

## Extent of harmonization of Jordan's Cybercrime Act No. 17 of 2023 with international legislation on freedom of opinion and expression

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### ABSTRACT (10PT)

The study recommends that it wishes the Jordanian legislator to approve international legislation and the Jordanian Constitution not to impose restrictions on freedom of opinion and expression, through amendments to the provisions of Jordan's Cybercrime Act that impose restrictions on freedom of opinion and expression, the most important of which contains broad terms and repeal the provision of the article (16) of the Jordanian Cybercrime Act for criminalizing the act of character assassination, which is a broad and unclear term that protects officials from popular control.

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## 1. Introduction

In The persons resort to electronic means to exercise their right to freedom of opinion and expression, this is the result of the widespread development in the use of technology, but this development requires a legislative development that will keep pace with the development of the way and manner in which crimes are committed, but does not give the legislator the power to restrict the rights and freedoms of individuals prepared by the Jordanian Constitution and international legislation because freedom of opinion and expression is part of democracy that helps to provide real control over the three authorities in the State (executive, legislative and judicial) because the nation is the source of these authorities.

### Problem of the study :

The problem of the study lies in the extent to which the provisions of the Jordanian Cybercrime Act No.17 of 2023 restrict freedom of opinion and expression. But there have been many popular demands to prevent the issuance of this Act , but nobody listened because these provisions restrict freedom of opinion and expression, so it had to be reviewed and demand amending or canceling to keep pace with international legislation and the Jordanian Constitution regarding freedom of opinion and expression. Democracy and freedom are among the most important ingredients for the advancement of countries and their progress in all fields.

### Objectives of the study:

This study seeks to clarify the legal provisions of the Jordanian Cybercrime Act that limit freedom of opinion and expression until a democratic law is reached that protects the right of opinion and

expression and does not restrict its exercise by persons to keep pace with international legislation and the Jordanian Constitution.

The importance of the study:

There must be a clear legal position by Jordanian legislation to protect the freedom of opinion and expression provided for in international legislation and the Jordanian Constitution, in particular for provisions restricting the exercise of this right through broad provisions, which must be defined and clarified. The importance of this lies in the fact that people exercise their right to freedom of opinion and expression without restrictions and fear of punishment that will be inflicted on them while exercising this right. The exercise of the right to opinion and expression also strengthens the Jordanian people's control over the public authorities in the State.

Questions of the study:

- 1- The concept of freedom of opinion and expression?
- 2- The extent to which international legislation on freedom of opinion and expression ratified by Jordan is in conformity with Jordan's Cybercrime Act?
- 3- What is the applicable Act in the event of a conflict between Jordan's Cybercrime Act and international legislation on freedom of opinion and expression?

Methodology of the study:

The study followed the descriptive and comparative approach. The prescriptive approach is through the study of Jordan's Cybercrime Act and international legislation relating to freedom of opinion and expression, for the comparative approach is through comparing Jordan's Cybercrime Act with international legislation related to freedom of opinion and expression and indicating the extent of the impact of freedom of opinion and expression practiced by the Jordanian people on electronic means.

Subdivision of the study:

First part: What is freedom of opinion and expression?

Second part: The position of Jordan's international legislation and Jordan's Cybercrime Act on freedom of opinion and expression through electronic means.

### **First part: What is freedom of opinion and expression?**

The right to freedom of opinion and expression, which is part of democracy: is one of the most important ingredients for the progress and advancement of States in all fields, whether it is practiced traditionally or electronically, as a result of the development in the use of technology. Therefore the international community has been keen to attach special importance to the right to freedom of opinion and expression in international and national legislation. At the outset, therefore, the concept of freedom of opinion and expression must be clarified and thus the rank of international legislation in Jordan's Constitution. Based on the foregoing, this part will be divided into two requirements; the first is the concept of freedom of opinion and expression. The second is the rank of international legislation in the Jordanian Constitution.

### **The first requirement : the concept of freedom of opinion and expression**

Freedom of opinion and expression are fundamental rights and freedoms in democratic States guaranteed by international and national legislation which allows people to express what they want around them, whether traditionally or electronically, to any conduct by the authorities or any other party, either by consent or criticism. This freedom also includes a package of other relevant freedoms, the exercise of which depends on guaranteeing such freedom as freedom of the press, freedom of the media, freedom of access to information, freedom of creativity and digital freedoms.

Freedom of opinion and expression involves two interrelated freedoms: freedom of opinion, and freedom of expression, which cannot be separated or exercised without each other (1)<sup>1</sup>. Ensuring the exercise of this right serves as the cornerstone and basis for the building, development and survival of a democratic society "It is a means rather than an objective and the main objective of protecting it and ensuring that individuals enjoy it is to involve individuals in the management of public life in the countries and to ensure proper governance in following up and expressing an opinion on what is happening (2)<sup>2</sup>".

Freedom of opinion and expression is defined as: "the ability to act with full will and choice (3)<sup>3</sup>", and also as : "the ability to criticize, express an opinion openly and clearly without prohibition or restriction on it (4)<sup>4</sup>".

Also it is defined as: "the ability of the individual to adopt the opinions and ideas that he/she wants without pressure or coercion, in addition to the ability to express these opinions using various means. It presupposes the existence of two basic conditions for the exercise of this freedom: the first is the absence of external inhibitions or restrictions on the desired conduct or activity, and the second is the absence of an external threat, that threat that no sane person can resist (5)<sup>5</sup>".

It is also defined as: freedom to express ideas and opinions through speech, writing or works of art without government control or restrictions (6)<sup>6</sup>. It is also defined as: An individual's ability to express his/her views and ideas freely and by the means he/she wants (Direct contact with people, writing, mailing, telegram, radio and theatre, films or television... etc.)(7)<sup>7</sup>.

It was also defined as "the freedom to say what one thinks without stalking, and includes the freedom to investigate, receive and broadcast news by any means without adhering to geographical boundaries, in any form, whether written, oral or printed, and by any means chosen by the person" (8)<sup>8</sup>. It is also defined as "the ability of a person to adopt the opinions and ideas he/she wants

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<sup>1</sup> Nizar Ayoub, Freedom of Opinion and Expression in the Palestinian National Authority - A Study in Light of International Human Rights Covenants and Palestinian Legislation, Ramallah: Al-Haq Foundation, 2001, p. 2.

<sup>2</sup> See: Palestinian Center for Human Rights - Gaza, The Right to Freedom of Opinion and Expression and the Right to Peaceful Assembly under the National Authority, The Case of the Gaza Strip (May 1994 - December 1998) Studies Series No. 1, p. 24.

<sup>3</sup> Dictionary of the Language of Jurists, Muhammad Rawas Qalaji, Dar Al-Naqais, 2nd edition, 1988 AD: p. 179.

<sup>4</sup> Human Rights in Islam, Amir Abdul Aziz, Dar es Salaam, 1st edition, 1997: p. 133.

<sup>5</sup> Ikram Badr al-Din, Liberal Democracy and Its Applied Models, Beirut: Dar Al-Jawhara for Printing, Publishing and Distribution, 1986, p. 36.

<sup>6</sup> Hamad bin Hamdan Al-Rubaie, Criminal Restrictions on Freedom of Expression of Opinion through the Media, Cairo, Dar Al-Nahda Al-Arabiya. 2012. p. 8

<sup>7</sup> Saad Ali Al-Bashir, Human Rights, a comparative study between Jordanian law and international conventions, Majdalawi Masterpieces House, Jordan, 1st edition, 2002, p. 61.

<sup>8</sup> Hadeel Malik and Nidal Abbas, The Role of International Law in Protecting Freedom of Opinion and Expression, Political and International Journal, Faculty of Political Science. Al-Mustansiriya University, Iraq, 2012, Issue 21, pp. 319-330

without any pressure or coercion, as well as the ability to express these opinions using all means and methods. (9<sup>9</sup>)"

It was also defined as "ensuring that every individual has the right to express his\her opinion and to receive information without interference with others (10<sup>10</sup>)". It was also said that it is a individual's ability to adopt opinions that he\she wishes without coercion and to express them by various means, taking into account two conditions for the exercise of this freedom: the absence of restrictions on desired activity and the absence of an irresistible threat, and that this freedom includes the right to obtain and disseminate information (11<sup>11</sup>)".

It is defined as: "Freedom to express ideas and opinions through speech, writing or works of art without government control or restrictions, provided that the method of expression in its contents does not represent ideas or opinions that constitute a violation of the laws or international norms that allowed this freedom (12<sup>12</sup>)".

In general international law, the international legislator has not elaborated a specific and explicit definition of freedom of opinion and expression, but international conventions have merely provided and emphasized it, such as the Universal Declaration of Human Rights, which provided the following: "His\her freedom to hold opinions without harassment, to seek, receive and impart information and ideas by any means and regardless of frontiers (13<sup>13</sup>)".

The Jordanian legislator has not elaborated a specific and explicit definition of freedom of opinion and expression. However, it merely has merely provided and emphasized it, such as the Jordanian Constitution, which provided the following: "The State guarantees freedom of opinion, and every Jordanian may freely express his\her opinion by speaking, writing, photography and other means of expression (14<sup>14</sup>)".

Therefore, through the above, it can be said that freedom of opinion and expression electronically is the freedom of people to express ideas and opinions in any way, whether speech or writing and other ways of expression through the virtual world (the internet) by all means without imposing restrictions on it, as long as it is in accordance with the Constitution and international legislation that allowed this freedom.

### **The second requirement is the rank of international legislation in the Jordanian Constitution**

As a result of the wide spread of international treaties on human rights, especially the right of opinion and expression at the present time, as a source of public international law, and because of its special legal force at the national level, this led to the adoption by the international community of Vienna Convention on the Law of Treaties of 1969 as a legal system governing relations between States and to resolve disputes that may arise from the application of international treaties.

<sup>9</sup> Saad Ali Al-Bashir, Freedom of Opinion and Expression, Guarantees and Responsibilities, Media Researcher Magazine, Faculty of Information, University of Baghdad, Issue 8, March 2010, p. 93

<sup>10</sup> Khaled Fahmy, Freedom of Opinion and Expression in Light of International Conventions, National Legislation, Islamic Law, and Crimes of Opinion and Expression. 2nd edition, House of University Thought

<sup>11</sup> Fadl Al-Amiri, Media Freedom in the Arab World in the Absence of Democracy, 1st edition, Halo Publishing and Distribution, Giza, pp. 63-64. Halo Publishing and Distribution, Giza, pp. 63-64. Halo Publishing and Distribution, Giza, pp. 63-64.

<sup>12</sup> Dr. Sulafa Al-Zoubi, Freedom of Opinion and Expression in International Conventions and Jordanian legislation, a working paper prepared for the Jordanian Ministry of Political Development, 2009, p. 1.

<sup>13</sup> Article 19 of the Universal Declaration of Human Rights of 1948 provided that: "Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas by any means and regardless of frontiers."

<sup>14</sup> Article (15) of the Jordanian Constitution of 1952 AD.

However, if international treaties were applied in practice, there might be a conflict between an international treaty and domestic law, in which case the international community obliged States to respect their international obligations, whereas a State possessed its domestic law as part of its internal sovereignty.

To solve this problem, the jurists have created two theories, the first: the theory of the duality of the two laws, where this theory is based on the fact that the rules of public international law are independent of the rules of domestic law, and therefore there is no room for application of either of them in the field of the other, there can be no conflict between the two laws (15<sup>15</sup>), and there is no room for conflict between them. The second theory is: the theory of the unity of the two laws, this theory is based on the fact that international and domestic law are a single legal system in which neither can be separated from each other. This leads to potential dispute and conflict between the two laws. In order to resolve this dispute according to this theory, they divided into two directions: one direction by which international law prevails over domestic law, and thus international law will be applied in the event of conflict with domestic law, and another direction by which domestic law prevails over international law, and thus domestic law will be applied in the event of conflict with international law (16<sup>16</sup>).

As we find, States have differed in the rank of international treaties, some States have granted in their constitutions the international treaty a legal force higher than or equal to the Constitution itself, while some States have given the treaty a legal value higher than or equal to ordinary legislation. Also, some States have silent or omitted the text of the treaty's rank in their Constitution or domestic laws, such as the Jordanian legislator.

Although the Jordanian legislator has silenced and failed to address the legal status of the international treaty, article 33 (2) of the Constitution provided: "Treaties and conventions that result in the State treasury incurring some expenses or prejudice to the public or private rights of Jordanians shall not be in force unless approved by the National Assembly, and in no case may the secret terms of a treaty or agreement contradict the public terms."

It is noted from this text that the Jordanian legislator has not explicitly referred to the rank of international treaties in the Jordanian Constitution other than some States whose constitutions have granted the international treaty a higher legal force than or equal to the Constitution itself, while some other States granted the international treaty a legal value higher than or equal to ordinary legislation, but pointed out that conventions and treaties that do not bear the treasury of the State any expenses or affect the public or private rights of Jordanians are in direct force without the approval of the National Assembly.

Since conventions and treaties relating to human rights, in particular the right to express one's opinion, do not bear the the State any expenses or detract from the general or private rights of Jordanians, they are in force and do not require the approval of the National Assembly.

We find that the legislator has meant or intended that the situation of prejudice is tantamount to any derogation of these rights, as confirmed by the High Council's decision to interpret the Constitution (17<sup>17</sup>).

Although the rank of international treaties and conventions is not provided in the Jordanian Constitution, the Jordanian judiciary has taken a clear position in clearing the rank of international treaties in Jordanian legislation, as the Jordanian Court of Cassation, in many of its rulings, gave

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<sup>15</sup> Adel Ahmed Al-Taie, Public International Law, 5th edition, 2022 AD, Dar Al-Thaqafa for Publishing and Distribution, pp. 82-83.

<sup>16</sup> Adel Ahmed Al-Taie, Public International Law, 5th edition, 2022 AD, Dar Al-Thaqafa for Publishing and Distribution, pp. 86-87.

<sup>17</sup> The decision of the Council of Ministers issued at its session held on February 20, 1952

priority to the rank of international treaties over domestic law, out of respect and commitment of the Jordanian state to the treaties it concludes.

Among these decisions is Jordanian Court of Cassation Decision No.7309/2003, which provided that "international treaties and conventions prevail over domestic laws and have priority application when they conflict with them. No domestic law may be invoked when its provisions are incompatible with the rulings of the conventions (18<sup>18</sup>)" Jordanian Human rights Court of Cassation Decision No.3965/2003 provided that: "The jurisprudence and the judiciary are unanimous in all States of the world, including Jordan, on the supremacy of international conventions and treaties over domestic laws, and that it is not permissible to apply the provisions of any domestic law that contradicts these international conventions and treaties so that they can be applied together, which is what our case was without dispute (19<sup>19</sup>)."

Jordan, at the Human Rights Committee in Geneva in 2010, affirmed that it is committed to the application of the two international covenants ( International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights) and that the international treaties ratified by it are considered an integral part of the national legislation and prevail over the domestic laws in force, this was based on the provisions of article (24) of the Jordanian Civil Code, which provided that (the provisions of the previous articles shall not apply if there is a provision in a special law or in an international treaty in force in the Hashemite Kingdom of Jordan that contradicts them) (20<sup>20</sup>).

International treaties and conventions have also affirmed the highness and the supremacy of the rules of international law over domestic law. This is evident in the Charter of the United Nations, which is considered one of the most important legitimate international treaties, if not the most important, even if it does not contain any explicit reference to the supremacy of the rules of international law, however the Charter implicitly expressed this when it emphasized in its introduction the principle of respect for obligations arising from treaties and other sources of international law (21<sup>21</sup>).

Public international law has affirmed that States must respect their international obligations, and this is what Vienna Convention on the Law of Treaties of 1969 provided that a party to a treaty may not invoke its domestic law as a reason for not implementing this treaty (22<sup>22</sup>), meaning that it is not permissible to invoke national law to evade international obligations arising from an international treaty. It also stressed that a State could not maintain that the expression of its consent to be bound by a treaty was contrary to a provision of its domestic law relating to competence to

<sup>18</sup> Decision of the Jordanian Human Rights Court of Cassation No. (7309/2003) dated (4/22/2004).

<sup>19</sup> Decision of the Jordanian Human Rights Court of Cassation No. (3965/2003) dated (2/29/2004).

<sup>20</sup> Jordan's reply was dated 11 - 29 October 2010 on the implementation of the International Covenant on Civil and Political Rights. Jordan's reply is as follows:

1- Jordan is committed to the implementation of the International Covenants on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

2- International treaties ratified by the Government of the Hashemite Kingdom of Jordan are an integral part of national legislation and prevail over the domestic laws in force, as reflected in article 24 of the Jordanian Civil Code, which provides that: "The provisions of the preceding articles shall not apply if there is any provision in a special law or in an international treaty in force in the Hashemite Kingdom of Jordan."

<sup>21</sup> Elwan, Public International Law, Introduction and Sources, 3th edition, p. 122-123.

<sup>22</sup> Article 27 of the 1969 Vienna Convention on the Law of Treaties. It provided that: "Without prejudice to the provision of article 46, a party to a treaty shall not uphold its domestic law as a ground for non-implementation of this treaty".



conclude treaties as a ground for nullifying its consent, unless it was a clear breach of a rule of fundamental importance to its domestic law (23<sup>23</sup>).

On the basis of the foregoing, if there is a conflict between Jordan's Cybercrime Act and international legislation, international legislation ratified by the Hashemite Kingdom of Jordan is applied because it prevails over national laws, including the Jordanian Cybercrime Act. Thus, the Cybercrime Act must comply with international human rights legislation, particularly the right to opinion and expression.

### **The position of Jordan's international legislation and Jordan's Cybercrime Act on freedom of opinion and expression**

Freedom of opinion and expression and associated rights, such as freedom of the press, freedom of the media, freedom of access to information, freedom of creativity and digital freedoms, are among the inherent rights recognized in international legislation (international human rights covenants and declarations) and States have undertaken to take measures and put in place the necessary mechanisms to ensure their exercise.

However, in reality, there are many restrictions imposed by States to restrict these rights. Therefore, the position of international legislation on freedom of opinion and expression should be clarified first, and then the position of the Jordanian Cybercrime Act on freedom of opinion and expression. Based on the above, this part will be divided into two requirements; the first requirement: the position of international legislation on freedom of opinion and expression, the second requirement: the position of the Jordanian Cybercrime Act on freedom of opinion and expression.

### **The first requirement: the position of international legislation on freedom of opinion and expression**

The international community has been keen to attach special importance to the right to freedom of opinion and expression in the international legislation that has been issued over the past decades and represents the summary of what human thought has accomplished since the issuance of the Universal Declaration of Human Rights issued in 1948, and the subsequent international and regional conventions, the most important of which are:-

#### **1- The Universal Declaration of Human Rights of 1948:**

The Universal Declaration of human rights, adopted by the United Nations General Assembly in 1948, although it is not mandatory for states, but it is the basis of international human rights law, and stressed the protection of freedom of opinion and expression for every person, including his freedom to hold opinions without harassment, and to seek, receive and transmit news and ideas to others, and made the means of expressing this right open, and did not restrict it in a certain way. Also, this declaration made freedom of expression absolute and did not set limits to its exercise (24<sup>24</sup>). Article (30) of the Declaration affirms that no State, group or individual has the right to engage in any activity or action aimed at the destruction of the rights and freedoms contained

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<sup>23</sup> Article 46 of the Vienna Convention on the Law of Treaties of 1969 provided that: "National law shall not be invoked to derogate from international obligations arising from the international treaty. It also stressed that a State could not maintain that the expression of its consent to be bound by a treaty was contrary to a provision of its domestic law relating to competence to conclude treaties as a ground for nullifying its consent, unless it was a clear breach of a rule of fundamental importance in its domestic law "

<sup>24</sup> Article 19 of the 1948 Universal Declaration of Human Rights provided that: "Everyone has the right to freedom of opinion and expression, including freedom to hold opinions without interference, to seek, receive and impart information and ideas by any means and regardless of frontiers."

therein. It is noted from this that freedom of opinion and expression is one of the rights that must be protected, and it is not enough to do so, but to take measures to guarantee this right, such as not imposing restrictions on the exercise of the right of opinion and expression (25<sup>25</sup>).

## 2- The International Covenant on Civil and Political Rights of 1966:

The International Covenant on Civil and Political Rights, ratified by Jordan on 28 May 1975 and entered into force on 23 March 1976, in its second article, obliged member states to guarantee and ensure the rights contained therein. A State's voluntary accession to the International Covenant on Civil and Political Rights entails a commitment to its content and a failure to argue that its national legislation exempts it from its international obligations, but if necessary, the State should amend its domestic legislation to be more appropriate to ensure all the rights enshrined in the International Covenant (26<sup>26</sup>).

The Jordanian State is therefore under an obligation to apply the International Covenant on Civil and Political Rights in accordance with article 2 thereof. On the other hand, its Constitution gives the King the power to conclude international treaties and conventions and to enter into force only those treaties and conventions that entail some expense or prejudice to the general or private rights of Jordanians only if approved by the National Assembly, that is, the International Covenant on Civil and Political rights with its contents is a law of the Jordanian State, and part of its legal system (27<sup>27</sup>).

With reference to the provisions of the International Covenant on Civil and Political Rights, we find that it has guaranteed and ensured the freedom of opinion and expression, including his\her freedom to seek, receive and transmit various kinds of information and ideas to others, and to make the means of expressing this right open, whether in written or printed form, in artistic form or by any other means he\she chooses (28<sup>28</sup>). We note here that the International Covenant has given everyone the right to express their opinion on any subject and by any means, whether traditional or electronic.

However, this Convention restricts freedom of opinion and expression without making such a restriction absolute, but within certain disciplines, by making such restrictions on freedom of opinion and expression specific and prescribed under a legal provision. Such restrictions must be necessary to respect the rights or reputations of others and to protect national security, public order, public health or morals (29<sup>29</sup>).

<sup>25</sup> Article 30 of the 1948 Universal Declaration of Human Rights provided that: "This Declaration does not provide that it may be construed as conferring on a State, group or individual any right to engage in any activity or action aimed at the destruction of the rights and freedoms contained therein."

<sup>26</sup> Article (2) of the International Covenant on Civil and Political Rights of 1966 provided that: "Each State Party to the present Covenant undertakes, if its existing legislative or other measures do not effectively guarantee the acts of the rights recognized in the present Covenant, to take such legislative or other measures as may be necessary in accordance with its constitutional procedures and the provisions of the present Covenant. "

<sup>27</sup> Article 33 (2) of the Constitution provided that: "Treaties and conventions that entail some expense or prejudice to the public or private rights of Jordanians shall be in force only if approved by the National Assembly and in no case may the confidential terms of a treaty or convention be contrary to public conditions."

<sup>28</sup> Article 19 of the International Covenant on Civil and Political Rights of 1966 provided that: "1. Everyone has the right to hold opinions without harassment, 2. Everyone has the right to freedom of expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, whether in writing, in print, in artistic form or by any other means of his\her choice. "

<sup>29</sup> Article (19) of the International Covenant on Civil and Political Rights of 1966, "3. The exercise of the rights provided for in paragraph 2 of this article entails special duties and responsibilities. They may



In addition to the previous restrictions, the International Covenant on Civil and Political Rights has placed further restrictions on freedom of opinion and expression in relation to the prohibition of propaganda for war, advocacy of national hatred and racial and religious discrimination, which constitute incitement to discrimination, hostility or violence, which must be criminalized in national laws (30<sup>30</sup>).

Jordan is therefore under an international obligation to guarantee freedom of opinion and expression, as a result of its signature and ratification of the International Covenant on Civil and Political Rights. Otherwise, it is a breach of its international obligations under the Covenant, as well as of its national laws. This may result in a reduction in the State's financial support by international human rights organizations, in particular the right to opinion and expression.

### 3- International Convention on the Elimination of All Forms of Racial Discrimination of 2006:

Jordan was one of the preceding States to sign and ratify the conventions on human rights, including the International Convention on the Elimination of All Forms of Racial Discrimination. Jordan acceded to the Convention on 30 May 1974 without reservations and it was published in the Official Gazette on 15 June 2006. Its provisions were incorporated into Jordanian national legislation.

This Convention affirms freedom of opinion and expression, and States parties' obligation to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, national or ethnic origin, to equality before the law, in particular with regard to the enjoyment of the right to express one's opinion (31<sup>31</sup>).

However, this convention restricted the freedom of expression of opinion without making this restriction on freedom of expression and opinion absolute, but prohibited propaganda and organizations based on ideas or theories that claim the superiority of any race or any group of color or ethnic origin, or that try to justify or promote any form of racial hatred and racial discrimination. In addition, this Convention obliged States to take immediate and positive measures aimed at eliminating any incitement to such discrimination and any act thereof; it criminalized any dissemination of ideas based on racial superiority or racial hatred, any incitement to racial discrimination, any act of violence or incitement to such acts committed against any race or any group of another color or ethnic origin, as well as any assistance to racist activities, including their financing . It also declared the illegality of organizations that promote and incite racial discrimination, and did not allow public authorities or institutions, national or local, to promote or incite racial discrimination (32<sup>32</sup>).

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therefore be subject to certain restrictions, but provided that they are specified by law and are necessary for:

- (a) Respecting the rights or reputations of others,
- (b) Protecting national security, public order, public health or morals. "

<sup>30</sup> Article (20) of the International Covenant on Civil and Political Rights of 1966 provided that: "1. Any propaganda for war is prohibited by law, 2. Any claim of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law ".

<sup>31</sup> Article (5) of the International Convention on the Elimination of All Forms of Racial Discrimination of 2006 provided that: "States parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, national or ethnic origin, to equality before the law, in particular with regard to the enjoyment of the following rights: d. Other civil rights, in particular: 8. right to freedom of opinion and expression ".

<sup>32</sup> Article (4) of the International Convention on the Elimination of Forms of Racial Discrimination 2006 provided that "States parties condemn all propaganda and organizations based on ideas or theories of superiority of any race or group of one colour or ethnicity or attempting to justify or promote any form of

Jordan is therefore under an international obligation to guarantee freedom of opinion and expression, as a result of its signature and ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, by prohibiting and eliminating racial discrimination in all its forms and by taking the necessary measures to eliminate such racial discrimination. Otherwise it is a violation of its international obligations arising from this convention, and also constitutes a violation of its national laws.

#### 4- Arab Charter on Human Rights of 2004:

The Arab Charter on Human Rights, signed by Jordan on 23 May 2004 and ratified on 28 October 2004, guaranteed freedom of opinion and expression by obtaining, receiving and transmitting news and ideas to others by any means, regardless of geographical boundaries (33<sup>33</sup>). But this Charter imposed restrictions on this right when exercising it, namely respect for the rights or reputations of others or prohibit the exercise of this right if it violates national security, public order, public health or morals (34<sup>34</sup>).

Here, the Charter recognizes freedom of opinion and expression by any means, including electronic means, but it imposed some restrictions on its exercise in broad terminology such as the term public order. It should have used clear and specific terms, and, as we know, public order has a relative concept that varies from State to State and the State itself from time to time, in what is now considered the system, may not be considered a public order before, and this is difficult to put a specific definition of public order.

Accordingly, all previous international treaties and conventions affirmed that the international community guaranteed and ensured freedom of expression and opinion, without making it absolute, but rather restricted it to certain controls: such restrictions on freedom of opinion and expression should be specific and legally established and such restrictions must be necessary to respect the rights or reputations of others, also to protect national security, public order, public health or morals.

#### **Second requirement: the position of the Jordanian Cybercrime Act on freedom of opinion and expression:**

racial hatred and discrimination. They also undertake to take immediate and positive measures aimed at eliminating any incitement to such discrimination and any act thereof and, in particular, undertake, to this end and with due regard to the principles contained in the Universal Declaration of Human Rights and the rights expressly enshrined in article 5 of this Convention:

- a. Any dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and any act of violence or incitement to such acts is committed against any race or group of other colour or ethnicity, as well as any assistance to racist activities, including their financing, is punishable by law.
- b. Declaring of the illegality organizations, as well as organized propaganda and other propaganda activities, which promote and incite racial discrimination, prohibit such organizations and activities and consider participation in any offence punishable by law.
- c. Not permit public authorities or institutions, national or local, to promote or incite racial discrimination".

<sup>33</sup> Article 31 of the Arab Charter on Human Rights of 2004 provided that: "1. The present Charter guarantees the right media and freedom of opinion and expression, as well as the right to obtain, receive and impart news and ideas by any means and regardless of geographical boundaries".

<sup>34</sup> Article (31) of the Arab Charter on Human Rights of 2004 provided that: "2. These rights and freedoms shall be exercised within the framework of the essential ingredient of society and shall be subject only to the restrictions imposed by respect for the rights or reputations of others or the protection of national security, public order, public health or morals. "

We must first refer to the rights guaranteed by Jordanian legislator in general: the Jordanian Constitution devoted a full chapter to human rights, entitled "The rights and duties of Jordanians males and females (35<sup>35</sup>)". We note that human rights are unequivocally enshrined in the Constitution, such as personal freedom, the principle of equality, compulsory education in the early stages and other rights.

As the Jordanian legislator enshrined the principle of equality before the law and explained that there is no discrimination between individuals in rights and duties on grounds of sex, origin, language or religion (36<sup>36</sup>). We note here that the Jordanian legislator in the Constitution is in conformity with international legislation, in particular the Universal Declaration of Human Rights in relation to this principle, as the Declaration affirmed this in article (2) which provided that: everyone has the right to enjoy all the rights and freedoms set forth in this Declaration without discrimination on grounds of race, colour, sex, language, religion, political or other race, national or social origin, property, birth or other status without distinction between men and women (37<sup>37</sup>).

The Jordanian Constitution guaranteed the personal rights of individuals as one of the most important freedoms, as it provided in article (7/1) that personal freedom is inviolable and this is in accordance with international legislation, especially the Universal Declaration of Human Rights, which emphasized in its article (3) on the exercise of individual personal rights such as life, liberty and personal safety (38<sup>38</sup>).

In addition, article 8 of the Constitution affirmed that no person may be arrested, detained or restricted except in accordance with the provisions of the law and that no person shall be subjected to torture or degrading treatment. Thus, the Constitution has approved international legislation, especially the Universal Declaration of Human Rights with regard to the right to life of individuals and their personal safety, and this is what achieves safety for them in their lives, where it provided in article (5) that no person shall be subjected to torture or to cruel, brutal or degrading punishments or treatment (39<sup>39</sup>).

Article 128 of the Jordanian Constitution provided that: "1. The laws promulgated under this Constitution to regulate rights and freedoms may not affect the substance or the fundamentals of these rights." It is noted from this text that Jordanian legislator on the rights and freedoms of individuals may not contravene the Jordanian Constitution, in particular the right to opinion and expression.

Jordan's Cybercrime Act No.17 of 2023 criminalized under its article (15/a), any person who transmits, re-transmits or disseminates data or information through the information network, information technology, information system, website or social media platforms that contain false

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<sup>35</sup> Articles (5- 23) of the Constitution of Jordan of 1952 and its amendments

<sup>36</sup> Article (6/1) of the Jordanian Constitution and its amendments of 1952 and its amendments provided that: "1. Jordanians are equal before the law, without discrimination between them in rights and duties, even if they differ in race, language, or religion."

<sup>37</sup> Article 2 of the Universal Declaration of Human Rights of 1948 provided that: "Everyone has the right to enjoy all the rights and freedoms set forth in this Declaration without discrimination based on race, colour, sex, language, religion, political or other race, national or social origin, property, birth or other status, without distinction between men and women. In addition to the foregoing, there shall be no discrimination on the basis of the political, legal or international status of the country or of the place to which the individual belongs, whether that country or that spot is independent, under trusteeship or non-self-governing or his\her sovereignty is subject to any restriction."

<sup>38</sup> Article 3 of the Universal Declaration of Human Rights of 1948 provided that: "Everyone has the right to life, liberty and his\her security of person".

<sup>39</sup> Article (5) of the Universal Declaration of Human Rights of 1948 provided that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

news aimed at national security and community peace or insults or demeans any person (40<sup>40</sup>). Thus, the legislator restricted freedom of expression through websites if the expression contains false news aimed at national security and community peace, insulting, slandering or disparaging any person.

Here, the legislator restricted the freedom to express opinion in broad terms such as national security and false news, and not only did the legislator do so, but the penalties were excessive in the event of such crimes, thereby restricting people's ability to express their opinion, especially since the penalty of three months to three years' imprisonment or the imposition of a fine could amount to (20.000) twenty thousand Jordanian dinars, which is very difficult under the difficult economic conditions of a simple Jordanian citizen, or a judge may collect the penalty of imprisonment with the fine.

As in article (15\b), the legislator authorized the public interest litigation to be brought directly by the Attorney-General's Office without the need to file a complaint from the complainant or a claim of personal right in previous crimes if they are addressed to one of the authorities in the State, official bodies or public administrations (41<sup>41</sup>).

In the sense of violating the provision of this article, it turns out that ordinary people must submit a claim of personal right to file a complaint of defamation, slander or contempt, this restricts the freedom of expression of opinion to full participation in political processes and civil life by individuals, and it may also lead to a lack of accountability of public authorities for the decisions they make.

Also, by reference to the provision of article 16 of the Cybercrime Act, Jordanian legislator criminalized any person who spread, or intentionally attributed unjustly to a person or contributed to this through the information network, information technology, information system, website, or social media platforms any act of character assassination. Thus, the legislator restricted the freedom of expression of opinion through websites if the expression includes any act of character assassination(42<sup>42</sup>).

Here, the legislator restricted the freedom of expression by a broad term "character assassination", also the legislator not only did this, but increased the penalties in the event of committing these crimes, which leads to restricting the ability of people to express their opinion, and thus the legislator applied severe penalties to people who express criticism of a person, especially officials, and this provision was to protect the official from responsibility.

Under article (33) of the Cybercrime Act, the Jordanian legislator conferred powers to the Attorney-General to oblige those in charge of electronic means to remove, block, stop, disable, register, intercept the itinerary of data or any publication or content, block access to it or ban the

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<sup>40</sup> Article (15/a) of the Jordan's Cybercrime Act No. (17) of 2023 provided that: "a. Anyone who intentionally transmits, re-transmits or disseminates data or information through the information network, information technology, information system, website or social media platforms involving false news aimed at national security, community peace, insult, demeans or disparage any person shall be liable to a term of up to three months' imprisonment or a fine of not less than three months 5,000 dinars, not exceeding 20,000 dinars, or both of these penalties".

<sup>41</sup> Article (15\b) of the Jordan's Cybercrime Act No.17 of 2023 provided that: "B. The crimes set forth in paragraph (a) of this article shall be prosecuted by the Public Prosecutor's Office without the need to file a complaint or claim of personal right if they are addressed to a State authority, official bodies or public administrations."

<sup>42</sup> Article (16) of Jordan's Cybercrime Act No.17 of 2023 provided that: "Anyone who unjustly promotes, attributes or contributes to an individual's intent through the information network, information technology, information system, website or social media platforms shall be liable to a term of imprisonment of not less than three months or a fine of not less than 5,000 dinars, not exceeding 20,000 dinars, or both of these penalties".

user or publisher, which lead to restriction of freedom of opinion and expression. Not only did the legislator do so, but also gave the Attorney-General the power to order the competent authorities to ban the information system, website, social media platform or service from the national network or to block access to content in the event that the operators of the information system, social media platform, website or service provider did not respond or refuse to remove, block, stop, disable, record or intercept the data itinerary, any post, content, prevent access to it or the user or publisher (43<sup>43</sup>).

It is clear from the above that those responsible for social media platforms and other means of publication may be prevented and banned if the official authorities deem that it violate this law. We have previously touched on the existence of broad terms that may justify a decision to ban the information system, website or social media platform from operating, which is a restriction on freedom of opinion and expression in electronic means.

As for the freedom of opinion and expression, which is the focus of our research, we found that the Jordanian Constitution regulated this freedom, and since the freedom of the press is considered one of the most important and most influential forms of freedom of opinion and expression, the Jordanian Constitution has paid special attention to it by allocating independent provisions to protect it, due to the importance of the press in forming, directing and influencing public opinion.

The press and electronic media are part of the freedom of opinion and expression, and this has been confirmed by the Jordanian Constitution in Article (15) of it as " 1. the State guarantees freedom of opinion, and every Jordanian may freely express his/her opinion by speech, writing, photography and other means of expression provided that it does not exceed the limits of the law, 2. the State guarantees freedom of the press, printing, publishing and the media within the limits of the law, 3. newspapers and media may not be disrupted or their license revoked except by a judicial order in accordance with the provisions of the law, 4- in the event of the declaration of martial law or emergency, the law may impose limited censorship on newspapers, publications, literature, media and communication in matters related to public safety and national defense purposes, 6 .the law regulates the method of censorship over the resources of newspapers (44<sup>44</sup>)".

Therefore, we note that the Jordanian Constitution guaranteed the right to freedom of expression of opinion, and this expression of opinion is by speech, writing, photography or any other means of

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<sup>43</sup> Article (33) of the Jordanian's Cybercrime Act provided that: "The competent Attorney-General or the competent court, when an information system, a website, a service provider inside or outside the kingdom, social media platforms, or the person responsible for any account, public page, public group, channel, or the like publishes any materials contrary to the provisions of this law or the legislation in force in the kingdom, has the right to issue an order to those responsible to take the following:-

1. Remove, block, stop, disable, record or intercept the data itinerary, any publication, content, block access to it or temporarily block the user or publisher within the period specified in the resolution.
2. Provide them with all necessary data or information that help to demonstrate the truth, including the data of the owner or user of the website or information system that helps in identifying him and conducting legal prosecution.
3. Urgent preservation of the data and information necessary to demonstrate, store and maintain the integrity of the truth.
4. Safeguarding confidentiality.

b - If the operators of the information system, social media platform, website or service provider do not respond or reject the order provided for in clause (1) of paragraph (a) of this article or if expeditious so requires, the competent Attorney-General or the competent court may, by reasoned decision, order the competent authorities to ban the information system, the website, the social media platform, the service of the national network or the prohibition of access to the contrary content.

c-A fine of not less than 15,000 dinars and not more than 30,000 dinars shall be imposed on anyone who fails to implement or contravene the orders of the Attorney-General or the competent court. "

<sup>44</sup> Article 15 of Jordan's Constitution of 1952 and its amendments



expression, provided that it does not exceed the limits of the law. The Constitution also guaranteed for the press, printing, publishing and the media the freedom to express opinion within the limits required by law.

Although the general rule under the preceding provision is that newspapers and the media may not be disabled and licensed only by judicial order in accordance with the provisions of the law, in the event of a declaration of martial or emergency law, however, the law may impose limited control on newspapers, leaflets, literature and the media in matters relating to public safety and national defence, which is a generalized term. This exception allows public authorities to censor newspapers, publications, literature and the media and to communicate on the grounds that they violate public safety and national defence.

In order to emphasize the principle of freedom of opinion and expression, the Jordanian legislator promulgated the Printing and Publishing Code (45<sup>45</sup>), in which the legislator affirmed the freedom of opinion and expression. Article 3 of this Code provided that: "The press and printing are free and the freedom of the opinion is guaranteed to every Jordanian and may express his\her opinion freely to say, write, photograph, paint and other means of expression and information."

This Code also subjected websites to it considering them to be one of the means through which ideas are conveyed and news is disseminated. Article (2) of it defined the publications as "every means of publication in which meanings, words or ideas are recorded in any way, including electronic means or digital or technical.

this Code also provided in article 4: "The press shall freely exercise its function to provide news, information and comments and shall contribute to the dissemination of thought, culture and science within the limits of the law and in the framework of the preservation of public freedoms, rights and duties and respect for the freedom and inviolability of the private life of others."

And Article (8) of this Code provided that "a. the journalist has the right to obtain information and all official bodies and public institutions should facilitate his\her task allowing him\her access to their programs, projects and plans .b. it is prohibited to impose any restrictions that impede the freedom of the press in ensuring the flow of information to the citizen or to impose measures that lead to the disruption of his\her right to obtain it".

It is noted here that the Jordanian legislator guaranteed the freedom of the press and the media, which is the basis for the application of freedom of opinion and expression, which is what prompted it to be called the fourth authority at the present time.

The legislator obliged the official authorities of the State to ensure that procedures for their exercise are facilitated, and the freedom of the press is exercised in an absolute manner without any restrictions. Thus, the Jordanian legislator complies with the relevant international legislation on the right to opinion and expression in this Code.

## Conclusion

Freedom of opinion and expression for citizens in general and freedom of the press and media, which is part of the freedom of opinion and expression and which has been approved by international legislations (international charters and declarations on human rights). These legislations obliged States to take measures and put in place the necessary mechanisms to ensure their exercise. However, there are many restrictions imposed by States to restrict these rights. Hence, international and national legislations are trying to avoid the disadvantages of imposing restrictions on freedom of opinion and expression, especially when practiced electronically as a result of electronic development.

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<sup>45</sup> The Printing and Publishing Code No. 8 of 1998.



**Findings:**

- 1- International legislations and Jordanian legislator did not explicitly and specifically define the right of opinion and expression, but merely emphasized it. There is also no provision in the Jordanian Constitution on the rank of international treaties and conventions, but the Jordanian judiciary has taken a clear position in the statement of the rank of international treaties in Jordanian legislation, as the Jordanian Court of Cassation, in many of its rulings, gave priority to the rank of international treaties over domestic law, out of respect and commitment of the Jordanian state to the treaties it concludes. Based on the above, if there is a conflict between the Jordan's Cybercrime Act and international legislations, the international legislations ratified by the Hashemite Kingdom of Jordan will be applied because they prevail over domestic laws, including the Jordan's Cybercrime Act, and therefore the Cybercrime Act must comply with international legislations on human rights, especially the right of opinion and expression.
- 2- All previous international treaties and conventions affirmed that the international community guaranteed and ensured the freedom of opinion and expression, without making it absolute, but rather restricted it within certain controls, that these restrictions on freedom of opinion and expression should be specific and established by a legal provision. Here, the international community must be clearer about the limitations imposed on this right and not use broad terms as the term "public order", etc., since it has no specific definition and varies from society to society and from time to time. Nor did it clearly refer to freedom of opinion and expression by electronic means, which were inherently different from traditional means of expression. Jordan's Cybercrime Act No.17 of 2023 also used broad terms such as false news and character assassination, thereby severely restricting freedom of opinion and expression.
- 3- Jordan's Cybercrime Act No.17 of 2023 is incompatible with international human rights legislations and the Jordanian Constitution, in particular the right to freedom of opinion and expression.

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