regulatory framework that prohibits the collection or payment of interest in transactions involving participatory or Islamic banking. This framework specifically addresses financial products such as murabaha (cost-plus financing), musharaka (partnership), mudaraba (profit-sharing), ijarah (leasing), istisna (manufacturing contract), salam (forward sale), and investment account deposits[4].

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[1] It is the view of those who reject analogical reasoning, from the Zahiri school of thought.

[2] Abdeladhim IBN BADAWY, Le commerce - Al-Wajiz ou le résumé de la jurisprudence islamique : chapitre de la vente, Traduit par Youssef ABOU ANAS, OUM AMATILLAH, Décembre 2014, pp. 45-51, https://queditlislam.wordpress.com/2014/10/11/les-regles-du-commerce-en-islam/.

[3] See, Article 454 of Ordinance No. 75-58, which includes the Civil Code, as amended and supplemented, dated 20 Ramadan 1395 (26 September 1975), published in the Official Gazette of the People's Democratic Republic of Algeria on 24 Ramadan 1395 (30 September 1975), Issue 78, Twelfth Year, p. 1017. (Original work in Arabic)

[4] See, Articles 2 and 4 of Bank of Algeria Regulation No. 20-02, dated 20 Rajab 1441 (15 March 2020), which defines banking operations related to Islamic finance and its rules for banks and financial institutions, published in the Official Gazette of the People's Democratic Republic of Algeria on 29 Rajab 1441 (24 March 2020), Issue 16, Fifty-Seventh Year, p. 33. (Original work in Arabic)
Also see, in the previous and repealed regulation, the first paragraph of Article 1 and the first paragraph of Article 2 of Bank of Algeria Regulation No. 18-02, which includes rules for conducting banking operations related to participatory finance by banks and financial institutions, dated 26 Safar 1440 (4 November 2018), published in the Official Gazette of the People's Democratic Republic of Algeria on Sunday, 1 Rabi' al-Thani 1440 (9 December 2018), Issue 73, Fifty-Fifth Year, p. 21. (Original work in Arabic)

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However, in contrast to the aforementioned regulations and as an exception, Algerian legislation permits lending institutions to offer interest on deposit contracts to encourage savings, and to collect interest on loan contracts to stimulate national economic activity[1]. This position aligns with the general and comprehensive stance of the Currency and Credit Law concerning banking loan operations, which defines them as "...any transaction involving compensation...".[2]

Currently, the Algerian banking regulations acknowledge the legitimacy of banks and financial institutions setting interest rates for both credit and deposit accounts freely. However, this is conditional on the effective interest rates on loans not exceeding the excessive interest rate threshold set periodically by the Bank of Algeria[3], which is announced every six months. The Bank of Algeria informs banks and financial institutions of this rate and publishes it publicly[4].

However, despite the affirmation by Algerian banking regulations of the freedom for banks and financial institutions to set interest rates, this regulation, according to some experts, remains a legal constraint on the interest rates collected. This raises questions about the potential existence of a legal concept of usury within the Algerian banking framework, the legal nature of interest—whether usurious or not according to banking regulations (1), and the scope of application of this regulation, including the civil and disciplinary responsibilities of financial institutions (2). These are complex issues that would be challenging to address without the intervention of Algerian banking

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[1] See, Articles 22 and 23 of Law No. 84-21, dated 1 Rabi' al-Thani 1405 (24 December 1984), which includes the Finance Law for 1985, published in the Official Gazette of the People's Democratic Republic of Algeria on 8 Rabi' al-Thani 1405 (31 December 1984), Issue 72, Twenty-First Year, p. 2544; and the subsequent amendments to Articles 455 and 456 of Ordinance No. 75-58, including the Civil Code, as amended and supplemented, previously mentioned, p. 1017. (Original work in Arabic)

[2] See, Article 68 of Ordinance No. 03-11, dated 27 Jumada al-Thani 1424 (26 August 2003), concerning currency and credit, as amended and supplemented, published in the Official Gazette of the People's Democratic Republic of Algeria on 28 Jumada al-Thani 1424 (27 August 2003), Issue 52, Fortieth Year, p. 11. (Original work in Arabic)

[3] Ibid.

[4] In this context, see Articles 13 and 14 of Bank of Algeria Instruction No. 08-2016, dated 1 September 2016, concerning methods for determining excess rates, amended and supplemented by Instruction No. 10-2021, dated 21 November 2021. (Original work in Arabic)

regulations concerning interest and its rates, which aim to simplify these complexities.

Section one: Is There a Concept of Usury in Algerian Banking Regulations, and What is the Legal Nature of Interest?

The aim of this section is to explore whether a legal concept of usury exists within the Algerian banking framework despite the direct non-use of the term (a), and to examine the legal nature of interest on credit contracts as regulated by the Bank of Algeria (b).

a) Is Usury Expressed in Algerian Banking Regulations?

Although Algerian legislation and banking regulations do not explicitly use the term usury[1], relying instead on terms like interest, compensation, and remuneration, a closer examination of various regulations and instructions issued by the Bank of Algeria reveals a narrow concept of usury.

This is evidenced by the concept of excessive interest rates, which suggests that the Bank of Algeria incorporates a notion of usury consistent with the theories of excessive or extortionate interest, as acknowledged by some Islamic jurisprudence scholars.

This aligns with the idea referenced by some researchers[2], who broadly affirmed this concerning the ASSIMIL (Assimilationist) model applied to countries where Islamic banks are subject to the same lending regulations and rules as conventional (usurious) banks[3]. Notably, under this model, regulatory authorities suggest that the prohibition of interest arises from a conservative and traditional interpretation of Islamic law or, at the very least, from equating usury with the abusive use of interest.

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[1] Sami A. ALDEEB ABU-SAHLIEH, Les intérêts et les banques en droits juif, chrétien et musulman, *in* Édition du Centre de droit arabe et musulman de Saint-Sulpice, Suisse, n° 4 p. 7.
Amin JAFARI, Droit bancaire islamique – Notions, mécanismes et protections pénales, *op. cit.*, n° 112 p. 90 ; Thierry BONNEAU, Droit bancaire, Domat Droit privé, Éditions Delta, LGDJ – Montchrestien, 5ème édition, imprimé au Liban – 2003, n° 69 pp. 50 à 53 ; Stéphane PIEDELIÈVRE, Usure, *op. cit.*, n° 25.

[2] Abderrazak BELABES, Variété de modèles d'accueil de la finance islamique en droit national, *in* Les Cahiers de la Finance Islamique, *op. cit.*, n° 3, 2012, p. 82.

[3] This model is one of the seven internationally recognized models aimed at integrating Islamic finance into the national law of any country.

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This situation is adopted by some European countries, such as France and the United Kingdom, which aim to facilitate the growth and development of Islamic financial instruments within a framework that ensures the application of the same rules and regulations. This approach maintains an exclusive focus on lending activities and equates profit margins with interest. In other words, according to this model, Islamic finance would not face obstacles nor benefit from special biases or preferences. Instead, it guarantees an equitable environment (Levels Playing Field) without any form of discrimination.

The term "excessive effective interest rate" refers to any benefit without compensation agreed upon by the contracting parties through a loan process. Given that there is no distinction between interest and usury in Islamic jurisprudence[1]—where usury today, according to some schools, only means excessive interest[2] —it appears that the Bank of Algeria's stance on the excessive interest rate is based on the Qur'anic verse: “O you who have believed, do not consume usury, doubled and multiplied” (Qur'an 3:130). This position contrasts with the majority opinion in Islamic jurisprudence, which considers any amount of usury, whether little or much, as impermissible. In other words, the Bank of Algeria adopts the concept of excessive or usurious interest, which some legal scholars like Abdel Razak Ahmed El-Sanhouri, Mohamed Said El-Ashmawy, and Mohamed Cherif support. This perspective aligns with Western thought, which differentiates between interest and usury by defining usury as any interest rate that is excessively high[3].

In its Circular No. 08-2016, as amended and supplemented, the Bank of Algeria established a concept of usury without explicitly using the term. Instead, it defined usury as any rate of interest exceeding the so-

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[1] Amin JAFARI, Droit bancaire islamique – Notions, mécanismes et protections pénales, *op. cit.*, n° 112 p. 89.

[2] Regarding the view that classifies riba as excessive interest or an excessive rate of interest, see the position of Aisha El-Sherkawi El-Malqi, *Islamic Banks: Experience between Jurisprudence, Law, and Practice*, the previous reference, pp. 564-598. (Original work in Arabic)

Sami A. ALDEEB ABU-SAHLIEH, Les intérêts et les banques en droits juif, chrétien et musulman, *op. cit.*, n° 4 p. 8.

Amin JAFARI, Droit bancaire islamique – Notions, mécanismes et protections pénales, *op. cit.*, n° 112 p. 90 ; Thierry BONNEAU, Droit bancaire, *op. cit.*, n° 69 pp. 50 à 53 ; Stéphane PIEDELIÈVRE, Usure, *op. cit.*, n° 25.

[3] See Aisha El-Sherkawi El-Malqi, *Islamic Banks: Experience between Jurisprudence, Law, and Practice*, the previous reference, p. 549. (Original work in Arabic)

called "excessive" or "usurious" interest rate. This rate includes nominal interest, plus any bonuses, fees, and commissions that banks and financial institutions[1] receive—known as banking charges[2]—which constitute a loan with an interest rate exceeding the "excessive" rate determined periodically by the Bank of Algeria.

More precisely, a loan with an excessive or usurious interest rate is defined as any financing with an effective overall interest rate that, at the time of acceptance, exceeds by ten percent (10%) the average effective rate applied by banks and financial institutions during the previous semester for transactions of the same nature[3].

Thus, in legal terms, usury is considered to be the portion of interest exceeding the rate set by the central bank of Algeria. Any compensation or fee for a loan below this rate is not deemed usury according to Algerian banking regulations. This concept diverges from the definition of usury in Islamic jurisprudence, which encompasses any interest without compensation, regardless of its rate. In contrast, the concept of usury in Algerian banking regulations is limited to interest rates that exceed those set by monetary authorities, specifically those deemed excessive or unjustified.

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[1] See Paragraph 2 of Article 4 of Bank of Algeria Instruction No. 08-2016, as amended and supplemented, mentioned earlier. (Original work in Arabic)

[2] See Article 2 of Bank of Algeria Instruction No. 20-01, mentioned earlier, p. 31. For the previous regulation, see Article 4 of Bank of Algeria Instruction No. 13-01, repealed, dated 26 Jumada al-Awwal 1434 (April 8, 2013), which defines the general rules for banking conditions applied to banking operations, published in the Official Journal of the People's Democratic Republic of Algeria on 23 Rajab 1434 (June 2, 2013), No. 29, Year 50, p. 42. (Original work in Arabic)

[3] See Article 2 of Bank of Algeria Instruction No. 08-2016, as amended and supplemented, mentioned earlier. Before the amendment introduced by Instruction No. 10-2021, mentioned earlier, the excessive or usurious interest rate was defined as any financing with an actual total interest rate exceeding, at the date of acceptance, 20% of the average actual rate during the previous half-year by banks and financial institutions for operations of the same nature. It appears that the Bank of Algeria has reduced the excessive interest rate. (Original work in Arabic)

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b) The Legal Nature of Interest in Algerian Banking Regulation

It is noteworthy that despite the issuance of regulatory provisions by the Bank of Algeria concerning interest rates and their determination, the legal nature of interest remains ambiguous.

Banks and financial institutions are required to inform customers of the nominal interest rate[1], which represents the time price. However, this disclosure may not be sufficient or accurate for borrowers due to the additional costs associated with interest[2]. These costs often include fees for services related to managing the funds provided to the borrower. Consequently, the Algerian banking system has established the effective annual percentage rate (APR), which is presented as the actual rate paid by the customer. This rate includes not only the nominal interest rate but also all associated costs, fees, or any other rewards received by the bank or financial institution during the provision of credit[3].

Nonetheless, it is important not to overly rely on the concept of the effective annual percentage rate as an absolute measure. Not all loan costs can be included in this rate. Certain expenses, such as optional insurance not mandated by the lender or penalty clauses considered civil penalties for borrowers who fail to meet their obligations, should not be included in the effective annual percentage rate. Similarly, taxes and fees collected by the lender on behalf of the state treasury are also excluded from this calculation[4].

Section two: Scope of Application of the Regulation on Excessive Interest Rates and Legal Responsibility of Banks and Financial Institutions for Non-Compliance

The application of the regulation concerning excessive interest rates is subject to legal standards that banks and financial institutions

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[1] See Article 9 of Bank of Algeria Instruction No. 20-01, mentioned earlier, p. 31. For the previous regulation, see Article 5 of Bank of Algeria Instruction No. 13-01, repealed, mentioned earlier, p. 42. (Original work in Arabic)

[2] Stéphane PIEDELIÈVRE, Intérêts des capitaux, *in* Répertoire de droit commercial, juin 2012 (actualisation : avril 2015), n° 8.

[3] See Paragraph 2 of Article 4 of Bank of Algeria Instruction No. 08-2016, as amended and supplemented, mentioned earlier. (Original work in Arabic)

[4] See Paragraph 2 of Article 5, the previous reference. (Original work in Arabic)

must adhere to (a). This raises questions about the potential legal liability of banks and financial institutions in cases of non-compliance with the legal provisions set by the Bank of Algeria (b).

a) Scope of Application of the Regulation on Excessive Interest Rates

Regarding the scope of the legal provisions related to excessive interest rates (in its narrow sense of riba), it appears that Algerian regulation ties its applicability to certain criteria, both positive and negative, which determine whether this legal framework applies. However, some of these criteria seem to lack logical legal foundations for reference.

Within the scope of the regulation on excessive interest rates, it is noticeable that each category of transactions of a similar nature has its own specific excessive interest rate. This means that the regulation does not involve a single excessive interest rate but rather seven (7) distinct excessive interest rates, each associated with a category of transactions of the same nature[1].

Positive Criteria in the Application of Excessive Interest Rate Regulation: Positive criteria refer to those conditions that necessitate the application of the rules governing excessive interest rates. In this regard, the regulation has established that the applicability of this framework is determined by the nature of the transaction. According to Article 3 of the Bank of Algeria Instruction No. 08-2016, as amended, the regulation identifies groups of transactions subject to the calculation of the excessive interest rate, which means each category of transactions of the same nature. These categories include: overdrafts, consumer loans, short-term loans, medium-term loans, long-term loans, housing finance loans, and leasing.

However, it is peculiar that the Bank of Algeria includes leasing in the category of transactions subject to excessive interest rate calculation. Despite the fact that leasing contracts are considered as loan transactions[2], the fact that they combine rental with an option to purchase

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[1] See Article 3, previously referenced. (Original work in Arabic)

[2] See the first paragraph of Article 2 of Ordinance No. 96-09, related to leasing, dated 19 Sha'ban 1416 corresponding to 10 January 1996, published in the Official Gazette of

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for the benefit of the lessee means that they do not involve an interest rate, thereby exempting them from these rules[1]. This is supported by the Bank of Algeria Instruction[2], which specifies that only credit contracts generating interest are subject to the calculation of the effective overall interest rate. This stance contrasts with leasing contracts, which do not contain interest per se but rather profits (rent and purchase price if applicable). This position is consistent with French Law No. 66-1010[3], which, according to French legal theory[4], excludes leasing contracts from the provisions related to usury.

Negative Criteria in the Application of Excessive Interest Rate Regulation: Regarding negative criteria, which lead to the non-application of this regulatory framework, the aforementioned instruction[5] excludes any credit contracts that are subject to dispute or are frozen, as well as credit contracts with interest rates that are either regulated or subsidized by the state (bonified rates). These credits are, therefore, not subject to the application of the excessive interest rate regulation.

b) Legal Responsibility of Banks and Financial Institutions for Non-Compliance with the Regulation on Excessive Interest Rates

Regarding the consequences of non-compliance with the legal framework concerning excessive interest rates, it appears that under Algerian law, the responsibility of banks and financial institutions is limited to civil and disciplinary measures. There are no criminal penalties

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the People's Democratic Republic of Algeria on 23 Sha'ban 1416 corresponding to 14 January 1996, No. 3, Year 33, p. 25. Also, see Paragraph 2 of Article 68 of Ordinance No. 03-11, related to money and credit, as amended and supplemented, previously mentioned, p. 11. (Original work in Arabic)

[1] Stéphane PIEDELIÈVRE, Usure, *op. cit.*, n° 25.
[2] See Article 10 of the Instruction of the Bank of Algeria No. 08-2016, as amended and supplemented, previously referenced. (Original work in Arabic)
[3] La loi n° 66-1010 du 28 décembre 1966 relative à l'usure, aux prêts d'argent et à certaines opérations de démarchage et de publicité.
[4] Thierry BONNEAU, Droit bancaire, *op. cit.*, n° 69 p. 52 al. 62.
[5] See Article 10 of the Instruction of the Bank of Algeria No. 08-2016, as amended and supplemented, previously referenced. (Original work in Arabic)

specifically for this issue within the Algerian legal system; however, this does not preclude the existence of such penalties in other legal systems[1].

- **Civil Liability:** When the rate of interest exceeds the stipulated limit, the lender has the right to pursue the bank or financial institution through civil channels. The lender can demand the return of the excess amount obtained unjustly, in addition to interest calculated based on the average effective interest rate for the type of loan involved, as determined by the Bank of Algeria[2].

On the other hand, prevailing laws and regulations governing credit contracts do not specify the consequences of failing to inform the customer about interest charges or the actual effective interest rate or nominal interest rate. Thus, any potential dispute between the borrower and lender regarding the imposition or rate of interest must adhere to general contractual obligations and principles.

In this regard, legal scholarship suggests that if a loan contract does not explicitly state the interest charges, the contract is deemed to be without compensation[3]. Consequently, the borrower is only obligated to repay the nominal value of the loan without any interest, based on the invalidity of the contractual interest clause[4]. If interest is required but its

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[1] In some Western countries, such as France, in addition to civil and disciplinary proceedings, violating the rules related to exceeding the actual total interest by one-third of the average effective interest rate periodically determined by the central bank is considered a misdemeanor punishable under the Consumer Code (Code de la consommation). Consequently, it can be concluded that this penal system applies only to consumer loans and does not apply to commercial, professional, industrial, or agricultural loans. Abdel Sattar Al-Khwaildi, "Legal and Judicial Restrictions on Loan Interest Rates in Positive Law: France as an Example," previously referenced, p. 49.
For precise information, see: Thierry BONNEAU, Droit bancaire, *op. cit.*, n° 69 pp. 52 & 53.

[2] See Article 15 of the Instruction of the Bank of Algeria No. 08-2016, as amended and supplemented, previously referenced.

[3] Abdel Razzaq Ahmed Al-Sanhouri, "The Intermediate in Explaining Civil Law - Contracts Concerning Ownership: Gift, Partnership, Loan, Permanent Income, and Settlement," Volume 5, Part 2, Dar Ihya Al-Turath Al-Arabi, Beirut, Lebanon, Paragraph 287, p. 443. (Original work in Arabic)
Stéphane PIEDELIÈVRE, Usure, *op. cit.*, n° 41.

[4] See, Abdel Razzaq Ahmed Al-Sanhouri, "Al-Waseet in the Explanation of Civil Law - Contracts Related to Ownership: Gift, Partnership, Loan, Permanent Income, and Settlement," previous reference, paragraph 289, p. 446 (original work in Arabic). See

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rate is not specified or included in the contract, the borrower is bound to repay the loan amount and pay interest based on the legally determined rate, known as the legal interest rate (Taux d'intérêt légal), with any unrecorded contractual interest terms being considered void[1].

- **Disciplinary Liability:** In terms of disciplinary or professional responsibility, non-compliance with the excessive interest rate system, particularly any breach of the stipulated rate[2] or failure to notify the lender in writing about the actual effective interest rate[3], exposes the bank or financial institution to disciplinary sanctions imposed by the Banking Committee of the Bank of Algeria[4].

However, it is a shortcoming of the regulatory framework that it does not clearly specify the disciplinary penalties that may be applied by the Banking Committee. The lack of a precise, well-defined, and transparent set of standards for these penalties means that decisions are left to the discretionary judgment of the committee, rather than being based on established and clear criteria.

Conclusion:

The examination of Algerian legislation and regulation reveals that the terms "usury" and "riba" have not been used in the provisions related to loans. Instead, the terms "interest," "remuneration," and "compensation" have been employed for loan operations. However, the Algerian banking system, adhering to legislative policy, has established a new framework concerning the excessive interest rate. This framework pertains to the actual effective interest rate on credit provided by banks and financial institutions when it exceeds the average effective rate, as set by the Bank of Algeria, by ten percent for similar operations during the previous six-month period. Within this framework, the Bank of Algeria imposes two types of liability on banks and financial institutions

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also, LAMY Droit du Financement : Titres et marchés - Ingénierie financières - Paiement - Crédit - Garantie du Crédit, *op. cit.*, n° 3170 p. 1491.

[1] Thierry BONNEAU, Droit bancaire, *op. cit.*, n° 380 p. 255.

[2] Article 2 of Bank of Algeria Instruction No. 08-2016, as amended and supplemented, previously mentioned (original work in Arabic).

[3] Article 11, previous reference (original work in Arabic).

[4] Article 17, previous reference (original work in Arabic).

for non-compliance: civil liability in favor of the borrower and disciplinary liability enforced by the Banking Committee.

The notable aspect of this regulation is that, while it does not explicitly use the term "usury," its content aligns with modern jurisprudential positions in both legal and Islamic law. These positions view usury as excessive or exorbitant interest or, in other words, interest at a significantly high rate.

However, the Algerian banking regulation is criticized for failing to label this excessive or exorbitant rate as "usury," unlike some Western countries such as France, which term it "L'usure" or "taux usuraire." Additionally, the inclusion of leasing contracts under the excessive interest rate framework, despite their lack of interest, represents an illogical situation that needs rectification.

Despite these shortcomings, the Algerian banking system deserves credit for moving towards the approach of Islamic law regarding usury, which is explicitly prohibited by the Qur'an and Sunnah. It is well known that the prohibition of usury in Islam was not sudden but progressive, evolving through four stages from encouragement to avoidance to definitive prohibition[1]. This indicates that Algerian monetary and financial authorities are following a similar gradual approach to banning usurious interest.

While it is true that the Algerian legal framework does not use the exact terminology of Islamic law and does not fully adopt all of its provisions concerning usury, it at least shows that since the introduction of provisions related to excessive interest rates and the prohibition of earning or paying interest in Islamic banking products, the monetary and financial authorities have

demonstrated an awareness of the principles of usury. This is evident even if the prohibition applies only to certain types of interest rather than all forms.

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[1] Paul Mills and John Presley, translated by Rafiq Younes Al-Misri, *Islamic Finance: Theory and Practice*, First Edition, 2004, p. 19 (original work in Arabic).
Sami A. ALDEEB ABU-SAHLIEH, Les intérêts et les banques en droits juif, chrétien et musulman, *op. cit.*, pp. 7 & 8 n° 4.