

Challenges And Mechanisms For Recovering Corruption Proceeds According To Provisions Of International And Jordanian Legislation

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Abstract

The research was devoted to revealing the adequacy of Jordanian legislation to recover the proceeds of corruption. The research revealed the fact that some of the official institutions involved are discreet in disclosing a large portion of information related to the amount of stolen funds that the government was unable to recover. In addition to restricting media and popular censorship, the failure to implement some anti-corruption legislation, and the inadequacy of some of them, such as the legal rules related to financial disclosure. The research recommends that the Jordanian legislator explicitly include journalists and ordinary people who secretly or publicly filmed or recorded an incident that may constitute a corruption crime with immunity from criminal prosecution, and transfer the burden of proving the veracity of their claim to the Public Prosecution in case they are accused of committing the crime of defamation or character assassination, considering any increase in the assets of the public employee or whoever holds this capacity and his branches, whether adults or minors, and not declaring it, is a definitive legal presumption to conceal crimes of corruption or illegal profit from public office, considering failure to report suspected corruption crimes or procrastination in providing assistance to the relevant authorities as conclusive legal evidence of criminal involvement, failure to set a ceiling for the period during which the bodies responsible for combating corruption must issue their decision, not to exclude or immunize any natural or legal person from criminal liability and not to open the door of financial settlements with the corrupt, Finally, address to the competent national or international judiciary in case of procrastination or refusal to provide International cooperation.

Keywords: Jordanian legislation, Corruption, legal rules, international cooperation.

Introduction

The president of the United Nations General Assembly affirmed at the opening session of a meeting on international cooperation to combat illicit financial flows, these “illicit financial flows negatively affect the lives of millions around the world, and these flows

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divert financial resources away from investments in health, education, housing, infrastructure, and people's well-being, leading to inequality and poverty.”(United Nations, 2019). Jordan suffered from the worsening phenomenon of corruption, like many countries in the Arab region and many other countries in the world until it became feared that this scourge would hit many Jordanian state institutions. In light of the high indebtedness and the noticeable and worrying economic decline, especially as a result of the Covid-19 pandemic, the increase in poverty and unemployment, and the deteriorating living conditions of the Jordanian people, despite this, corrupt people still smuggle what they steal from public money or what they profit from the people's livelihood to safe foreign havens.

In the absence of accurate estimates and official statistics on the size of the looted amounts resulting from acts of corruption and organized crime. Studies by international organizations, most notably ESCWA and the United Nations Human Rights Council, have confirmed that what is recovered by developing countries and countries in the Arab region, including Jordan (the country under study), of funds derived from an illicit source, is much less than what was stolen from these countries which has disastrous effects on the people of these countries and exacerbates their economic problems, poverty and unemployment. This requires research to uncover the loopholes that enable corrupt people and organized crime perpetrators to hide this money outside the Kingdom, and the challenges that the government faces while trying to search for these funds and assets, prove their ownership, and recover them.

How adequate is Jordanian legislation to recover proceeds of crime and stolen assets derived from corruption crimes and other forms of organized crime?

The research aims to reveal the adequacy of Jordanian legislation and the national legal mechanisms necessary to achieve the highest efficiency of recovery of looted funds, in light of the United Nations Convention Against Corruption of 2003.

In this research, the inductive approach was used to clarify the concept of corruption, its causes and effects in general, and to shed light on the phenomenon of corruption in the Hashemite Kingdom of Jordan and its effects on the living situation of the Jordanian people in particular. Also, to track the challenges faced by Jordan while trying to recover the looted funds. The analytical approach was also adopted when researching the provisions related to the recovery of looted funds and mutual international cooperation provided for in the United Nations Convention Against Corruption (UNCAC) of 2003 as well as stipulated in the Jordanian legislation, and then the critical approach to clarify the gaps in the latter.

This study is divided into two topics: the first examines the concept of corruption, its causes and effects in general, and its effects on the living conditions of the Jordanian people in particular. The second deals with the legal challenges of recovering proceeds of crime that Jordan faces between international law and Jordanian law, this was done after analyzing the provisions contained in international law, especially UNCAC of 2003, and comparing them with those provisions contained in Jordanian national legislation.

First topic: The concept of corruption, its causes, and its effects on the standard of living:

It is necessary, first of all, to research the phenomenon of corruption by defining its various aspects, the extent of its spread in the Kingdom of Jordan, and its impact on the living aspects of the Jordanian people. Accordingly, this research was divided into two requirements: the first to introduce the phenomenon of corruption in general and provide a general overview of the economic situation in Jordan, and the second to present the phenomenon of corruption in Jordan and its effects on the Jordanian people.

The first requirement: The phenomenon of corruption and the economic situation in the Jordanian state:

To the date of this research, there is no single comprehensive definition that prevents corruption, recognized at the international level, even the 2003 UNCAC itself avoided defining it, therefore, the definition of corruption differs among researchers depending on the researcher's scientific field and the perspective from which he starts to explain corruption. For example, researchers in economics and corruption focus on the relationship between investment and economic development on the one hand and the quality of government institutions on the other hand. Legal researchers, consider corruption a deviation from adherence to legal rules, and they agree that it has a devastating impact on the rule of law, especially if it affects the judiciary. While political researchers focus on corruption with the legitimacy of governance, the role of civil society institutions, and models of political forces. Sociologists see corruption as a social relationship represented by violating the rules of social behavior with regard to the public interest (Daoud Taghreed, 2015).

One of the most important definitions of corruption cited by international bodies is the World Bank's definition of corruption as "abuse of public office for private gain and includes a wide range of behaviors from bribery to theft of public funds." (World Bank website, 2020).

The 2003 draft United Nations Convention Against Corruption defines it as "acts constituting improper performance of Duty or abuse of a position or authority, including acts of omission in anticipation of an advantage, or in order to obtain an advantage that is promised, offered or requested directly or indirectly, or after accepting an advantage granted directly or indirectly, whether to the same person or for the benefit of another person" (United Nations Documents, 2011).

Transparency International also defines corruption as "the misuse of power to achieve private gain." (Transparency International, 2021). While the United Nations Development Program defined corruption as "the misuse of official power, position, or authority for private benefit, whether through bribery, extortion, influence peddling, nepotism, fraud, providing gratuities to activate services, or through embezzlement." (United Nations Development Program, 2008).

The causes of corruption vary from one country to another, and whatever these reasons are, the human element has a fundamental role in them, among them: are weakness of moral and religious motivation, poverty, ignorance, illiteracy and unemployment, weakness and lack of independence of oversight and accountability bodies, lack of adherence to legal rules, procedures and employee codes of conduct, low salaries in the public sector, high living costs, ineffective legislation responsible for combating corruption, lack of transparency and clarity, and many other reasons. Corruption also constitutes a real danger to society and the state in all political, social, administrative, legal, and economic fields. In the political field, the political system loses its legitimacy as a result of Its leaders being involved in corruption crimes, in addition to the decline in popular participation in governance as a result of widespread election fraud, which opens the door to unrest.

As for the administrative body, it is the first to be affected by corruption as it is the scene of the crime, as employees and officials neglect to review the laws, regulations, and procedures that govern the work of government departments to maintain the inertia, bureaucracy, and routine that brings them financial gains. In addition to the above, corruption has serious effects on the legal and judicial system in the country, as it causes it to be ineffective due to the corruption of those in charge of it and constitutes a direct violation of human rights, it is inconceivable to respect human rights if the police or military institutions do not respect those rights, or if the judiciary is politicized or accepts bribes, as it is impossible for individuals to obtain their right to a fair trial before an independent and impartial judicial body. Corruption also leads to the violation of a wide range of human rights, as it leads to discrimination in access to public services. Corruption can have an indirect impact on human rights. If, for example, public authorities illegally allow

deforestation in exchange for a bribe, the right of people residing on these lands to food, health, the environment, and housing may be violated. Also, the rights of vulnerable groups such as the poor, people with disabilities, and the elderly are affected in terms of their access to an acceptable level of social care, as corruption reduces the resources available for the realization of economic, social, and cultural rights (Document No. A/HRC/28/73, 2015).

As for the effects of corruption in the economic field, corruption raises the prices of public services and reduces their quality, creates uncertainty in the market through the constant change of regulations and laws, undermines the efforts of the state in the collection of revenues and taxes, reduces the quality and standards of industrial, pharmaceutical and other products. And it causes increased conflicts, undermines societal peace, and hampers reconstruction work in countries suffering from natural disasters (United Nations Development Program, 2008).

The Jordanian people suffer from poor economic conditions, as the poverty rate in Jordan in 2010 was 14.4% compared to a rate of 13.3% in 2008 (Jordanian Department of Statistics, 2012). The World Bank and the Jordanian Department of Statistics indicated that the poverty rate continues to rise, as in 2018 it reached a rate of 15.7%, meaning that 1.069 million Jordanians live in the poverty zone, while the percentage of hunger poverty in Jordan reached 0.12%, equivalent to 7993 individuals, noting that the population census in 2008 was 6 and a half million, and in 2010 it became 7 million and two hundred thousand, as for 2018, the population reached about 10 million (Department of General Statistics, 2019). In the latest World Bank report, "ATLAS of Sustainable Development Goals 2023," the World Bank revealed that Jordan, despite beginning to recover from the Corona pandemic, is below the poverty line with an average income of approximately \$7.9 per capita, meaning that is, the number of poor people in this year is estimated at 3.980 million out of 11.15 million people (ATLAS of Sustainable Development Goals, 2023). While the unemployment rate in Jordan in the first quarter of 2021 reached about 25% and 23.2% in 2020, while it ranged between 18% and 19% for the years 2017, 2018, and 2019, compared to an estimated rate of 12% for the years from 2009 to 2015 (Department of General Statistics, 2021). In the fourth quarter of 2022, the unemployment rate reached 22.9% and decreased in the first quarter of 2023 to reach 21.9%, according to the Jordanian Department of General Statistics.

According to World Bank data, the Corona pandemic has had serious economic repercussions in Jordan, due to its small economy, its openness, and its high level of connectivity with the rest of the world, as the pandemic has had a profound impact on the services sector, and travel and tourism revenues, which are all essential sectors for growth in the Jordanian economy. Jordan achieved notable improvement in reducing the current account deficit in the two years prior to the pandemic, but the slowdown in global economic activity due to the pandemic appears to have reversed this trend. The deficit (including grants) decreased from 10.6% of GDP in 2017 to 7% of the total in 2018, and 2.1% of the total in 2019, but in 2020, it increased to 8% of GDP due to an unprecedented decline in tourism revenues of 76%, in addition to a 9% decline in remittances from Jordanian expatriates, despite the significant contraction in the trade balance (World Bank, 2021).

According to Reuters, the balance of public debt owed by Jordan in the first two months of 2021 increased by 0.8% to 26.7 billion Jordanian dinars (\$37.6 billion), compared to 26.49 billion at the end of 2020. Statistics published on the website of the Jordanian Ministry of Finance showed that Jordan's internal debt at the end of February amounted to 13.6 billion dinars, and its external debt amounted to about 13.06 billion, meaning that Jordanian public debt is equivalent to 85.6% of the Kingdom's gross domestic product, It should be noted here that the Ministry of Finance has changed its methodology in calculating the public debt by excluding debts issued by the Social Security Investment Fund, amounting to

approximately seven billion Jordanian dinars (Reuters, 2021). The data of the Jordanian Ministry of Finance indicated in its report on public debt in the fourth quarter of 2022 that the total public debt reached 38.4 billion Jordanian dinars (\$54.2 billion), including the debts of the Social Security Investment Fund, and that these debts entail interest amounting to 10,387.9 million Jordanian dinars (\$14.6 billion) (Jordanian Ministry of Finance, 2022).

At the same time, Jordan is suffering from the worsening phenomenon of corruption to the point that it is almost affecting many Jordanian state institutions, as the Corruption Perceptions Index issued by Transparency International showed a decline in Jordan's level and ability to limit the spread of corrupt practices.

The second requirement: Corruption phenomenon in Jordan and its effects on the Jordanian people:

The Corruption Perceptions Index is an index that ranks 180 countries and territories according to the perceived levels of public sector corruption according to experts and the business community, according to a scale from zero to 100, where zero is the most corrupt and 100 the most honest. The 2020 index showed that more than two-thirds of countries score below 50 on the Corruption Perceptions Index, with an average score of only 43, and the data show that despite some progress, most countries are still failing to tackle corruption effectively (Transparency International, CPI 2020). Jordan exceeded the fifty-degree limit in 2015, where it received 53 degrees on the Corruption Perceptions Index, which indicates that it has made significant progress in the fight against corruption, that is, it exceeded the global average and the average of most regions of the world, except for the average of the European Union and Western Europe. Unfortunately, in 2016 and 2017, it declined again to 48, a low of five degrees, and then its rank ranged from 49 to 48 for the years 2018-2021, and then it declined again in 2022 on the Corruption Perceptions Index, where it got a rank of 47 and then 46 in 2023 (Transparency International, 2024).

The Transparency International report for 2020 indicated that the phenomenon of corruption has worsened in all countries of the world following the Covid-19 pandemic, as the report confirmed that this pandemic is not just a health and economic crisis, but also a global corruption crisis, where the world has lost countless lives due to the pernicious effects of corruption that undermines a fair and equitable global response, reports of widespread bribery, embezzlement, overpricing and nepotism reverberated. The emergency response to the COVID-19 pandemic has exposed massive cracks in health systems and democratic institutions, which emphasizes that those in power or who control government spending are working to achieve their own interests instead of the interests of the most vulnerable groups. The 2021 report also reiterated the impact of the pandemic on the increase in corruption, added that the deterioration of respect for the values of freedom and human rights, especially in the countries of the Middle East, has led to the decline of democracy and the root of despotism, which contributed to the aggravation of the phenomenon of corruption. This deterioration is related to the disruption of the work and role of the media, journalists, and civil society organizations as a result of the restrictions imposed by the pandemic on the movement of individuals, especially in countries that exploited preventive measures against the pandemic to suppress public freedoms. In other words, the report emphasized that the freedom to express one's opinion in all its forms, the freedom to assemble and demonstrate, and the ease of access to the judiciary ensures continuity of oversight over corruption rates, all of this was affected by the measures necessary to confront the pandemic, which contributed to a significant increase in corruption rates (Transparency International, 2021).

The Transparency International report for 2022 confirmed the decline in democracy in the Kingdom, as it was one of the countries that exploited the pandemic measures to tighten restrictions on civil society and silence journalists who criticize it. In addition, the deterioration of the Kingdom's results on the Consumer Price Index and other indexes threatens the regional role that the country was playing as a mediator in the Middle East

region which is the largest hotbed of conflict in the world, it is unlikely that regional and international actors will trust the country to fulfill this role (Transparency International, CPI 2022). In this context, Transparency International relied on the decline in the Kingdom's ranking on the CIVICUS index of freedoms in the civil judiciary, as Jordan entered the list of countries where freedom of expression is considered repressed after it was restricted in 2020, following the dissolution of the teachers' union and the blocking of websites, in addition to the continuous attempts to introduce legislative amendments that suppress freedoms through the Cybercrime Law (CIVICUS Monitor, 2023).

As for the common forms of corruption in Jordan, by reviewing the annual reports of the Integrity and Anti-Corruption Commission, including the annual reports for the years 2019 and 2020, It became clear that the most prominent of them are forgery, behavioral violations of all kinds, assault on public funds, waste and embezzlement, abuse of office influence, abuse of authority, nepotism, impersonating a public employee, bribery, tax and customs evasion, money laundering, fraud, violation of the legislation governing tenders and carrying out additional unapproved work under the guise of bidding for the benefit of contractors and government officials, and the implementation of additional unapproved works under the cover of tender for the benefit of contractors and government officials, evasion of stamp duty payments, tampering with invoices with the aim of increasing profits in an unreal conditional increase for the purpose of tax evasion, Finally, during the curfew in light of the Covid-19 pandemic, it was proven that some employees issued movement permits in the names of companies that do not exist on the ground in exchange for various benefits (Integrity and Anti-Corruption Commission in Jordan, 2020).

The 2019 report also pointed out the most important manifestations of deficiencies in public administrations (Integrity and Anti-Corruption Commission in Jordan, 2019):

1. Absence of a correct understanding of the foundations for holding leadership and supervisory positions in the majority of government agencies.
2. Monopolizing leadership and supervisory positions and not preparing the second row of employees as a result of neglecting to develop an appropriate replacement and succession plan in many government agencies.
3. Absence of clear and fair foundations to ensure equal opportunities in distributing rewards and incentives, forming internal and external committees, and participating in internal and external courses.
4. Weak measurement of service recipient satisfaction.
5. Weak enforcement of the provisions of the law on illicit gain regarding the declaration of financial disclosure.
6. Weak application of the articles of the Right to Information Law.
7. Confusion between national integrity standards and governance principles, as well as the concept of risk, emergency and crisis management.
8. Weak implementation of codes of conduct, especially in municipal councils, and weak internal oversight.
9. The lack of a clear mechanism for institutions on how to declare and disclose when there is a conflict between the public employee's private interest and the public interest.

While the 2020 report highlighted the most important challenges that the authority faced during this year, the most prominent of which was related to the Covid-19 pandemic, which is reducing the number of employees in the authority in compliance with curfews and defense orders, with the difficulty of obtaining documents, listening to testimonies and completing investigative procedures, the lack of compatibility of Jordanian legislation with the provisions of the United Nations Convention against Corruption, the authority's inability to attract experts and specialists in the fields of engineering and legal accounting due to the civil service system regarding appointments, scarcity of the authority's financial

resources necessary to meet its needs for equipment, infrastructure, and human resources (Integrity and Anti-Corruption Commission in Jordan, 2020).

On the other hand, GAN Integrity explained in a report published on its platform Risk & Compliance Portal, formerly known as The Business Anti-Corruption Portal, the corruption risks that companies investing or wishing to invest in Jordan may face, the most prominent of which are (Risk & Compliance Portal, 2020):

1. **Judicial system:** the judicial institution suffers from some manifestations of corruption, as it sometimes witnesses the exchange of bribes in exchange for obtaining favorable judicial decisions. It also suffers from the deterioration of judicial efficiency, which has led to a backlog of cases before the courts, as well as the authorities' failure to always comply with court orders, it was noted that a lack of transparency in dispute resolution and executive interventions in judicial decisions and functions, but on the other hand, statistics indicated that less than one in five Jordanians sees manifestations of corruption even in some judicial bodies.
2. **Police:** companies face low or medium corruption risks in their dealings with the police, as impunity is widespread among police officials, and abuse of functions and corruption within the security services are rarely investigated. Even when investigations are conducted, the probability of conviction is low, however, on the other hand, the companies indicated that the Jordanian security forces have a high level of professionalism and are capable of protecting companies from crime, with only one in ten companies paying money for security, which is a rate much lower than the regional average.
3. **Public services:** Corruption risks are low to moderate for companies in this field, the most widespread form of corruption is the use of nepotism, which many Jordanians view as just part of doing business, which has had a negative impact on the quality of public services, this practice has led to an increase in the number of unqualified employees, a high level of bureaucracy and routine, and an increased rate of bribes and irregular payments.
4. **The land and construction sector:** It is a corruption-free sector in general, but there are allegations that in 2019 a number of influential people used their political power to "seize" land, buy it at deeply discounted prices, and then sell it to multinational companies at above-market prices, which led to a significant increase in prices. The Public Prosecutor of the Integrity and Anti-Corruption Commission submitted to the court's files revealing fraudulent land sales involving 99 people.
5. **Taxes:** Companies resort to corruption when dealing with the Jordanian tax authorities. Bribes are often exchanged in meetings with tax officials, as approximately one in every six companies offers gifts at their meetings, moreover, more than a quarter of the families included in the study believe that the tax authorities are corrupt. While transparency in border management was rated as moderately high.
6. **Public Tenders and Procurement:** Companies face high corruption risks when dealing with public procurement in Jordan, which suffers from a lack of transparency and objectivity, and companies believe that nepotism practices among procurement officials are common. Business managers also report that bribes are often paid in the process of awarding public contracts and licenses, corruption is also rampant in tenders, there are many inconsistencies in the application of award criteria to bidders, ignoring procedures for changing tenders documents during the tender, and unsatisfactory responses to inquiries related to tenders.
7. **Extractive industries:** This sector suffers from corruption in Jordan, and there is a scarcity of information available to the public, for example, the misuse of water resources in the Jordanian agricultural sector and mismanagement of water by some influential Jordanian figures close to the authorities have led to water scarcity. The Jordanian House of Representatives also rejected an oil exploration deal between

Jordan and the Korean International Energy Company after allegations of bribery and influence peddling emerged.

At the end of the previous report, the press environment is not free in Jordan, despite the fact that the Jordanian Constitution provides for freedom of expression and the press, but the government does not respect these provisions in practice; journalists often face harassment and are prohibited from covering controversial issues, security officials reportedly try to influence reporters through several different threats and pressures. The weakness of non-governmental actors, including the media, in anti-corruption in Jordan is noted, as non-governmental organizations are generally excluded from the policy-making process, and political leaders often ignore the interests or demands of civil society organizations. Here it is necessary to question the extent of the freedom of journalists and even ordinary citizens to photograph and publish any media material that reveals the deterioration of public services or even reveals an incident of corruption, is photographing a public employee in his workplace and publishing that considered defamation or slander? The answer lies in the Jordanian Penal Code, which allows anyone accused of slander or defamation to request proof of his claim as long as the victim is a public employee and the subject of the slander or defamation is related to the performance of his job duties. If his claim is proven, he will be acquitted of what has been attributed to him, otherwise, he will be punished. Here we note that the burden of proof falls on the person against whom the accusation of defamation or slander is attributed. Note that the accused may often not be able to prove his claim, while the Public Prosecution can certainly verify the veracity of the incident that is the subject of slander or slander. Therefore, we see the necessity of transferring the burden of proof to the Public Prosecution because of its broad investigative tools and powers.

It should be noted that the Integrity and Corruption Commission recovered an amount of 150 million Jordanian dinars during the year 2019 alone by deciding 2,514 investigative files (Integrity and Anti-Corruption Commission in Jordan, 2019). The Integrity Commission figures also indicated the recovery and settlement of 222 million Jordanian dinars between 2013 and 2018, distributed between recoveries, settlements of public funds, and tax and customs evasion (Amman Net website, 2019). These numbers are huge, but what raises concern are international estimates that indicate the amounts recovered are very small compared to the amounts that were smuggled out of developing countries, the report of the Human Rights Council in its nineteenth session indicated that in the case of proceeds of corruption, smuggled money flows from developing countries reached 80% of the total money generated from corruption in the world, given the relative weight of the transferred funds in each economy, the impact of the exit of the proceeds of corruption flows is much greater in the developing world. Despite the progress made since the entry into force of the United Nations Convention against Corruption, only about 2% of estimated funds from an illicit source that leaves the developing world every year are returned to their original countries (United Nations Human Rights, 2011), meaning that 98% of this money disappears and is lost to the people.

The ESCWA (Economic and Social Commission for Western Asia) report on illicit financial flows from the Arab region also concluded that Arab economies lose an amount ranging between 60.3 and 77.5 billion dollars per year through commercial invoices that intentionally falsify the value, size and/or type of the item in an international commercial transaction for goods or services for the purpose of illicitly moving money across borders, these flows constitute a significant leakage of local public revenues that could be harnessed to finance national and regional efforts to achieve sustainable development plans until 2030 (United Nations Economic and Social Commission, 2018).

Due to the absence of any accurate official estimates or statistics regarding the size of the amounts and funds looted in Jordan that must be recovered, it is possible to rely on

international estimates of funds derived from illegal sources in the Arab region, and on estimates that indicate the small amounts recovered. To say that there is evidence that Jordan, like other countries in the Arab region, suffers from problems and challenges that prevent it from being able to recover its looted financial rights, which, if recovered, would have necessarily contributed to improving the living conditions of the Jordanian people.

In this context, an investigation conducted by the Jordanian News Agency (Petra), which took 100 days and included research and investigation over the years (2006-2018), indicated the absence of any accurate and clear figure revealing the value of corruption proceeds recovered to the treasury, this was confirmed by the Chairman of the Parliamentary Finance Committee, Dr. Khaled Al-Bakkar, who confirmed that the public treasury had not recovered any money from corruption cases during the four years preceding the investigation, he stated that he read the general budget figures and did not see any corruption proceeds that returned to the Jordanian state treasury (Al-Anbat Newspaper, 2021).

Second topic: Recovery of proceeds of crime between international law and Jordanian law:

Due to the evidence that the kingdom of Jordan is facing difficulties that prevent it from recovering all the money looted and derived from illegal sources, it was necessary to uncover the legal loopholes that enable corrupt people and organized crime perpetrators to hide this money outside the Kingdom, and the challenges that the government faces while trying to search for these funds and assets, prove their ownership, and recover them. Accordingly, the first requirement will focus on studying the international legal rules related to the recovery of proceeds of crime mentioned in the United Nations Convention against Corruption of 2003. Identifying the most prominent challenges faced by Arab countries in general, including Jordan in recovering these revenues, and then comparing the international provisions with the legal rules that have been approved and implemented in Jordan, to find out whether Jordan has truly complied with all the provisions of the United Nations Convention Against Corruption and whether it has created the necessary means to meet the challenges of recovering proceeds of crime.

The first requirement: Recovering assets in light of the United Nations Convention against Corruption and the challenges of recovering them:

The report of the first session meeting of the Committee on Financing for Development in member states of the Economic and Social Commission for Western Asia (ESCWA) indicated that illicit financial flows cause a significant waste of financing resources in developing countries, exhausting efforts to mobilize domestic resources, weakens tax systems, reducing levels of vital investment in social infrastructure. Also, illicit financial flows undermine the rule of law, create trade imbalances, and harm macroeconomic conditions, in addition, tax evasion and the existence of tax havens facilitate the spread of tax base erosion, profit shifting, and money laundering practices within commercial operations, All of this deprives countries of resources that could have been used to achieve sustainable development goals and improve their standing in governance and corruption indexes, knowing that Illicit financial flows arise from the proceeds of crime, stolen assets, manipulation of pricing, manipulation of commercial invoices for goods, unauthorized wealth abroad, corruption, transnational crime, and money laundering (Economic and Social Commission for Western Asia, 2019).

Therefore, international agreements came to oblige all countries to cooperate legally and judicially with each other to achieve this goal, the United Nations Convention against Corruption of 2003 required each state party to oblige financial institutions on its territory to verify the identity of customers and determine the identity of the beneficial owners of funds deposited, especially in high-value accounts to conduct a careful examination of the accounts requested to be opened on behalf of individuals who are or have been assigned to

perform important public functions, or members of their families and even persons closely related to them, and to report any suspicious transactions to the competent authorities and to keep records of all transactions for an appropriate period. Each State Party also commits to considering establishing effective financial disclosure systems for public employees and take whatever measures may be necessary to allow its competent anti-corruption authorities to share information with the competent authorities in other countries, In addition to obligating countries to refrain from establishing banks that do not have a physical presence and are not affiliated with a regulated financial group, and to prevent Its financial institutions from dealing with this type of banks (United Nations Convention against Corruption, 2003).

The Convention also obligated state parties to provide a legal system that allows other states to file a civil lawsuit before their courts, to prove their right to property acquired by committing corruption crimes to recover it, accordingly, the courts and authorities competent to prevent and combat corruption are authorized, when they must make a decision regarding the confiscation of certain property, to recognize the claim of another State Party to such property as its legal owner (Legislative Guide, 2012). It obliges states to allow their authorities to enforce a confiscation order issued by a court in another State Party or a freeze or seizure order that has a reasonable basis and to order the confiscation of such property. If a judicial decision is issued regarding the crime of money laundering or any other crime, even in the absence of a criminal conviction. In addition to all of the above, it allows states to preserve property to confiscate it based on an arrest or criminal accusation related to its possession (United Nations Convention against Corruption, 2003). This property is then returned to the state requesting recovery or its equivalent value when the state reasonably proves its ownership of it or when it proves the damage to it. The agreement confirmed that the condition for a final ruling from the state requesting restitution was stipulated only to return property and not for confiscation. However, the requested state may waive the requirement for a final judgment in cases where it is not possible to obtain such a verdict because the perpetrator cannot be prosecuted due to death, flight, absence, etc.. (Legislative Guide, 2012).

The Convention encouraged States Parties to transmit information about proceeds derived from criminal acts to another State Party without prior request when believe that this may help the other country recover what was stolen from it illegally (United Nations Convention against Corruption, 2003). The agreement also addressed the provisions of international cooperation, which are very necessary provisions for the recovery of assets and proceeds of crime, Whereas the effective implementation of mutual legal and judicial assistance provisions between states contributes to enhancing the efficiency of recovery provisions, including provisions related to the freezing, seizure and confiscation of proceeds of crime, and it is not permissible to invoke banking secrecy to refuse to provide the required legal and judicial assistance, it also permitted resorting to arbitration, as well as to the competent national or international judiciary, within the framework of settling disputes between state parties regarding the interpretation or application of the agreement.

Despite the existence of these international legal provisions, countries are still evading their application in one way or another, as the coalition of Arab NGOs revealed the existence of huge amounts of funds smuggled out of Arab countries in the name of political officials from leaders and followers of corrupt ruling regimes and businessmen, which was revealed after the Arab Spring, and was integrated without caution into the financial cycle in many countries, especially in the United States of America, Europe, Canada, and Australia. Although some foreign countries announced the freezing of these funds, which amount to hundreds of billions of dollars and tons of gold, the process of recovering them is expected to take many years, which will lead to a deterioration in the economic conditions in the Arab countries, which suffer from a large budget deficit and a scarcity of central bank deposits. The coalition called on foreign countries to cooperate with Arab countries by

freezing these smuggled funds, working to speed up their recovery, monitoring financial movements, especially those associated with Arab government officials, and establishing real cooperation in the field of investigation and extradition of criminals and holding accountable foreign officials who facilitated the entry of these looted funds to foreign countries (Transparency International, 2013).

The recently held conference on recovering stolen funds in Iraq was attended by many Arab ministers of justice, heads of oversight councils and bodies, and the president of the League of Arab States, as well as many specialists in the field of anti-corruption, also revealed many of the challenges facing the recovery of criminal proceeds, among them is what the head of the Iraqi Integrity Commission mentioned a week before the conference was held in the meetings of the working groups within the framework of the United Nations Convention against Corruption held in Vienna, such as dual citizenship, which provides immunity to criminals, and the difficulty of proving the link between the smuggled assets and funds and the crime that those assets result from it, and the integration of those funds into the economies of those countries. Here, one of the economic experts says, for example, that most of the money that left Iraq came out through legitimate means and entered the global banking network by buying and selling hard currency and forging fake invoices to buy goods for the Iraqi market. Also, if the relevant authorities want to accuse any person of being wealthy and owning real estate, for example, in Dubai, Amman, Turkey, and other capitals and countries, this requires the issuance of a judicial decision supported by evidence, and those who embezzle and smuggle money must take the necessary means to ensure that they keep it (Iraq Ultra, 2021, Stolen Money Recovery Conference, 2021). As we mentioned above, there is corruption gnawing at the body of some judicial organs in many of these countries, and this constitutes the biggest obstacle to the recovery of looted funds, the first step to recovery is to issue a definitive judicial decision to commit a corruption crime resulting in the existence of criminal proceeds to be recovered, and this is often impossible in light of an independent and impartial judiciary.

The second requirement: Recovery of assets in light of Jordanian law.

The Integrity and Anti-Corruption Commission was established in Jordan in 2005, and its law (the Integrity and Anti-Corruption Commission Law) was issued in 2006 and underwent several amendments, the most recent of which was pursuant to Law No. (25) of 2019, and this is to take into account compliance with all provisions of the United Nations Convention against Corruption of 2003 ratified by the Kingdom by a law issued in 2004, in addition to providing the Authority's employees with the greatest degree of immunity and independence, which facilitates the performance of their extremely important tasks. The Kingdom also issued a special system to protect whistleblowers, witnesses, informants, and experts in corruption cases for the year 2014.

Firstly, after our investigations into Jordanian legislation, we see that the Jordanian legislator has criminalized all forms of corruption mentioned in the United Nations Convention against Corruption in a set of laws, most notably the Integrity and Anti-Corruption Commission Law No. 13 of 2016, Penal Code No. 16 of 1961, Economic Crimes Law No. 11 of 1993, Anti-Money Laundering and Terrorist Financing Law No. 46 of 2007 and Illegal Gain Law No. 21 of 2014. The Jordanian legislator also tried to include these previous legislations and other relevant legislations, the most important of which are the legislations regulating investment, taxation, and public transactions, as provisions aimed at preventing corruption before it occurs. However, here we cannot address all of these legislations in detail due to our focus on the part of the legislation regulating international cooperation to recover assets.

In this part of Jordanian legislation, the two most prominent laws are: Firstly, the Integrity and Anti-Corruption Commission Law, which stipulates in Article [4/H] that cooperation in providing and requesting international legal assistance in the field of anti-corruption is a primary goal of the Commission if the conditions for providing it through official

channels are met, note that the official channel in the Kingdom is the same body, in support of the text of Article [8/A/4] as well as Article [8/D]; This article entrusted the Commission's Council with the task of cooperating and coordinating with similar local, regional and international bodies and gave it the authority to contribute to the recovery of funds obtained from acts of corruption, whether inside or outside the Kingdom, and to deliver them to those entitled to them.

Secondly, Anti-Money Laundering and Terrorist Financing Law No. 46 of 2007, pursuant to which a committee and unit were established to combat money laundering and terrorist financing, this committee was given the authority to formulate a general policy to combat money laundering, develop the necessary plans for its implementation, follow up with the competent authorities for the purposes of implementing the obligations contained in the relevant international resolutions, and participate in relevant international forums. While the Unit is committed to receiving notifications related to any operation suspected of being related to money laundering, requesting information related to it, analyzing it, investigating it, and referring it to the competent authorities to resume investigative and judicial procedures, the previous law gave the Anti-Money Laundering Unit the right to exchange information with its counterpart units in other countries on the condition of reciprocity and the right to conclude memorandums of understanding with its counterparts to organize cooperation in this regard (Anti-Money Laundering and Terrorism Financing Law, 2007).

The same law also obliges all financial institutions, including banks, exchange companies, insurance companies, etc., companies working in the field of real estate and precious metals, and even people working in these fields, to do everything necessary to know the customer's identity, his legal status, his activity, the purpose and nature of the business relationship, and the real beneficiary, and not to deal with persons of unknown identity or with fictitious names, or with banks or fictitious companies, and keeping records for at least five years from the date of the end of dealing with the client, and finally notifying of any suspicious transaction. The law obliges every person to declare any movable property he carries upon entering the Kingdom if it exceeds a certain amount, and the Jordanian Customs Department maintains records of this data for use when necessary, the Customs Department also has the authority to ask the person about the source and purpose of the money, as well as seize it and refer its holder to the public prosecutor in the event of providing false information and suspicion of a money laundering crime (Anti-Money Laundering and Terrorism Financing Law, 2007).

The previous law also affirmed in Articles [22-23] the commitment of the Jordanian judicial authorities to cooperate with their counterpart judicial authorities in other countries within the framework of legal and judicial assistance to combat money laundering, Whether in the field of pursuing and tracing criminals and extraditing them, or In the field of judicial deputies, or tracking, seizing, freezing and confiscating funds in according to the rules determined by Jordanian laws and bilateral or international agreements ratified by Jordan, or an according to the principle of reciprocity, it stressed not to prejudice the rights of others and in good faith. It also gave it the authority to order the implementation of requests from non-Jordanian judicial authorities competent to confiscate the proceeds of a crime subject to the crime of money laundering, according to the rules determined by Jordanian laws and ratified bilateral or international agreements. It is also required to adhere to the provisions of these agreements with regard to the distribution of the proceeds of funds finally ruled to be confiscated, and it is not permissible to excuse banking secrecy for withholding any type of information from the competent authorities or to excuse the failure to provide legal or judicial assistance in Article [35] of this law.

In addition, Article [8/c] of the Integrity and Anti-Corruption Commission Law gave the Commission's Council the authority to request true copies of the declarations, statements and information related to declaring the financial assets of a person whose wealth appears

to the Council to be evidence of abnormal growth as long as it is covered by the provisions of the Illegal Gains Law, this paragraph did not specify whether this growth was inside or outside the Kingdom. This necessarily leads us to the Jordanian Illegal Gains Law No. 21 of 2014, which stipulates in Article [4] that any movable or immovable money obtained by a person for himself or others during his tenure of public office or because of his job status through the exploitation of his job or any increase in his movable or immovable property or the money of his spouse or minor children in proportion to his or their financial resources is an illegal gain if he or she is unable to justify and clarify the source of this increase.

It should be noted here that the Jordanian legislator has overlooked the fact that many corrupt people smuggle what they have acquired as a result of their illegal activities into the accounts of their adult children or grandchildren in some cases, especially those who are not covered by the provisions of the Financial Disclosure Law No. 54 of 2006, although the Anti-Money Laundering and Terrorism Financing Law in Article [27/B] gave the public prosecutor the authority to seize the defendant's funds, his spouse's funds, and any of his direct assets and descendants, and prohibited the disposal of these funds and prevented them from traveling until the investigation procedures were completed or the case was decided, and it gave the competent court the right to decide to confiscate them. However, this article will be inoperative unless the Jordanian judicial authorities possess any evidence that can be relied upon to indicate the suspicion of committing a money laundering crime by the defendant himself and the existence of evidence proving that he smuggled dirty money to the account of one of his assets or descendants. This may be impossible in some cases committed by organized crime networks, which complicate the mechanisms for committing these crimes and concealing these proceeds. Accordingly, it is more appropriate to rely on the fact that any unjustified inflation in the wealth of any person, his spouse, or his assets or descendants, whether minors or adults, is considered legal evidence of committing corruption crimes and attempting to commit money laundering crimes. Therefore, freezing, investigation, and confiscation are required if the person cannot prove the legitimate origin of these funds in a way that categorically denies the possibility of illicit enrichment. Therefore, it is indispensable to amend Article [4] of the Illegal Gains Law to include all assets and descendants, whether adults or minors.

The law on illicit enrichment in Article 16 punishes anyone who provides false information in declaring financial disclosure with imprisonment from 3 months to a year or a fine not exceeding one thousand dinars. However, this punishment is simple and trivial, as the offender can easily bear it in exchange for retaining the money that he has likely prepared and falsified in many documents that cast doubt on the charges against him, benefiting from the principle of doubt that works in favor of the accused to evade punishment. Therefore, we believe that the punishment should be harshened here, considering that simply providing false information is a clear legal indicator of concealing a corruption crime and the dirtiness of this money.

In the same context, when reviewing the provisions related to the reluctance of employees in the public and private sectors to report suspected acts that constitute corruption or money laundering crimes, as well as the provisions related to the refusal of any public or private entity to cooperate with the competent authorities in combating corruption and money laundering or delaying the submission of requested data, records, and documents, we noted the inadequacy of the prescribed penalties for these criminal acts, where the penalties range from imprisonment to fines and are tightened in case of repetition, which these individuals can bear the risks of exposure to or endure the hardship in exchange for the benefits of covering up for criminals and sharing in the proceeds of their crimes. Crime today is an organized crime with multiple perpetrators, each with their own role and share of criminal proceeds. Therefore, we see that these criminal behaviors are a decisive legal indicator of the participation of this entity with the original perpetrator in committing crimes of corruption or money laundering and imposing the same punishment on the original perpetrator without opening the door to a lesser punishment. In this type of serious crime

with catastrophic consequences for the public interest, there is no room to open any door to leniency with criminals and delay in imposing a stricter punishment until a repeat occurs by assuming their ignorance of the details of what is happening in their workplaces.

Among the important provisions in the field of recovering corruption proceeds are the provisions outlined in Articles 28/B of the Integrity and Anti-Corruption Authority Law and 32 of the Anti-Money Laundering and Terrorism Financing Law, which provide for exempting or reducing the punishment of the perpetrator by two-thirds if they inform the competent authorities of a corruption crime, they were not aware of and the information provided by them facilitates the recovery of embezzled funds. Article 29 of the Integrity and Anti-Corruption Authority Law also includes provisions that prevent the statute of limitations from applying to public rights claims, penalties related to corruption crimes, or the recovery of criminal proceeds, and prevent the dropping of public rights claims, cessation of prosecution, or exemption from punishment for any reason without continuing the recovery of funds obtained from committing corruption crimes.

However, despite what is stated in Article [29], the law itself has obligated the Anti-Corruption Commission in Article [21] to issue its decision within a maximum period of six months from the date of initiating the investigation procedures into the complaint submitted to it. This is not realistic, especially in light of the increasingly complex methods used to commit this type of crime and to conceal any connection between embezzled funds and corruption crimes. Therefore, the investigation may take long periods until the Commission can gather sufficient evidence and data to refer the case to the competent judicial authorities, ensuring that it has the necessary evidence to preserve the public interest and prevent a verdict of acquittal due to insufficient evidence and violation of the rights of the Jordanian people.

Conclusion

In conclusion, it can be said that Jordanian legislation is more advanced compared to the legislation of other countries such as Syria and others and that it respects the provisions of the United Nations Convention against Corruption for the year 2003, despite the existence of some provisions that need to be reconsidered to increase their effectiveness, due to the proven inability of the Jordanian authorities to effectively confront corrupt individuals, as evidenced by Jordan's decline in the Corruption Perceptions Index, and due to the observed decline and deterioration of economic and social conditions in the country. The following results and recommendations have been reached:

Results:

1. Lack of transparency with citizens regarding corruption issues and withholding a large amount of information, especially the amount of embezzled money that the government has not been able to recover, as well as restricting media and public oversight by using criminal texts for defamation and character assassination, leading to laxity in the performance of the relevant authorities in combating corruption, tracking embezzled funds, and recovering them.
2. Lack of genuine cooperation from foreign countries in the field of combating corruption and preventing it, with their procrastination or evasion in providing the necessary legal and judicial assistance despite being parties to the United Nations Convention against Corruption.
3. Some legislation related to combating corruption has failed, and some of them are not sufficient, especially the legal rules related to declaring the financial disclosure of public officials. This necessitates tightening the punishment for those proven to conceal any funds or assets outside the country if there is sufficient evidence to convict them of corruption crimes. This is in light of the new and complex methods of money laundering and the speed of the movement of funds, making it difficult and highly

complex to trace these funds and accurately track their movement, especially after several years of entering the global financial cycle. Therefore, we believe that simply concealing information and providing misleading information to supervisory bodies about their financial disclosure and wealth inflation is sufficient reason to confiscate their funds and impose financial penalties on them, even if it is not enough to convict them and impose a prison sentence on them.

Recommendations:

1. It is necessary to activate the role of the press, non-governmental organizations, and civil society organizations in the fight against corruption. In this context, we hope that the Jordanian legislator will include journalists and ordinary people, whether secretly or publicly, in filming or recording an incident that may constitute a corruption crime or involve negligence in performing official duties, with immunity from criminal prosecution. Even if they did not obtain permission to film or record unless their bad intentions and fabrication of an incident to commit a crime of assassination or defamation are proven. Therefore, the burden of proving the validity of their claims should be transferred from them to the public prosecution, which will achieve higher efficiency in achieving social oversight in the field of combating corruption and preventing it.
2. We recommend the Integrity and Anti-Corruption Commission present regular, detailed annual reports on the corruption crimes that have been detected, the corrupt individuals who have been convicted of corruption crimes, the funds owed to the state treasury, the funds smuggled out of the country, as well as those still under investigation for their destination, and the percentage recovered from them for each year continuously and permanently.
3. We recommend the Jordanian legislator stipulate the disclosure of any unjustified or documented increase in movable and immovable funds of a public employee or anyone who held this position, and to his branches, whether adults or minors not covered by the provisions of the Financial Disclosure Law, a definitive legal indication of concealing corruption or unjust enrichment from the public office committed by this employee.
4. We recommend that the Jordanian legislator stipulate the obligation to disclose all movable and immovable funds in the financial disclosure statement for the categories subject to this obligation as a clear legal indication of concealing corruption crimes or unjust enrichment from public office, which requires the immediate confiscation of these funds and the dismissal of the violator, and to increase the penalty for providing false information when declaring their financial disclosure.
5. We recommend that the Jordanian legislator consider not informing public or private sector employees of suspicions of corruption crimes, refusing any public or private entity to cooperate with the competent authorities in combating corruption or delaying the submission of requested data, records, and documents that are legally required, with the participation of this entity with the original perpetrator in committing corruption crimes or money laundering, and imposing the same punishment on the original perpetrator without opening the door to a lesser punishment.
6. We recommend that the Jordanian legislator not set a limit on the period within which the authorities responsible for combating corruption must issue their decisions, as investigating many corruption cases takes a long time, especially in light of the complexity of the methods of committing these crimes and the complexity of money laundering methods.
7. In general, not exempting or immunizing any natural or legal person from the criminal responsibility arising from committing corruption crimes, following the basic Rome Statute of the International Criminal Court, as well as not exempting anyone from the laws concerned with preventing and combating corruption, including the law on illicit enrichment, as no one is above the law. Also, not opening the door to financial

settlements with corrupt individuals in an attempt to recover part of the embezzled amounts and holding them accountable and punishing them so that these settlements do not provide an escape route for the corrupt individuals to evade punishment, especially in light of the poor economic conditions facing the country, as the Jordanian people deserve every penny of these embezzled funds.

8. We recommend that the Jordanian legislature prohibit economic transactions with any companies, banks, or economic or financial institutions found guilty of corruption offenses or facilitating the transfer and concealment of illicit proceeds smuggled from the Kingdom to other states. We urge the Jordanian Government to address the competent national or international courts if states delay or refuse to provide the judicial and legal assistance provided for in the United Nations Convention against Corruption until the crimes of corruption have been investigated and the proceeds of crime have been identified, recovered, and returned to the State Treasury.

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