

## THE SHORTCOMINGS OF THE INCOME AND ASSET DECLARATION SYSTEM IN JORDAN ILLICIT ENRICHMENT LAW

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### Abstract

*This article discusses the Jordanian Income and Asset Declaration (AID) system or what so-called the financial disclosure. This study intends to highlight the Jordan Illicit Enrichment law, which is the legal framework of the AID system in line with the international criteria and guide lines such as the United Nations Convention Against Corruption (UNCAC), the Organization for Economic Co-operation and Development (OECD) guide lines and the World Bank reports. The IAD system had been adopted in Jordan to monitor the development occurs the public official's wealth aiming to detect and prevent any possibility of illicit enrichment. but, what is the efficiency of the law on the real practical? Actually, a few problems invalidate the role of IAD in fighting corruption; such as the legal inadequacy and contradiction with other legislations that prevent the enforcement of law, thereby, these shortcomings disable the real objectives of the law. Thus, this study tries to explain these problems within the Jordanian legal framework, aiming to introduce convenient suggestions.*

**Keywords:** *Corruption, Jordan, Income and Asset Declaration system, Illicit Enrichment law.*

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### Introduction

This article discusses the shortcomings of the Illicit Enrichment law no. 21 of 2014, which establish the Income and Asset Declaration (IAD) or what so-called the financial disclosure system. The mentioned law replaced the Financial Disclosure Law no.55 of 2006 as a response to the people's demands due to overcome the legal gaps that comprise hurdles to prosecute the corrupt officials (Jordan Times, 2014). However, the studies by the researcher shows that the content of the IE law is more or less similar to the FD law.

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However, many tools, programs and laws had been invented to curb corruption in the public sector such as Income and Asset Declaration IAD system, which became one of the important measures to establish and maintain good governance (Burdescu, Ruxandra, Gary J Reid, Stephanie E Trapnell & Daniel W Barnes, 2010). The IAD system requires the public officials to declare their properties in the due dates (Transparency International, 2013). The advantage and successfulness of IAD system relies on the political, institutional and cultural environment. Therefore, the IAD system is twofold functions: preventive and executive or law enforcement. In the preventive function, the IAD system seeks to prevent the conflict of interests and ensure the sound implementation of code of ethics (Regional Anti Corruption, 2012). Besides, the law enforcement role of the IAD is looking to detect and prosecute the incidences of illicit enrichment.

International documents provide the provisions of IAD, the United Nations Convention Against Corruption (UNCAC) 2004 stipulates the financial disclosure system in article (52/5):

"Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention."

UNCAC defines IAD system under chapter (5) regarding asset recovery, as an optional choice, but important tool in this regard. Inter-American Convention against Corruption 1996 (ICAC) provides the IAD system under article (3) in relationship with the preventive measures which calls state parties to established such system to force any person who perform public function to disclose his/her income, asset and liabilities (Inter-America Convention Against Corruption, 1996). Likely, African Union Convention on Preventing and Combating Corruption 2003 (AUCPCC), article (7) requires the state parties to commit themselves to build assets declaration for public officials to fight corruption and related offences in the public service.

In 1889, the United Kingdom established the Prevention of Corruption Act, which requires some general provisions on the asset declaration, but this law was resisted until 1974 where the House of Common established the Register of Interests (OEDC, 2014). Progressively, in the beginning of the 1980s, the European countries adopted the IAD system. During the 1950s an initiative called the public officials to declare their assets in the United States under what so-called public officials' declarations. Gradually, after the 1965 the president Lyndon B. Johnson initiate a project requires the federal official to declare their assets. Now, more than 120 countries adopt the IAD system in their legislations, despite of varieties of mechanisms, models and provisions among them (Emile van der Does de Emily, M. Halter, Robert A. Harrison, Ji Won Park & J. C. Sharman Willebois' 2011). The following table provides the international anti-corruption legal framework, where the provisions of IAD were included (OECD, 2015).

Table of the International Anti-Corruption Legal Framework

Title	adoption	Entry into enforce	Signatories
United Nations Convention Against Corruption UNCAC	31 Oct. 2003	14 Dec. 2005	154
OECD Anti-Bribery convention	15 1dec.1997	15 Feb. 1999	All of OECD countries plus Brazil, Argentina, Bulgaria, South Africa
UN. Convention against Transnational Organized Crime UNTOC	15 Nov. 2000	29 Sep. 2003	147
African Union Convention of Preventing and Combating Corruption AUCPCC	11 July.2003	2006	31
The South African Development Community SADC Protocol	14 Aug.	2005	8
Inter-American Convention Against Corruption IACAC	29 March,1999	6 March 1997	33
The Council of Europe Criminal Law Convention COE/Criminal	27 Jan,99	2002	43
The Council of Europe Civil Law Convention COE/ Civil	4 Nov.1997	2003	34
Convention European Union on the Fight Against Corruption	26 May, 1997	28 Sep.2005	Open to all EU Countries
Convention on the Protection of European Communities' Financial Interests	26Jul,1995	17 Oct. 2002	Open to all EU Countries
The Economic Community Organization of West African States ECOWAS	21 Dec. 2001	Forthcoming	

### The Advantages of the Income and Asset Declaration System

The importance of the IAD system in fighting corruption is increasing day by day, through monitoring the development and changes of the public officials' wealth. The advantages of IAD depend on strong foundation such as legal framework and well equipped and funded competent institutions in order to get the following advantages (Transparency International, 2014):

i. The IAD system is to prevent corruption.

The main purpose of the IAD system is to prevent corruption through increasing the sense of responsibility and accountability to the public officials, where they are required to disclose their assets and benefits periodically subject to sanctions in case of abstain to comply with (World Bank, 2012). More importantly, that when the IAD is used to prevent conflict of interests; if the officials are required to divulge their interests and benefits they will be aware of involving suspicious situations where his position may conflict with his interest (OECD, 2014). Consequently, this will enhance integrity and transparency among the subject sectors. Thereby, it maintained the confidence of citizens in the three branches of the state (Burdescu, Ruxandra, Gary J Reid, Stephanie E Trapnell & Daniel W Barnes, 2010).

“A Puerto Rican legislator, Nicolas Nogueras, was forced to resign as vice president of the senate because “financial statements he filed in recent years do not explain where he came with the money to make a \$50,000 down payment for a \$350,000 second home.” (Djankov, La Porta, Lopez-de-Silanes, & Andrei Shleifer, 2009)

ii. IAD system as a part of law enforcement tools:

Due to the secret nature of corruption (Derencinovic, 2007), the IAD assists the investigation and prosecution in corruption offenses as a source of information which will be easier to reveal the cover off the required information or data related the public official, that's to say, IAD provides an effective criminalization on illicit enrichment and stolen asset recovery (World Bank, 2012), money laundering, even the statement of the written disclosure can be used against the defendant himself as a proof in what called shifting the burden of proof (Burdescu, et al., 2010).

Accordingly, the absence of evidence to explain the changes on the public official's wealth is difficult to capture through traditional investigation and prosecution (World Bank, 2012), that's why IAD system considered an additional source of information to the investigation, in this manner, help to understand the trend of investigation. This is considered as one of the best practices in combating corruption (Perdriel, 2012).

Sanctions provided by the IAD laws deem strong indicator to ensure integrity and commitment of the system, where it seeks to enforce the law (Yousef Nasrullah, 2013), and the punish who refrains from submitting the declaration in due times or providing false information or hiding it<sup>4</sup> with different penalties, such as , imprisonment, fines and even dismissed from job.

"In the U.K., two Labour MPs, Mo Mowlam and Bob Wareing, failed to declare outside interests and gave wrong information when challenged. The former was mildly censured, the latter suspended from the Commons" (Djankov et al., 2009)

In addition, the great assistance to asset recovery in the process of tracing, where the investigation merely is not efficient without data provided by declarations and to keep track of the stolen money (International Centre for Asset Recovery, 2009).

### **Models of Income and Asset Declaration System**

Many considerations should be taken into account in designing the IAD system; such as, scope of implementation, making balance between the public right to know and the right of privacy of individuals, how to control the monitoring of compliance and verification, budgetary and the qualified personnel are crucial to run the system (Burdescu, Ruxandra, Gary J Reid, Stephanie E Trapnell & Daniel W Barnes, 2009).

Designing according to objectives (World Bank 2012); is also another major consideration on how to know which model can meet the size of corruption. This part of study identifies different models of IAD systems (Burdescu et al., 2010).

In sum, the model is determined depending on the legal framework and objectives (Burdescu et al., 2010). Thus, three main models worldwide (World Bank, 2012) which are: the Conflict of Interest (COI), Illicit Enrichment (IE) and the Mixed model.

### **Conflict of Interest Model**

OECD Guidelines 2004 defines conflict of interest as:

“Involves a conflict between the public duties and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.”

A conflict of interest appears, when a public official is in an inconsistency situation between his private interests and his obligation of duty, to use the official capacity or position for private benefit (OCES, 2012).

Consequently, the conflict of interest leads to unethical behavior or even to commit a criminal offense, therefore, the COI model is a sort of caution to conflict of interest. That's why legal framework to this model is a combination of code of conduct, civil service legislations, public official guidance, supported with training course, timely communication interpersonal to remind the public official and help them on know-how the conflict of interest may occur and how to avoid it, so, the COI model aims to link its objectives to the public officials (World Bank, 2012). The COI has an advisory role and can be found as a dependant entity related to the authorities that subject to the IAD system (OECD, 2011).

"In 2008 the U.S. saw two major investigations (and in the second case, a criminal conviction) related to a failure to disclose: Democratic Representative Charlie Rangel and Republican Senator Ted Stevens" (Djankov et al., 2009)

Conflict of interest can be identified in many types, for example: nepotism where the official uses his position to bring a private benefit to his family (OCES, 2012). Favoritism or cronyism (OCES, 2012) is also another type of COI and its objectives. (Jordan Anti-Corruption Commission law no. 62 of 2006). For instance, the United States of America USA, old members of European Union, adopt (COI) model (Burdescu et al., 2009).

"The Argentine Economy Minister, Felisa Miceli, resigned after an envelope containing US\$80,000 in cash was found in the private bathroom of her office, and she failed to explain where the money came from in light of the asset declaration she had submitted" (Djankov et al., 2009)

This model is basically depends on the criminalization of illicit enrichment, participate or assist the law enforcement authorities in their investigations (World Bank, 2012), prosecution, asset recovery, throughout detecting the declarations, require related information and data (Perdriel, 2012). The missing chain of the illicit enrichment is inability of the accused person to justify the magnificent increase on his/her wealth, where the role of the IAD system is to identify it, by this means, assists other competent authorities to return the stolen money (Burdescu et al., 2010).

The legal framework of illicit enrichment model mostly consists of the criminal legislations and financial disclosure law (Yousef Nasrullah, 2013). The responsible authorities such as anti-corruption agency or an independent commission is fully independent and have wider mandates than (COI) competent authorities. In Argentina the competent authority is the Ministry of Justice (Anti-Corruption Office), while in Jordan the Ministry of Justice (Financial Disclosure Department), while in Guatemala the Integrity Department. Indonesia runs the financial disclosure system by Corruption Eradication Commission.

### **Mixed Model**

This model is combination of two past models; therefore, it has the preventive role side-by-side with the law enforcement of detection illicit enrichment, that's why some scholars name it "Dual objectives System" (World Bank, 2012). It's an advantage of this system where it aims to reduce the conflict of interest and detecting the wealth of public officials, join the investigation and assist prosecution the corruption crimes.

### **Key Considerations in Building an Effective Income and Asset Declaration System**

Political will is the first and for most important consideration in establishing an effective IAD system it is a keystone in the whole process (Transparency International, 2011). In order to create convenient legal and institutional frameworks, it's very important to identify the objectives of the system whether if it seeks to prevent the conflict of interests, where the role is an advisory or the objective is detection of illicit enrichment to be a law enforcement agency (Burdescu et al., 2009).

As a preventive role the legal framework is a combination from several legislations such as: civil services, code of ethics or relevant legislation (OECD, 2011). Yet, a specialized law is

recommended; taking into account the national context and accessibility factors to the information as a tool for the civil societies to ensure optimized application (Messick, 2009). Another major question is shown in determining the IAD system: which entity should be responsible to administrate the IAD system? The institutional framework based on the nature of adopted objectives as explained under the models. Actually, practices show that the advisory role authority is tailored to follow the subject persons whose they are related and work for them, thereupon, a several dependent entities will be in charged as decentralized. This kind of institutions can be found in US, Canada and Western EU countries. In contrast, the law enforcement authority should be an independent and centralized body; to perform its mandates freely without any chance of influence (Derencinovic, 2007).

Additionally, two elements are vital to assess the successfulness of the IAD system: firstly, whether to make it open access for public or confidential declarations? Secondly, in respect of the subject persons whom they are obliged to disclose their properties; whether to maximize the scope of coverage or adopt targeted coverage?

The availability of information or not, is based on political and institutional traditions and the modernity or maturity of experience (Transparency International, 2011). In addition, the right of privacy which may contradict with the right of access to information, that's why, this element should be settled according to the country priorities (Burdescu et al., 2009) The scope of coverage depends on the finance and personnel factors, plus, the objective of the IAD system, eventually; it should cover the three main branches of the state (Messick, 2009).

### **The Insufficiency of the Jordan Illicit Enrichment Law**

Jordan established the first Financial Disclosure (FD) Law No. 54/2006 in 2006 to comply with the United Nations Convention Against Corruption. Consequently, the FD law had been canceled by the Illicit Enrichment law No. 21 of 2014 which it was enacted to overcome the problems of the FD law.

Accordingly, the Financial Disclosure Department (FDD) was established in order to be the competent authority of the IAD application. FDD is not independent but related to the Minister of Justice, and headed by high ranked judge from the cassation court appointed by the Judicial Council.

The following table introduces the elements of the Jordanian IAD system in accordance with the IE law.

**Table (2) Elements of the IE Law**

Theme	Article
Establishing the IAD Department and identifying its mandates	5, 9
The targeted persons	3
Criminalizing and defining illicit enrichment	4
Obligations of relevant authorities	6:1
Principle of Confidentiality	6:2,8,12
Obligations of the subject persons and	7

Filing frequency	
The verification Process	10
Precautionary measures	11
Sanctions	15-17

The IE law primary objective is to criminalize illicit enrichment, in the contrary; the FDD is not independent, and rather, it's located inside the Ministry of Justice and related to the Minister to achieve this goal. Additionally, the verification of asset declaration is not allowed unless if a pre-complaint on specific declaration submitted to the FDD by the competent authority to be verified by the verification committee.

"The agency responsible for managing the IAD system should be empowered to conduct preliminary verification. If disclosures are not reviewed they will not serve as a source of potential cases. In some countries, **Jordan** for instance, the responsible agency cannot initiate an investigation until a complaint is filed against a specific public official. That said, a cursory verification of large numbers of disclosures is unlikely to generate useful leads" (Muzilla et al., 2012).

Accordingly; article 10 of the IE law provides:

"If a competent authority provides the Commission with complaints or report of illicit enrichment against a person subject to the provisions of this law, the Commission shall verify, examine, and audit the relevant Disclosure submitted to the Department".

Besides, the FDD staff and the chairperson are not allowed , by no means, to open the envelopes of the declarations subject to legal liability, in this regard articles 8 and 12 of the said law emphasize on the principle of confidentiality;

Article 8 stipulates:

"The disclosures mentioned in this law shall be submitted to the Chairman in a closed and sealed envelope. The employees of the Department are prohibited from opening the envelope or access to its contents subject to legal liability" Illicit Enrichment Law of 2014.

Where article 12 from the same law provides:

"Disclosures and all related clarifications, data, information, documents, verification and scrutiny procedures pursuant to this law, are considered secrets and prohibited to be revealed or published, subject to legal liability."

Knowing that, the Jordan IAD system quasi adopts the IE model, yet, the FDD is toothless agency, because it has no authority to verify declaration or conduct any investigation on any subject person due to the lack of power and legal delegation (World Bank, 2012).

The following table should explain the weakness of the FDD when compared to the international adopted models as explained previously.



Table (3) FDD organizational structure to international models

Model.	Cent./Dec.	Obj.	Role	Power	Verf.	Independency
IE	Cen.	IE	Enforcement	Must	Yes	Independent
COI	Dec.	COI	Advisory	No	Yes	Dependent
H.	Cen.	Mix	COI & IE	Must	Yes	Independent
FDD	Cen.	IE	Administrative	No	No	Dependent

- Contents of this table extracted from the Jordan IE law and its regulation and MoJ official website.

**Abbreviations:**

IE: Illicit Enrichment model.

COI: Conflict of Interest model.

Cen./Dec.: Dec/Centralized.

Verf.: Verification.

MoJ: Ministry of Justice.

H: Hybrid model.

**Criminalization of Illicit Enrichment Offense**

The Jordan IE law criminalizes illicit enrichment under the article 4 thereof; meanwhile, first establishment of this crime was in 2006 by the FD law under the article 6 thereof. Notwithstanding, the Jordanian courts didn't received any case of illicit enrichment over eight years of issuance (2006-2014), despite of the steadily increasing of corruption cases in the public sector and high-risk crimes on the national economy (EU Twenning Project, 2012) due to many problems of the FD law i.e. legal inadequacy, lack of power, complicated procedures, immunity etc. (Mohammad Al-Subaihi, 2011).

Article 4 of the IE law provides:

" It shall be regarded an Illicit Enrichment; any movable or immovable property attained by any person, subject to this law, for his benefit or the benefit of any other person due to exploitation of position, office or the status he holds or by virtue of capacity any of them; and it is : any increase occurs on the movable or immovable properties owned by him-or- his/her spouse -or- minor children according to in the financial disclosure submitted by him pursuant to this law or to the Financial Disclosure Law no. 45 of 2006, during his tenure of position, office, status or by virtue of the capacity any of them, if this increase does not commensurate with the financial resources, and he fail to prove a legitimate source for that increase"

This article complicates the criminalization of illicit enrichment as well it hinders the prosecution itself. Illicit enrichment has been defined by all of the international conventions, for example the UNCAC defines it under article 20 thereof as follows:

"...a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income" (United Nation, 2009).

As a result, the UNCAC and other conventions build the criminalization of illicit enrichment if the public official fails to prove the legitimate source of the significant increase on wealth.

Yet, the Jordan IE law requires a set of conditions and pre-condition like: the proof of the exploitation by the prosecutor and pre-complaint.

### **Hurdle of Immunity**

Immunity protection shields the high-ranked officials from prosecution, which makes the immunity a hurdle to enforce the IAD as designed (Burdescu et al., 2009). Accordingly, article 3 of the Jordan IE law the subject persons numerated therein, are obliged to declare their properties. Amazingly, large segment of those persons are immunized by their relevant legislation.

Pursuant to the Prosecution of Ministers Law No. 35 of the year 1952 and its amendments. Article 56 of the Constitution of Jordan provides:

"The House of Representatives shall have the right to refer the Ministers to the Attorney General along with stating the justifying reasons. The decision of referral shall not be issued except by the majority of the members of whom the House of Representatives is composed".

Besides, some legislation grants the immunity to the high-ranked officials, except in case of flagrante delicto, for example, Article 20 of the Anti-Corruption Commission 2006 and article 11 of the Independent Electoral Commission Law 2012. Similarly article 179 of the Customs Law 1998, which grant the customs officers immunity from prosecution unless if the special committee issues the approval of referral to competent court.

Likewise, the judges have their immunity of prosecution pursuant to article 28 of the Law of Independence of the Judiciary of 2014. The law of the Constitutional Court 2012 also provides the legal immunity to the members of court pursuant to article 23 of the said law.

Moreover, the legislative branch is also enjoying the legal immunity in accordance with article 86 from Constitution of Jordan 1952 stipulates:

"No member of the Senate and the House of Representatives shall be detained or tried during the currency of the sitting of the Parliament unless the House to which he belongs issues a decision by the absolute majority that there is sufficient reason for his detention or trial or unless he was arrested flagrante delicto. In the event of his arrest in this manner, the House should be notified immediately"

### **Exemption from Prosecution**

According to article 3 of the IE law, large numbers of public officials are exempted from prosecution of illicit enrichment, although they do not have the immunity to protect them. How the legal inadequacy of the IE law introduces such gap.

Article 10 of the IE law, provides that the verification committee can't initiate the verification of the declaration except in case of a pre-complaint submitted to the FDD by the competent authority. The complaint should address a specific declaration of the subject person (Fayyad Al-Qudah, 2011). Hence, the verification committee can't verify the complaint if the declaration is not found and/or the complaine is not subjected to the provision of the IE law.

Consequently, the officials whom they are not obliged to disclose their wealth, are out scope of criminalization and prosecution of illicit enrichment.

## Conclusion

The IAD system is critical tool in fighting corruption as a preventive and law enforcement measure when establish upon serious political will in line with the minimum requirements as explained in this article.

Despite of complying with the UNCAC, the Jordanian AID system is stillborn law according (Mohammad AL-Subaihi, 2011) not efficient for many reasons as: legal inadequacies, lack of power to enforce the law and ensure compliance, immunity protection and overlooked wide segment of public official from prosecution of illicit enrichment. Besides, the study finds that the Jordan FDD, somehow, far from the recognized models of IAD, although it criminalizes illicit enrichment offense, but it does not exercise any role to prevent the conflict of interests and has no features of the IE model as clarified.

The prosecution of illicit enrichment seems very difficult if not impossible, due to the complicated procedures that must be taken before the prosecution like the pre-complaint and the post-complaint. However, the Jordan IAD system needs real revision from the legal and institutional aspects in order to ensure the optimization of application.

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