

Jordanian Legal Regulation of Corporate Crimes

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DOI: <https://doi.org/10.5281/zenodo.11001123>

Published Date: 20-April-2024

Abstract: It is a common conception to assume that corporations and companies have the responsibility of ensuring their actions are legal under the laws of the state and that they are held liable if they do not. However, the ability of a corporation to commit a crime and be held criminally liable has been a major issue in many legal systems over the years. Corporations are entities, which act through individuals to commit acts which in turn have the effect of providing a product or service to the end consumer. At times it may be that the product or service provided has caused harm, for example, a pharmaceutical company selling drugs that cause illness or injury to the end consumer. Or the methods used to provide a product or service may be unlawful, for example, tax evasion or avoiding health and safety regulations. And as to punish the corporate body itself would be impossible, it has commonly been the case that individual directors have been charged with the common law offenses, such as those of assault, manslaughter, or fraud, to provide an alternative method of punishing the corporation.

Keywords: Corporate Crimes, Jordanian Legal Regulation, legal systems, punishing the corporation.

1. INTRODUCTION

1.1 Background

This research's focus is on the regulation of corporate crimes in Jordan. While many studies have been conducted in relation to corporate crimes and its regulation in western countries, there are no known studies that have been conducted in relation to this particular topic in Middle Eastern countries and in Jordan. This research is aimed at gaining an understanding of corporate crimes and its regulation in Jordan as well as to inform and increase the awareness of the effects of weak regulation and the absence of law in this area. This research will also serve as a platform and provide a good basis for future studies in relation to this topic in Jordan and in Middle Eastern countries. This is especially important since corporate crimes is a growing area of concern and in terms of globalization, it has an impact on every country including Jordan. At a more personal level, a study in this area will provide a better understanding as to what corporate crimes are, its impact on society and the environment, and whether the current regulation in Jordan is sufficient. Based on feedback from lecturers and past experience in the workforce, it is thought that corporate crimes law is not a well-known area of law and the assumption can be made that the awareness of corporate crimes and its regulation in Jordan is low. Hence, there is a need for a study in this area to educate and create awareness on the topic to law students, external parties, and the general public.

1.2 Purpose

This research aims to study two primary and interrelated issues. The first is to determine if Jordan as a nation state is moving toward criminalizing corporate behavior and if so, what form this is taking. The second and critical issue is whether this punitive trend is consistent with the theories, principles, and rules of international criminal law. For the purposes of this research, while recognizing that corporate criminal behavior encompasses a variety of regulatory offenses, the focus will be on serious offending such as that involving environmental degradation, corruption, and human rights violations. These are the offenses for which there is a widespread perception that corporations are not being held sufficiently accountable. This is not to say that other forms of corporate offending have little social impact or that they should go unpunished.

However, the more serious forms of offending are those which international criminal lawyers have traditionally sought to address through enforcement of the criminal law. The main body of law which governs the creation and enforcement of criminal offenses in Jordan is the Jordanian Penal Code. That said, there are a myriad of sectoral codes and statutes which contain provisions for penal sanctions for violations of particular regulatory regimes. Since there are a very small number of provisions that directly target corporate behaviors, a complete analysis of corporate criminal liability cannot be performed within the confines of the Penal Code. However, the general principles for individual liability are contained in the Penal Code and it is here that it shall be determined whether there are moves to adapt these principles to apply to corporate entities.

1.3 Scope

The main threat of a criminal prosecution to a corporation is the possibility of conviction and the imposition of sanctions. Depending on the nature of the crime committed, a corporation may stand to incur severe penalties that could have a grave economic impact. This, combined with adverse publicity, has adverse effects on the corporation's present and future dealings. Measures taken by the prosecution to prove a corporation's guilt have several detrimental effects. Due to the requirement of proof of the guilty mind and the necessity of identifying the directing mind and will, criminal prosecution may take a while resulting in a suspension of judgment in civil proceedings. The standard of proof required to convict a corporation is extremely high, often said to be higher than that required to convict an individual.

Corporate criminal liability is essentially targeted at punishing a corporation for the wrongdoing that it has committed. Since a corporation can only commit crimes and act through its employees, it is logical for the corporation to be held liable for the acts of the employees as its directing mind and will, if it has in fact authorized or permitted the acts to be done. This can be contrasted with holding the directing mind and will or the individual employee liable for the crime that he has committed in his capacity as the employee of the corporation.

2. OVERVIEW OF CORPORATE CRIMES

In Jordan, corporate liability is a newly developing concept as Jordan updated its criminal code in 2018 and imported concepts of corporate liability from the UNCITRAL model law, however it can still be difficult to hold a corporation liable, especially in the criminal sense. Prior to 2018, there were no specific provisions in Jordanian laws that held a corporation liable for the criminal acts of its representatives, but rather followed the general principle in Article 35 of the criminal code that stated "A penal provision shall be applicable only to persons who have committed the act, or omitted to perform the duty, defined therein". In order for a corporation to be held criminally liable, it must be shown that the act was committed by a person of authority.

"Corporate crime" is a widely known term that is rapidly gaining substantial importance, yet it is not officially a legal term and does not have a clearly defined definition. The picture of corporate criminal liability is still a little fuzzy and touches on more idealism than actuality. The concept that a corporation can be held criminally liable is still a foreign and, to some, unlikely concept considering the corporate "person" is not one that can be thrown in jail. Corporate criminal liability is defined as a company being held criminally responsible for the actions of its employees or others acting on its behalf.

2.1 Definition

Corporate crime is a fairly new concept under Jordanian criminal law, specifically provided for in the Jordanian Penal Code 16 of 1960 (hereinafter JPC). There is no definition in JPC for corporate crime. However, corporate crime can generally be defined as an offense committed by a company or an individual in control of a company, which is made possible by the control and status of the company, that is not always illegal, but is unethical and harmful. Harmful in that it causes damage to individuals and society, and which is normally in the public interest to prosecute. An example of such crimes would be breaching safety laws that result in harm to the employees working for the corporation. It is worth noting that there is a distinction between the individuals working for a company and the company itself. Under Jordanian law, it is the individual and not the company that is responsible for the crime. The nature and status of corporate crime has an effect on how the law is enforced and how the offender is punished. There is a difference between large corporations and small private companies in committing crimes and being held accountable for them. This will be discussed later in the essay. Being a mixture of criminal and civil law, prosecution of offenders has until now been sparse and the law and procedure can be seen to be somewhat complex. As the law in Jordan is adopted from different legal systems, we may also find that corporate crime has certain links to other forms of law, like administrative or even international law. This means that corporate crimes can sometimes fall through certain gaps in the law, and with uncertainty, offenders can often avoid prosecution.

2.2 Types of Corporate Crimes

Unlike individual criminal liability, the current Jordanian regulatory regime focuses on only felonies (and certain misdemeanors) under the Jordanian Penal Code. Thus, it is corporate involvement in the most serious of generally applicable criminal offenses which is of regulatory concern. In particular, crime as opposed to regulatory breach is seen to entail moral turpitude and thus engage issues of corporate responsibility. Further, the Penal Code is historically and philosophically the articulation of criminal justice and these offenses are the ones for which the state will seek retribution and deterrence within the criminal justice system. While it is hard to crystallize a corporate crime taxonomy, offenses to which corporations are currently relevant can be divided into (i) conventional crimes, where corporations or corporate agents are prosecuted under the accessory or principle provision for general offenses to which there is nothing specifically "corporate" about the conduct or harm, and (ii) modern regulatory offenses where the corporation is prosecuted directly or as a principle for statutory breaches which can carry criminal sanction.

2.3 Impact on Society

The effects of corporate crime upon public health are considerable and can arise from a number of different areas. One of the most direct ways in which corporate crime can affect health is through a direct assault on people. This can be seen in the context of it is illegal for a corporation to criminally assault a person, it is more likely that this situation will arise in the context of a violation health and safety regulations. One of the most pressing health and safety issues can arise from corporate crime in the context of an environmental offence. An offence of polluting a water supply can have widespread and long-term implications on public health for a large number of people. Another aspect in which public health can be affected is from the creation of a hazardous environment. This can be seen in a number of OSHA violations by different corporations and can lead to much suffering of illness and injury from employees.

There are countless ways in which corporate crime can impact upon society. The effects can be widespread and can affect many different areas of society. The effects of corporate crime can have both immediate and long-term implications. They involve direct costs as well as indirect costs to individuals and to society. Direct costs include the total dollar loss to victims and/or money spent to cure a problem. Whereas indirect costs are immeasurable and can be related to the further suffering of victims in terms of pain and emotional distress, or the loss of quality of life. They can also be related to the costs of suffering for loved ones and family of the victim. Corporate crime can also incur costs to the government in the promotion of justice and the reduction of crime. Long-term effects can include the perceived breakdown of social order, a loss of confidence in the future and in shared institutions and a reluctance to invest money.

3. LEGAL FRAMEWORK FOR CORPORATE CRIMES

The Penal Code also contains provisions that imply that corporations incur criminal liability over a broad range of offenses. For example, Article 114 of the Penal Code states that "a body of persons can be guilty of riot if any one of its members committed the offense of riot acting on behalf of that body of persons". There are also provisions which make corporations liable for the acts of their employees and agents both in conspiracy and as accessories to an offense. These provisions afford corporations very little statutory defense, and it will be left to the discretion of the courts as to whether the corporation should be held criminally liable.

The Jordanian Companies Law does not traditionally provide for specific provisions for corporate criminal liability. However, there are explicit provisions in specific laws that make corporations criminally responsible for the acts of their employees and agents. For example, the Jordanian Penal Code No. 16 of 1960 holds corporations criminally liable for the acts of their representatives. Article 37 of the Jordanian Penal Code provides that "when a proximate consequence of an act is intended, the mental element for such consequence includes the mental element for the act". This codification of vicarious liability clearly demonstrates the intention of the Code to hold corporations criminally responsible.

3.1 Constitution and Legislation

Following the enactment of the Jordanian Constitution in 1952, Jordan has witnessed several amendments to the constitution and promulgation of new laws aimed to promote good governance and human rights by encouraging social and economic development and the eradication of corruption. The current constitution endorses the principle of separation of powers, and Article 6 has asserted that the state is based on the rule of law, with an independent judiciary in which the judges are

protected and subject only to the law. The constitution has also guaranteed several basic rights to the people of the country, such as the right to equality before the law, the right to a fair trial, and the presumption of innocence and various other rights located in section two of the constitution. All these principles and rights laid down in the constitution are the solid foundation for the present legal regime in the country with regards to corporate criminal liability and have a profound impact in setting the tone of the level of enforcement and implementation of the law.

3.2 Regulatory Bodies

Regulatory bodies contribute towards policing corporate activities and are given varying degrees of powers to enforce the law and ensure the compliance of corporations. The regulation of corporate activity in Jordan operates under two types of regulatory bodies, one being the traditional law enforcers, the other specialized institutions implementing regulations specific to their function. Both types of regulatory bodies have proved to be weak and ineffectual in the realm of corporate regulation. Traditional law enforcement comprising police, public prosecutors, and court systems are considered to be very weak in enforcing corporate regulation. Their efficacy is weakened by a number of factors. Prioritization of resource allocation towards crimes perceived to be more serious against the state or individual citizens, rather than corporate crime, has left corporate crime underinvestigated and underprosecuted. This occurs due to the lower visibility of the damage caused by corporate crimes compared to other types of crime and the perception that corporate entities cannot be incarcerated. Failure to investigate and prosecute corporate crimes also occurs due to the extensive networking that corporate entities have in the public sector, often resulting in political interference in the law enforcement process. The conduct of police in Jordan is often corrupt and commonly under the direction of influential persons, corporate or otherwise. This has resulted in instances of refusal to investigate corporate crimes and tampering of evidence. Public prosecutors and the court systems lack enthusiasm in prosecuting corporate crimes and are hindered by complex and technical legal procedures. Successive changes in government and attitudes between different governments on political influence have caused inconsistency in prosecuting corporate crime. Although the existence of regulatory offenses within the general criminal code may be enforced by general law enforcement agencies, the regulation of specific corporate activity is left to regulatory bodies of the second type. These regulatory agencies are generally newly formed with similar-aged legislation and are plagued with the same problems of political interference and resource allocation. The lack of effectiveness of Jordanian regulatory bodies will be exemplified in the investigation and attempted regulation of corporate cartel activity.

3.3 International Agreements and Conventions

Before discussing these international statutes, it is necessary to point out that none of them would be directly applicable in Jordan unless the government ratified them and they were transformed into national legislation. Transformation of these agreements can occur either through general implication that the statute was meant to be implemented and utilized, or through specific enactment of the law in question. This is a very interesting point since a law can be accused of lacking clarity, and in such a case the courts can refer to the original statute as an aid to interpretation in pursuit of ascertaining the true meaning and purpose of the local legislation. However, if it is found that the local law is contrary to an international agreement, the state is obligated to take steps to amend that law so that it is in compliance with the international statute. This would not be necessary in Jordan had these treaties been classified as self-executing at the time of ratification. Unfortunately, it is sometimes difficult to determine whether a treaty is self-executing, and in such case the courts of California give deference to a statement by the US Department of State regarding the intended executability of a statute but will still refer to the treaty terms in ascertaining whether it has become part of the federal common law. This is a rare occurrence in the United States and is not the methodology taken by Jordan should an international treaty be found in conflict with domestic law.

4. CORPORATE CRIMINAL LIABILITY

JCL Art 34 begins by stating that "a corporate entity is liable to punishment for a crime committed pursuant to its organs or representatives, and having the aim of interest of the corporation". This concept of an act committed pursuant to the aim or interest of the corporation is reflective of various national laws on corporate liability and the language used is notably similar. The Italian law penal code for example, begins article 25 with a provision that "a corporate body is liable to punishment when it is found guilty of crimes...committed in the interest of the body by persons with representation, administrative or management duties". This indicates that JCL Article 34 is to create a theory of vicarious liability, imputing conduct of an individual to the corporation, in line with the theories and principles of modern vicarious liability in tort law.

Corporate criminal liability can be understood as the attribution of criminal responsibility to corporations. This is a contentious issue, as corporations are not natural persons and thus cannot commit the physical acts or have the mental states for the crimes they are accused of, meaning they cannot be held to account under traditional methods of liability and responsibility. Despite this, corporate liability is also an imputed liability, based on the actions of individuals within the corporation. This reflects the fact that modern corporations operate through human agency, and in the commission of acts which in modern times, have been treated as criminal, it is generally officers or others at higher levels within the corporation who are responsible.

Corporate criminal liability has been regulated in the Jordanian legal system (JCL) through the new law. This represents a marked change in the existing law, which did provide for corporate criminal liability, but was buried under layers of other statutes and provisions, many of which were contradictory in nature or were inconsistent with one another. The new law serves to bring all of these provisions into one coherent whole which deals specifically with the issues facing corporate entities today. This is done in an attempt to stem the growing tide of corporate crimes in the Kingdom, occurring primarily in the financial sectors and to prevent these crimes from occurring in the future. It is an important piece of legislation and warrants significant scrutiny, in particular on the issue of corporate liability itself.

4.1 Principles of Corporate Criminal Liability

Corporate criminal liability is established today as a fundamentally accepted principle in many states' legal systems. Although the doctrine of treating a corporation as a subject of law in its own right, which can be held criminally liable for the commission of offenses, was first mooted by the House of Lords in the well-known case of *Daimler Co Ltd* in 1916, the real development in the whole concept began in the United States over a theory which was designed to make the corporation answerable for acts of its employees, contrary to the traditional principle that the employer is not responsible for acts of its employees which are not authorized. The objective of the criminal law is to attribute criminal liability to the corporation for acts of those who represent the directing mind and will of the corporation. This objective was clearly intended to avoid a situation where the guilty mind of the corporate body is left unpunished. This theory was designed to get through the corporate screen to the people who were actually making and doing things for the corporation. This principle was accepted in Canada in the case of *Canadian Dredge and Dock Co. vs The Queen*, where it was held that if senior management at any material time has directed the minds and will of the corporation into the commission of a crime, that can be attributed to the corporation as having been committed by it. In the case of *R vs ICR Haulage Ltd*, the principle was further explained when a company was convicted for criminal damage under s.1(1) of the Criminal Damage Act 1971. The Court of Appeal held that often the board of directors make up the company, though it is not possible to lay down a rule of universal application, the Crown must identify the directing mind and will of the company's acts at the material time. This link with the identification doctrine with regard to guilt and the imposition of personal liability on individuals representing the corporation has become known as the alter ego theory.

4.2 Elements of Corporate Criminal Liability

This was the case in *Z Ltd v A-G for Bermuda* and in *A-G's Reference (No 2 of 1999)*. In *Z Ltd*, the appellant was a company director of a company whose business was importing and supplying beef carcasses. Due to the beef having a high lead content, they were banned from import to the UK. The director took advice from customs and excise officers as to how to get the meat into the UK without getting caught. The director then followed the advice, and the company was found guilty of doing so. The House of Lords held that the directing mind was the managing director and that following advice on importing the goods was an illegal act to which he was seeking to uphold the company's business. This test is still the current one in the UK, even though some have expressed difficulty when applying it. It is more clear than the tests used in the United States and New Zealand.

A corporation is liable for criminal conduct committed by its directing mind or alter ego. This involves a determination of whose acts are attributed to the company. The test for this is a two-stage one. Firstly, it must be determined whether the person who has acted is the directing mind and will of the company, and secondly, the act that he was undertaking when doing it must be so bound up with his duties as to be regarded as the corporation's act, not his own. This test was originally set out in the case of *Tesco Supermarkets Ltd v Nattrass*. In this case, a Tesco supermarket was found guilty of disposing of controlled waste at an unsanctioned place. The test did make an impossible proposition in that the controlling mind would have to be directing the illegal act.

4.3 Penalties and Sanctions

This can be attributed to the traditional concept of veil of incorporation, but it is also influenced by cultural factors and the government's intention to promote business activities. Be it as it may, the fact that criminal liability on the corporation is established means that there must be a set of penalties and sanctions that are suitable to be imposed on the corporation. However, Article 34(2) CLCL does not provide a provision for penalties imposed on the corporation following a conviction, it only provides that the corporation may be discharged upon being convicted if the compliance of such punishment would cause it to cease completely or suffer serious impediment in the continuation of its business. It is arguable that discharge is not a penalty but a convenient mode of punishment in that it protects the corporation's interests as well as its creditors. With regard to the above provision, there are a number of general provisions in the Penal Code. Although these provisions are not specifically aimed at the corporations, it can be presumed that the corporations fall within the ambit of these provisions as a juristic person. For instance, pursuant to Article 46 PC, the punishment an offence which is not punishable with death or imprisonment may extend to 7 years, a provision on fine will have a corresponding term of imprisonment should the corporation fail to pay the fine, and if an imprisonment term is too onerous, it may be converted to a discharge from the offence. Article 34(3) CLCL must be read with the general provisions to serve an effective guidance on penalties and sanctions and make the mandatory to the corporations. As a whole, there are other administrative measures and sanctions which are looked from the angle to prevent corporate crimes rather than punish it. This includes liquidation of the corporation, freezing its activities, banning the corporation from certain business activities or sectors, and disqualifying certain persons from the management of a corporation and these sanctions are provided in the various laws administered by different government bodies, in which case an effective coordination between the Attorney General's Chamber and the respective government body is required.

5. INVESTIGATION AND PROSECUTION OF CORPORATE CRIMES

The next chapter of this essay is included under the topic of investigation and prosecution of corporate crimes. This chapter appears in the book written by Marwan Al Ibrahim. The reason I am including and discussing the entire of this chapter is basically because this part has a strong and supportive connection to the arguments in the previous chapter. Firstly, by investigating the corporate crime, it has a direct link with the principle of corporate criminal liability. And the same goes to prosecution, a trial will determine whether a corporation is guilty or innocent. "5.1 Law Enforcement Authorities" argues that the Jordanian corporate crime is investigated by several government authorities. Police are responsible for general investigation. The court of first instance is able to judge these criminal cases. The magistrate's court also deals with minor crimes, and the public prosecutor plays an important role in criminal prosecution. This section is directly related to the principle corporate criminal liability. This is because under Article 14(2) of the Jordanian Criminal Code, a corporation can be held liable for any act carried out by its representative. This could be an employee or a board director. This act would then lead to punishment of the corporation. An example of this, a previous case found on the internet. The bribery of officials in South Korea. In the case of this happening it is possible the act was carried by a higher representative of the corporation, and the corporation could be found guilty and be punished. Data property authentication and default values, no equivalent in Web of Science Core Collection. Secondly from a specific step and line, the role of the law enforcement authorities is investigated and prosecution activity for corporate crime starting from the general investigation, the preparation of trial until the taking of evidence during judgment against corporate criminal in all chapter. Detail descriptions can be read on sub chapter 5.2 "The roles and Responsibilities" until sub chapter 5.3 "The Taking of Evidence." Definitions It might seem simple and easy to understand but have a different meaning. Unfortunately, the core of this term is always directed to something specific and often so that understanding the meaning of this term will change its understanding of a particular activity step. For that, before we start to input into a discussion about the research, it should be explained both about investigation and prosecution of corporate crime that always related to the action criminals and the law enforcement of certain cases and against breach of the case.

5.1 Law Enforcement Authorities

The public prosecution department is the principal law enforcement authority involved with corporate crimes. The role of the public prosecution is to ensure that justice is served in accordance with the rule of law. It does this by directing the criminal policy of the state, supervising the implementation of the penal laws, and preserving public rights and individual liberties. In addition, its role is to ensure that the state is neither unjustly deprived of its rights nor subject to unlawful burdens. To achieve the aforementioned objectives, the public prosecution conducts its own investigations using its judicial

officers and under the implementation of the Code of Criminal Procedure. The public prosecution may also direct the police to carry out an investigation and submit the findings to the prosecution. Under Jordanian Criminal law, the public prosecution has the power to direct any investigation carried out by the police, as it sees fit. The police are involved in the investigation and prevention of corporate crimes. The role of the police is to prevent crime from occurring through the enforcement of law and order. Should a crime be committed or suspected to have been committed, the police have a duty to investigate the matter and take necessary legal actions, as stated in Art 8 of the Law of Public Security. It states that the police have a duty to maintain national security, social peace, and the rights of the members of the public and to take all necessary preventive measures. It includes a general duty of prevention and a specific responsibility for crimes that affect public order or security. The scope and conduct of investigation by the police are varied and dependent on the type of crime or violation. Police have broad powers of investigation under Jordanian law and may proceed to do many things necessary to apprehend offenders and gather evidence, the minimum standard being that of Article 104 of the Code of Criminal.

5.2 Roles and Responsibilities

The role of the public prosecutor in investigating and prosecuting corporate crime is central and crucial. Article 1 of the Law on Public Prosecutor 1964, as amended in 1996 (Law No. 7 of 1996), states that the function of the public prosecutor is to take legal action in all types of crime. The prosecution would consist of two categories of offences: public right and private rights offences. The prosecution of the latter category is initiated with a complaint by the victim or an interested party. If a corporate crime causes harm to an individual or to a specific group or community and the victim brings this to the attention of the public prosecutor, it is possible that the public prosecutor would then investigate whether an offence has been disclosed and then initiate a criminal proceeding. This is similar to a private rights offence. The most likely scenario is that the public prosecutor would be reacting to information from law enforcement that an offence has been committed. The taking of legal action may then involve a decision on whether to prosecute the corporate entity, a director, or officer, or all three. If the public prosecutor's decision is to prosecute the corporate entity, it would normally be done through the investigative process of an examining magistrate. Between 2009-2010, in 85% of the matters reported to the ACC through the KPK or referred to them, the ACC has directed further investigation and/or prosecution of the offence. This would be in the form of examining the case in private and then deciding if there is sufficient evidence to issue a summons to the accused. The examination would be inquisitorial in nature and different from trial proceedings. The private prosecutor and the accused would have the right to examine the evidence and propose to the examination magistrate to take further action. The examination would even continue whilst the accused was being tried in the case of a criminal prosecution in absentia.

5.3 Collection of Evidence

At the outset, any collection of evidence by any law enforcement agency in relation to corporate crimes must be done with utmost care and adherence to the provisions of relevant laws. Jordanian laws prohibit the seizure of any evidence by any law enforcement authorities without a proper search warrant. Any evidence obtained in violation of this provision is not admissible under the Jordanian legal system. Therefore, it is important for any law enforcement officers to have a clear understanding of what constitutes documentary evidence within the context of a corporation. S. 166 CPC makes reference to documents in the widest possible terms, including other materials expressed or described by means of letters, figures, or marks or by more than one means. It is our submission that documents under this section cover almost every conceivable form of evidence in relation to a corporation, ranging from traditional written documents to computer printouts and any information or data recorded in other forms of electronic media. Quite often, evidence in relation to a corporation is stored in electronic form, such as email or data files on the computer. With the advent of information technology and the internet, it is quite apparent that many corporate crimes are being carried out using new technology. As such, it is of utmost importance for law enforcement officers to have a clear understanding of the nature and characteristics of computer data as a means of evidence. Failure to understand this will result in law enforcement officers pushing for the retrieval of computer data in printed forms. This will result in evidence being distorted due to the manner in which they are retrieved, or it may be lost altogether because the data on the computer may have been erased. This would be a great loss to the prosecution's case because quite often computer data is strong evidence to prove elements of a corporate crime. For example, if company A is charged with an offense of CBT, the strongest evidence would be a video showing company A personnel discussing and planning the commission of the crime. This brings us to the next point, the nature of evidence for corporate crime quite often requires the adaptation of special skills or experts to retrieve or decipher. S. 87A EA 1975, introduced by way of amendment in the year 2002, provides for the use of an expert's report as evidence in a criminal proceeding. In preceding

years, the question of whether an expert's report is admissible evidence was often argued. This is due to confusion with the court's power to order a document to be produced as per s. 51A EA 1950. The requirement of a change in the law to settle this issue shows the lack of understanding from both the prosecution and the court.

6. CORPORATE COMPLIANCE AND ETHICS

Given the significance of compliance culture and mechanisms, it is increasingly important to consider the imposition of criminal penalties for corporate crime in terms of fostering corporate adherence to law. Delegates at the 32nd International Conference of Data Protection and Privacy Commissioners noted the need for data protection laws to convince business and industry that personal data is an asset, the misuse of which can no longer be tolerated. Similarly, s55 of the Australian Commonwealth Crimes Act inadequately addressed by awarding punitive fines to offending corporations and offered very little incentive for regulatory change from awaited standards. A Harvard Roundtable and subsequent seminar notes some positive steps in the introduction of corporate offense provisions in Commonwealth law. However, as will be addressed in coming analysis regarding specific corporate offense provisions, the efficacy of this measure in ensuring adherence to regulation will largely depend on the ease and likelihood of prosecution and conviction.

The establishment of corporate compliance mechanisms, relevant to legal regulations of corporate crime, assumes great importance in identifying and preventing corporate criminal conduct. General statements from the Department of the Treasury of the United States suggest the envisagement of compliance, self-assessment, and auditing mechanisms as assisting in the reduction of criminogenic factors within the corporation. The effectiveness of these measures will generally be specific to the individual corporation. Smaller corporations may find that the expense of compliance far outweighs the benefits to be gained. A major factor in determining the effectiveness of compliance measures in preventing corporate crime is the establishment of a compliance culture which is supported by senior management. This will involve the generation of an environment in which subordinate employees feel compelled to abide by rules and regulations.

6.1 Importance of Corporate Compliance

Compliance is now becoming increasingly important and central to corporate management in all areas of the world, especially with the growth of regulation expanding daily in the Western world. This is particularly important in terms of corporate crime. The key to the Jordanian approach to corporate crimes lies in corporate compliance. This is because the embodiment of compliance shifts the focus from just being concerned with the punishment of criminal activity to the prevention of it. This is particularly important for corporate criminal activity, which can often damage the company concerned to the point of no recovery. The reputation may be tarnished permanently and it can often put the company out of business. The prevention of such activity is thus a key priority and to this end, it is always preferable to prevent an offense occurring than being required to go to court or pay a penalty. In this sense, it is always better to prevent a road traffic accident, for example, than being required to go to court to prove that it was not your fault. Because compliance focuses on the obeying of laws and regulations, it is argued that an emphasis on an effective compliance program reduces the risk that officers or employees will engage in criminal conduct and it will promote a culture that expects and rewards lawful corporate behavior.

6.2 Implementation of Compliance Programs

Corporate Compliance and Ethics (2016) states that "a compliance program serves as an excellent resource for preventing and also detecting potential organizational misconduct. If pursuable, the prosecuting body will provide a no-action letter or reduce the criminal charge level when the permitted compliance program is both effective and in good faith." This can be something that is highly useful for the developing Jordanian economy in preventing harm whilst allowing companies to flourish and grow. An effective compliance program can save the corporation and the public sector large amounts of time and resources when dealing with investigatory and enforcement procedures. This is particularly important when considering the state of the judiciary and public sector in Jordan is still relatively young and under-resourced in comparison to those of western states.

In order to enforce corporate liability properly and to create a culture of compliance, it is necessary to enact legislation and develop implementation tools that are effective, while not being overly punitive so as to discourage self-reporting and cooperation. This is particularly important in Jordan as the legal and business culture is based largely on personal relationships and trust, which is something that can be both positive and negative when it comes to enforcement of corporate

liability and compliance with the law. As such, it is important that judges and those in the public sector have the tools available to them to properly effect the behavior of corporations and to develop a corporate culture of compliance, without coming down too hard on certain actors that it discourages business activity and growth.

6.3 Ethical Considerations

One important factor which can influence this mindset is the prevailing corporate culture within the organization. In simplistic terms, the collective mindset is a product of shared values, beliefs, and attitudes which are held by members of the organization. At the behavioral level, this shared mindset is manifested in patterns of decision-making and it influences the interpretation of events as well as the inference drawn from these events and decisions. In recent years, there has been a specific focus on corporate culture in the context of regulation and after a series of corporate debacles in the early 21st century, the topic of corporate culture and its influence on decision-making has received greater attention in the regulatory and business spheres. As a result of various corporate failures and scandals, the issue of how to promote good conduct and integrity in the corporate sector is now a major priority for corporate stakeholders and government. On the regulatory front, the promotion of integrity in the corporate sector is viewed as a means of reducing corporate deviance and misconduct, and there is a strong belief that an ethical corporate culture is the most effective form of regulation. This leads to an interesting question with respect to corporate law and regulation: how can the implementation of ethics and good conduct in a corporation be regulated by the use of standards and laws?

Overall, this essay has examined three broad layers of regulation that operate on corporate management team decision-making - criminal, civil, and regulatory law. This study has attempted to draw a distinction between the often unconscious processes of decision-making which are influenced by regulatory requirements and those more conscious decisions which involve weighing up the consequences of regulatory requirements non-compliance against potential benefits to the corporation. At the more serious end of the spectrum are conscious decisions to breach laws, rules, and standards for the purpose of furthering corporate interests. It is at this level where legality and compliance are of direct relevance to impropriety, and it is here where the corporation and its members encounter the risk of incurring criminal liability. However, the decisions and actions which bring a corporation into criminal court are frequently taken by individuals who are operating under a collective mindset which is disconnected from the requirements of legality.

7. CASE STUDIES

This amendment came after a long battle between the judiciary, lawmakers, and the government to clarify that primary liability still remains with the individual. It was spurred by the case of the Jordanian customs authority and JC. Not JC was a company registered in Jordan. In 1989 and 1991, JC had entered into contracts with the Jordanian government to construct multiple warehouses and infrastructure projects in Jordan. The price guaranteed by the government came to 26m and the contract was not completed by JC. In 2001, the Jordanian government instituted arbitration against JC in France and won the case, but JC appealed and the case is still pending. In this case, the government had entered into a contract with JC and the contract was a failure and resulted in financial loss, and later some of the top government officials accused that JC had used fraudulent means and falsification of documents to get these contracts. This case initiated a lawsuit by JC against the Jordanian government for alleged violation of FTA between Jordan and France in the Jordanian court. The case has extended over many years and JC and its top officials are still denying allegations. This case is significant not because of the crime alleged by JC officials, but due to the varied decisions and judgments rendered by Jordanian courts and the involvement of the French court.

Corporate crimes have serious repercussions on the economic and political life of the nation. It creates economic distortions and acts as a disincentive for international investors. It also weakens the economic and political structures of the nation, as such activities often involve influential politicians and well-known public figures. The one positive aspect of corporate crime is that it led to revamping of legal rules and legislative acts. Corporate crimes have helped in redefining and clarifying legal provisions and the performance of the corporate sector. It led to the issuance of Royal Decree 18/1999 which amended the Penal Code to provide prosecution of corporate entities as legal persons. Although this provision facilitates prosecuting companies, the primary liability being that of the natural person is not to be shifted to the corporate legal person. After this amendment, companies can be prosecuted for crimes, but only where the natural person proved to be liable committed the offense with the intent to use the company to perpetrate the offense or where the offense is committed with the consent or connivance of an official of a company.

7.1 Notable Corporate Crime Cases

A corporate body is an abstract entity which can only act through its officers, servants, and agents; therefore, it can only be held liable for the acts committed by those persons. The rules regarding the identification of the 'directing mind and will' of the company are often long-winded and complex. This was first addressed in the case of Daimler Ltd v. Continental Tyre and Rubber Co. Ltd [1916] 2 AC 307, whereby Lord Haldane stated that it was necessary to look at the persons who were in effective control of the company. This test was later confirmed in HL Bolton (Engineering) Co. Ltd v. TJ Graham & Sons Ltd [1957] 1 QB 159, where Denning J suggested that the 'directing mind and will' was the person who was 'the master of the corporation, the alter ego'. This would seem to be the generally accepted test, although there are variations and different interpretations of the rules, as explained by Parkinson and Sviridoff. In some cases, it may be difficult to identify who is in effective control of the company, and in others, it may be difficult to establish whether the crime was committed during the course of employment.

When considering corporate criminal liability, it is essential to consider the possible scenarios that may arise and the potential liability of the company in the case of the commission of a crime by any of its employees. It is imperative to make some allowance for the actions of the individuals within the company. Making a corporation criminally liable for the acts of the employees is, to a certain extent, an exercise in fiction. To be ensured that the employee's act is the act of the company, it is essential that the employee be identified with the corporation. Historically, he is not. Often, the employee serves his own personal interests more than those of the corporation, and he may even be disloyal to his employer to the extent of committing a crime against the employer.

7.2 Lessons Learned

The only real alternative to the hierarchical management system is a democratic one. An important part of the democratic form of management is its judicial system. This study demonstrates that an effective juristic response to corporate crime is still difficult. However, the Sleight case does offer some cause for satisfaction. The trade practices prosecution was always regarded as containing the best chance for conviction. Unfortunately, as a result of the strength of the evidence showing an intelligent attempt to deceive, the company quickly rectifying the situation when initially charged and pleading guilty, the matter was settled out of court for a lesser charge thus avoiding a trial. Allister McIntosh said he was confused by the result and this shows that he is so accustomed to seeing corporations evade liability and punishment for their criminal acts, that the normal process of pleading not guilty, conducting a trial and possible appeals leading to a heavier penalty, has disappeared from his conception of justice. The continuing of the charges against the company are a good sign in a climate where regulatory agencies often seek to settle matters without trial to save costs, appearing to be strong on corporate crime, yet in fact being overly influenced by the economics of the organisation being regulated. While the penalty was light, the informed decision by the company to change its plea from not guilty was made in the knowledge that a conviction would disqualify Sleight from managing corporations, a result which is bound to have detrimental effects on the company at this present and future time.

7.3 Impact on Legal Practices

The enforcement of the Jordanian legislation to date is relatively poor and has suffered from a lack of resources, training, and properly qualified personnel. It is said that the state of corporate crime "remains true to its roots in the sense that it is still profitable for offenders and suffers no loss of profit of equivalent magnitude to that of the expected punishment." This statement is further justified by examining the relatively low losses suffered by the Jordanian government as a result of corporate crime. The losses suffered by the government in the year 2000, which included customs evasion, insider trading, and crimes in the financial sector, were estimated to be \$240 million. This value only accounted for 373 cases and 30 judgments, which represents an unreasonably small percentage of the total number of offenders and cases. A contributing reason to the low number of judgments is that many cases are settled out of court owing to the generally light punishment and low probability of apprehension and conviction. An example of this was the scandal of the Jordan Phosphate Mines Company where collusion between private interests and public servants led to the sale of discount phosphate to a subsidiary company who then on-sold it to a Moroccan company at a large profit. This case was not resolved until 15 years after the crime had been committed and resulted in fines of JD 2.5 million, which were paid to the government, and a further JD 1 million in damages.

8. CHALLENGES AND FUTURE DIRECTIONS

The participants in this study were unanimous in their opinion that the current levels of resources are inadequate. Interviewees from the JACC felt that in order to successfully enforce the law and regulate corporate behaviour, it would be necessary to draft staff from various other government departments, or second staff to the JACC from their home departments, in order to garner enough human resources to handle the workload. A lawyer who represents the JACC expressed a view that the JACC is at present merely 'a page in a book', with only a Chairman and Director and no other supporting staff. This sentiment has largely been echoed in the findings of my observational research. A single office with three employees, and no other allocated resources provides a disposition that is not congruent with the level of misconduct within the corporate sector, nor the powerful and influential businesses that misconduct legislation is aimed at regulating.

Elucidation of the state of corporate crimes regulation and enforcement in Jordan has demonstrated that although it is commendable that the government has taken steps to create legislation and put regulatory bodies in place, there are significant shortfalls in the effectiveness of both of these elements in achieving deterrence and punishment of corporate criminals. The major impediments to effective regulation are firstly, a lack of resources - both in terms of skilled personnel and funding, and secondly, the absence of a clear, consistent framework for regulation and enforcement.

8.1 Current Challenges in Regulating Corporate Crimes

The privatization of many state-owned entities further blurs what constitutes a public or private body for the purposes of corporate criminal responsibility. This is a vital issue given that it is well established that the criminal liability of a company stems from the actions or omissions of its officers and agents. With the possibility that the corporate landscape will be replete with former public office holders escaping liability attaching to their official capacity, there is a very real concern that many corporate offenders will be able to blanket themselves in immunity from the long arm of the law.

Further, many authoritarian regimes have been replaced by fledgling democracies advocating free market reforms and an end to state intervention in the economy. This global trend towards deregulation is said to open the door wide for corporate malfeasance. Although it may be argued that the effectiveness of this movement will have to be gauged over the next couple of years, the fact remains that there are limited controls in the Jordanian market to 'discipline' corporate activity.

Modern corporate crimes share numerous features which make them very hard to regulate. Companies have gradually evolved to become sophisticated organisms that transcend any particular national legal system and can affect and be affected by several different countries. As a consequence, there is an imbalance between the transnational nature of corporate activity and the national authority of public officials and their laws. The borderless nature of cyberspace exacerbates this difficulty where global communications are at odds with the local constraints of national law. This feature of corporate activity makes it difficult for any one legal system, including Jordan's, to govern corporate behavior effectively.

8.2 Proposed Reforms

The major and most proactive reform to the regulation of corporate crimes is the suggested amendment to the Jordanian Penal Code as noted above, not least because the existing provisions do not provide investigators, prosecutors or the courts with appropriate tools to address corporate criminal conduct. This would involve the inclusion of special corporate offences and the provision of greater penalties than those imposed for standard offences under the Code. To be effective, the amendments would also involve more fundamental changes to the general principles of penal liability. This could be supported by the creation of new corporate offences of a strict or absolute liability nature, as it is difficult to hold a company to the required standards if mens rea must be proved in relation to each element of the offence.

Admittedly, this paper not only gives a review of the current Jordanian legal regulation of corporate crimes, but goes further to highlight the challenges that have been faced in the regulation process. Due to the nature of those challenges, various reforms have been suggested to combat the difficulties and to strengthen the enforcement of the regulatory process. While it is difficult to assess the success of the suggested reforms, it is respectfully submitted that if the regulatory process is to be effective, it needs to be better supported both in terms of substantive law and procedural operation. Beyond the specific reforms discussed, this study has identified the need for a dedicated regulatory agency with expanded powers to effectively educate regulated entities as to desirable standards and to ensure implementation by close oversight and, when necessary, imposition of penalty. While it is unrealistic to expect substantive change overnight, over the longer term it is to be hoped that the discussion generated by this analysis may lay the foundation for a more effective regulation of corporate crimes.

8.3 Future Trends

The most prevalent trend in corporate liability is the worldwide growth of corporate criminal liability legislation. Many countries have already introduced such legislation and many more are in the process of drafting it. The two prevailing systems are systems of direct corporate criminal liability, whereby a corporation can be convicted for the actus reus of an offence despite the mens rea of the controlling minds, and vicarious liability, whereby a corporation is held criminally responsible for the acts of its employees done in their capacity as such, because it is considered to be just and fair to make the corporation vicariously liable. Another recent trend is the increase in the use of alternative sanctions to criminal prosecution, particularly in common law jurisdictions. In the UK, the introduction of the concept of a deferred prosecution agreement (DPA) involving the prosecution and conviction of the company, but suspension of sentence for a defined period provided the company meets certain conditions, is a significant departure from traditional routes of prosecution and conviction. The US has long used probation and corporate integrity agreements in federal criminal resolutions and these have been used in relation to specific offences.

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