Odious Loans between Legal Legitimacy and Financial Sustainability

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Abstract

The phenomenon of odious debt has long posed a dilemma for international law and global financial governance. Although many developing and post-conflict countries have endured the burden of illegitimate loans contracted by authoritarian regimes, the concept of "odious debt" has not been formally recognized under international law. This raises a fundamental legal and ethical question: should successor governments and their citizens be bound by debts incurred without popular consent, often used to finance repression, corruption, or wars against their own populations? Against this background, the present study explores the legitimacy of odious loans and their broader implications for financial sovereignty, human rights, and sustainable development. The study concludes that odious debt remains primarily a moral and political principle rather than a binding legal rule. Nevertheless, its recognition could serve as a foundation for greater financial justice and international accountability. The findings underscore that such debts undermine development, violate human rights, and perpetuate inequality, while creditor states often evade responsibility. The research recommends advancing toward codification of the doctrine within international

agreements, clarifying its legal bases through principles such as unjust enrichment and abuse of rights, and creating mechanisms for debt repudiation or cancellation. Ultimately, embedding the principle of odious debt into international financial governance could not only relieve debtor states of unjust obligations but also promote sustainable development and protect future generations from the consequences of illegitimate borrowing.

Keywords: Public Loans, Odious Loans, Public Revenues, Sustainable Development

القروض البغيضة بين الشرعية القانونية والاستدامة المالية

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المستخلص

لطالما شكّلت ظاهرة الديون البغيضة معضلةً للقانون الدولي والحوكمة المالية العالمية. فرغم أن العديد من الدول النامية والدول الخارجة من الصراعات قد تحملت عبء القروض غير المشروعة التي أبرمتها الأنظمة الاستبدادية، إلا أن مفهوم "الديون البغيضة" لم يُعترف به رسميًا في القانون الدولي. وهذا يطرح سؤالًا قانونيًا وأخلاقيًا جوهريًا: هل ينبغي إلزام الحكومات اللاحقة ومواطنيها بديونٍ تُكبّد دون موافقة شعبية، والتي غالبًا ما تُستخدم لتمويل القمع والفساد أو الحروب ضد شعوبها؟ في ضوء ذلك، تستكشف هذه الدراسة شرعية القروض البغيضة وآثارها الأوسع على السيادة المالية وحقوق الإنسان والتنمية المستدامة.

وتخلص الدراسة إلى أن الديون البغيضة لا تزال في المقام الأول مبدأً أخلاقيًا وسياسيًا أكثر منها قاعدةً قانونيةً مُلزمةً. ومع ذلك، فإن الاعتراف بها يمكن أن يُشكّل أساسًا لمزيد من العدالة المالية والمساءلة الدولية. وتُؤكد النتائج أن هذه الديون تُقوّض التنمية، وتنتهك حقوق الإنسان، وتُديم عدم المساواة، بينما غالبًا ما تتهرب الدول الدائنة من المسؤولية. يوصي البحث بالمضي قدمًا نحو تدوين هذا المبدأ في الاتفاقيات الدولية، وتوضيح أسسه القانونية من خلال مبادئ مثل الإثراء غير المشروع وإساءة استعمال الحقوق، وإنشاء آليات للتنصل من الديون أو إلغائها. في نهاية المطاف، فإن دمج مبدأ الديون البغيضة في الحوكمة المالية الدولية لن يُعفي الدول المدينة من التزاماتها الجائرة فحسب، بل سيعزز أيضًا التنمية المستدامة ويحمي الأجيال القادمة من عواقب الاقتراض غير المشروع.

الكلمات المفتاحية: القروض العامة، القروض البغيضة، الإيرادات العامة، التنمية المستدامة

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Research Problem

Although the phenomenon of odious debt is common in many countries (especially developing or emerging from conflict), the concept of "odious loans" has not been officially recognized in international law, which raises a problem about the legitimacy of these debts and their impact on **financial Revenues and sustainable development**.

So our research is summarized by the saying "When tyrants borrow, who will pay the debts? So the main research question is (Can the principle of "odioust loans" constitute a legal and economic framework to alleviate the burden of illegitimate debts and enhance the financial independence of debtor countries?)

Research Objectives:

1. Clarifying the theoretical framework of the concept of odious loans and its intellectual origins.
2. Studying the economic and social impacts of these loans on developing countries.
3. Exploring the possibility of developing an international legal or financial framework to deal with odious loans.

Research Hypotheses:

1. Odious loans are still a non-legally binding concept despite its moral and political relevance.
2. The continued absence of an international mechanism to address these debts exacerbates the financial crises of developing countries.
3. Incorporating the principle of abhorrent loans into international debt governance could contribute to financial justice and sustainable development.

Methodology:

1. **Analytical-Legal Method:** The Study of International Legal Texts (Treaties, Case Studies, Opinions of Jurists).

2. **A comparative approach:** an analysis of the experiences of different countries that have faced odious loans.
3. **A descriptive-critical approach:** Evaluating the policies of international financial institutions towards the phenomenon.

Research Plan:

The first requirement – the concept of the hateful public credit

The Second Requirement – The Legitimacy of Odious Public Loans

Third Requirement – Legal Basis for the Expiration of Odious Public Loans

1- The concept of odious public loans

1-1 The Emergence of the Theory of Odious Loans:

The theory of **odious debt** emerged in the late nineteenth and early twentieth centuries, and is attributed to the Russian jurist Alexander Nahum Sack, a legal expert who wrote on the subject in 1927 **and**, to this day, remains the world's leading legal scholar who wrote about the treatment of public debt, writing at a time of political turmoil, when colonial territories became independent, and Monarchies became republics, and when military rulers were replaced by civilians, borders were constantly changing and the new ideologies of socialism, communism, and fascism overthrew those who preceded them, Sack pointed out that public debt represented obligations on the state (which meant the territory), not the governmental structure, but he made an exception for debts that did not It is in the interest of the state, so here it should not be bound by this general rule. He pointed out that if an authoritarian power incurs a debt not to meet the needs of the state or its interest, but to strengthen its authoritarian regime, suppress the population that fights against it, etc., then this debt is hateful to the population of the whole state, and therefore it is not

an obligation on the peoples, but rather a personal debt to the power that has incurred it, and therefore when this power falls, this debt is bound to fall with the fall of this power[1].

Therefore, we will provide a clear definition of abhorrent loans and consider the extent of their legitimacy, and then we will consider the effects of these loans through the following two points:

1-2 Definition of an Odious Public Loan:

A public loan is generally defined as "a cash amount borrowed by the state from third parties in exchange for repayment after a period of time, in addition to interest"[2], and the issuance of a public loan is based on a law approved by the legislative authority, for reasons related to the budget deficit and the requirements of economic development in the state.

Is the concept of the hateful public loan different from the concept of public loan, and what is the legal basis on which it is based?

This loan is known as an exploitative or predatory loan, because it includes unfair, fraudulent or abusive terms for the borrower, as the state has no options.

1-3- Characteristics of an Odious Loan:

According to **Sack**, three conditions must be met for a loan to be considered an obnoxious[3]:

- Absence of popular approval: where the loan has been made without the consent or benefit of the people.
- Using it for illegal purposes: where the loan is used for purposes that harm the people or do not achieve a public benefit.
- Knowledge to creditors of the objectives of the loan and that the funds will be used in an illegal or unfair manner or

for purposes that do not serve the public benefit of individuals.

Jeff King classifies abhorrent debt into four main categories, according to their purpose[4]:

- War Debts
- Illegal Occupation Debts
- Corruption Debts
- Subjugation Debts

Based on this, we can summarize the characteristics of odious loans as follows:

- It does not serve the interests of the people, but rather the existence and survival of the dictatorial regime, as it is used to strengthen the repressive regime, such as buying weapons to suppress dissent, or to finance projects that serve the ruling elite only within the framework of widespread corruption in the state and manipulation of public funds. Or to finance a war Unfair and aggressive that does not have popular support and does not serve their interests, and often the lending state is aware of this, and that the borrowed money will not serve the interests of the people, so it manipulates the terms of lending as it pleases.
- The existence of harsh and unfair conditions for agreeing to lending, such as the signing of certain agreements in exchange for granting the loan, or the determination of large payments for repayment, which leads to the possibility of imposing sanctions, or the need to refinance under more pressing conditions.
- Lack of real consent of the people: Borrowing is done without the knowledge of the people, and even if the approval of the parliament is obtained, this approval is marred by a lot of questions.

- Exploiting the borrowing country's needs: because of certain circumstances that the state is going through, or taking advantage of the state's lack of experience in this regard, and not taking into account the borrowing country's ability to repay.

If such loans are reprehensible, it is because they cause the country to be burdened with useless debts, which hinders the development process, and the lenders escape responsibility, as the lending countries are not afraid of any consequences of doing so, as long as there is international silence on such exploitation.

Although there is no international consensus on the theory of odious debt, it can be said that it represents an emerging moral and legal principle and is sometimes used as a basis for claims for unfair debt cancellation. Therefore, we must lay down some legal bases on which we can justify the rejection of such debts, and this is what we will discuss in the next section.

2- The Legitimacy of the odious Public Loans:

This section raises two points, the first is related to the determination of the legal nature of the public loan, and the second is related to the extent to which these loans are compatible with human rights.

2-1- The legal nature of the public loan:

Article[5] [6] 127 of the Constitution of the Arab Republic of Egypt for the year 2014 (as amended) stipulates the following: "The executive authority may not borrow, obtain financing, or be associated with a project that is not included in the approved general budget that entails spending sums from the public treasury of the state for a future period, except after the approval of the House of Representatives."

Article 126 of the UAE Constitution also stipulates that a public loan may not be concluded except by law.

Article 88 of the Constitution of Lebanon of 1926 (as amended) stipulates that no public loan or undertaking entailing expenditure from the treasury may be concluded except by law.

Article 136 of the Constitution of the State of Kuwait of 1962 (as amended) stipulates that "public loans shall be concluded by law, and the State may lend or guarantee a loan by law or within the limits of the appropriations established for this purpose by the Budget Law."

Article (108) of the Constitution of the Kingdom of Bahrain of 2002 (as amended) stipulates that "public loans shall be concluded by law, and the State may lend or guarantee a loan by law within the limits of the appropriations prescribed for this purpose by the Budget Law. (b) Local authorities, including municipalities or public institutions, may lend, borrow or guarantee a loan in accordance with their respective laws.

By extrapolating from these texts, we find that the contract of public loans can only be based on a law, that is, it cannot even be based on a law, or according the law, and there is a difference between the two concerned, as the first can only be done by the parliament, while the second can be carried out by the executive authority under its powers to legislate in some regulations, and this indicates the seriousness of this matter because it affects the interests of the peoples, especially future generations, and the seriousness of this matter we note A trend that believes that the legal permission to borrow has become a constitutional principle today, like the principle of the legality of taxation, and one of the usual assets in the state's finances that the administration must respect, even if it is not explicitly stipulated in the constitution, and that violating it makes loans legally non-existent[7].

Therefore, we can characterize the odious loans that have exceeded this approval from the parliament non-existent loans,

and therefore are not binding on the new governments of the borrowing country.

2.2. The hateful loan and its relationship to human rights[8]: These loans constitute a direct or indirect violation of the rights of peoples, especially economic, social and political rights.

2.2.1 Violation of the principle of political participation**:** Human rights provide for the right of peoples to self-determination and to participate in decision-making, and when governments conclude debts without consulting the people or their representatives, it is considered to confiscate their right to economic self-determination.

2.2.2 Deprivation of economic and social rights[9]. Instead of being directed to health, education, infrastructure, and social justice, these loans are used to finance repressive apparatus or fictitious projects, with the result being depriving generations of sustainable development and accumulating debt repayment burdens without compensation[10]. The Human Rights Council declared in this regard at its thirty-fourth session in 2017 [11], said that the unsustainably increasing debt burden faced by the most indebted developing countries was one of the major obstacles to progress in achieving sustainable people-centred development, which was supposed to be aimed at eradicating poverty, noting that high debt servicing severely limited the ability of many developing countries and even some developed countries to promote social development and provide basic services in order to create the conditions necessary for the realization of economic, social and cultural rights.

2.2.3. Deepening poverty and class inequality**:** Hateful loans are often used to enrich political or economic elites, which contribute to the impoverishment of the people and the widening of the class gap, which is contrary to the principles of justice and dignity

enshrined in the International Covenant on Economic, Social and Cultural Rights.

2.2.4 Suppression of Freedoms and Financing of Abuses**:** Some loans are explicitly used to purchase weapons, fund armies, or support security services involved in torture, repression, or liquidation of dissidents, and this is a direct financing of human rights violations and may hold creditor countries morally and legally responsible.

So we must pointed out these debts from two angles[12] :

- From the perspective of the successor state: These debts incurred by the predecessor state are considered to be for purposes that are contrary to most of the interests of the predecessor state or the territory to which it has moved.

- From the point of view of the international community: These debts are incompatible with contemporary international law, especially the principles of international law stipulated in the Charter of the United Nations.

3- **The expiration of the public loan based on the theory of odious loans**

We will first deal with the challenges facing this matter, and then we will present the possible solutions so that we will apply this principle as much as possible, because it carries a great benefit to the countries that have endured it without the slightest benefit from it.

3-1 – Legal and Political Challenges Preventing the Adoption of the Odious Debt Theory:

If we go back in time to 1898 when the peace negotiations that followed the Spanish-American War[13], the United States government claimed that neither the United States nor Cuba should be held responsible for the debts incurred by Cuba (which was under the jurisdiction of Spain) without the consent of its

people and without taking into account their interests. The Spanish argued with the prevailing principle of international law that the obligations of a state belong to a territory and its people, not to a regime.

But the Americans asserted that the Cuban debts "imposed on the people of Cuba without their consent and by force of arms" were in fact one of the main reasons why Cubans struggled for their independence, and that much of the loan money was intended to crush the Cuban population's attempts at revolution against Spanish domination, and it was spent in a way that was contrary to Cuba's interest, debts created by the Government of Spain, for its own purposes and through its agents, in which Cuba had no say.

The United States forced Spain to pay off Cuba's debt under the Paris Peace Treaty.

Also in 1918, the Soviet Union (then known as the Russian Soviet Federative Socialist Republic) announced its denial of the debts accumulated by the former Russian Empire, and this denial came in the wake of the Bolshevik Revolution in 1917, and the Bolsheviks' seizure of power, where the new regime considered these debts to be a burden on the Russian people and did not bear their responsibility for them, and of course this announcement had great repercussions on Russia's international economic relations later on.

Later, legal scholars developed the principle of "abhorrent debts," arguing that sovereign debt should not be transferred to the successor government if it was incurred without the consent of the people and without benefiting them. Some scholars added a requirement that creditors be aware of these terms when granting loans to repressive or predatory governments.

Beginning in the late 1990s, a global campaign called Jubilee 2000 sought to draw attention to the concept of abhorrent debt by recruiting prominent speakers such as pop star Bono and Pope John Paul II to mobilize for the elimination of Third World debt. However, the principle of abhorrent debt has received little attention in international law, which still holds states responsible for paying off illicit debts, as there is no international trend to adopt the theory of abhorrent loans Despite the escalating calls for its recognition at the international level, especially by developing countries that have inherited large debts from previous regimes[14] , and this is due to several reasons, which we summarize as follows[15] :

3.1.1. Absence of a binding legal basis in public international law: that The theory of abhorrent debt is not explicitly codified or recognized in international treaties, as it is not enshrined in major conventions such as the Vienna Convention on the Law of Treaties. Therefore, jurisprudence considers it closer to a moral or political principle than to a binding legal rule.

We believe that this prevents its implementation, but it does not prevent the demand for the creation of this legal basis and the establishment of legal controls for its implementation, whether in terms of the lender countries' dealings with the borrowing countries and the need for them to ascertain the fate of the loan money, or in terms of the existence of real approval from the parliament to conclude this contract, or in terms of the results arranged by this debt, and raising the responsibility of the creditor countries, and cases in which this responsibility is fulfilled by demanding compensation similar to what happened after the World War First, Germany paid financial reparations to France based on the Treaty of Versailles (1919), where Germany was held responsible for the war and obliged to pay reparations to the

victorious countries, especially France, Belgium and Britain, which suffered material damages that affected all their sectors and infrastructures, in addition to the large costs of the war[16]. If a country that caused the war paid heavy reparations to the Allies, let alone creditor countries that supported wars against peoples, corruption, or damage to the economies of countries, and then the governments that supported them fell.

3.1.2. The principle of continuity of the state, which states that the state remains the same regardless of the change of its governments, and therefore commits to its previous debts.

We reply that the creditor country would not have provided this loan if it were not for the strong relations and common interests between it and the old government, and this may not be available with the new government.

3.1.3. Protecting the international financial system: Recognition of this type of debt will undermine confidence in the international financial system and reduce the willingness of lenders to lend to countries (especially those undergoing political changes), as the possibility of regime change and repudiation of the contractual obligations of the previous regime poses a risk to investors dealing in sovereign debt. Investors who hold loans or bonds from an existing government face the risk of non-repayment in the event that the borrower is overthrown or placed under another authority, especially since the concept of odious debt is applied retroactively to recognized and legitimate debts[17] at the time, and this justification is convincing, but with an agreement regulating the status of odious loans, there will be no threat to the international financial system.

3.1.4 Difficulty of proof: The country that has committed to such debts has to prove that they are repugnant debts, and this is not easy, and this makes it very necessary to determine the legal

controls for the availability of this description of the loan, but we can be guided by the opinion of Sak, the originator of this principle, when he proposed that the new government be asked to prove that the debts it inherited from a previous regime do not serve the public interest. and that the creditors were aware of this. After these proofs, the burden of proof is on creditors to prove that the funds were used for the benefit of the territory. If creditors are unable to do so, before an international tribunal, or before competent and impartial international representatives, the debt will be unenforceable[18].

3.1.5 -The risk of politicization : Opening the door to the cancellation of debts on the basis of "hatred" may be politically exploited to settle accounts or reject previous obligations for illegal motives, and this justification is not valid, as long as this matter is regulated by clear legal rules, and it is verified whether this loan is really repugnant or not, and here the circumstances of the debtor state play a role, and the purpose of the debt.

3.2 Ways of relying on the principle of odious debts

Although this principle has not been codified as we mentioned earlier, and we have dealt with the mirrors, but we can develop mechanisms for this to codify this principle to turn from a mere theory to a binding law, and we can summarize it as follows:

3.2.1 The principle of "odious **loan" must be advocated for legal recognition, a** principle that has roots in international law, so that, if its conditions are met, the new state can refuse to repay the loan as illegitimate.

This can be based on a comprehensive review of the odious debts by establishing an independent commission to review all past debts and determine which ones were used against the interest of the people, and whether they were done in corrupt or non-transparent ways, such as Ecuador in 2008, which cancelled debts

after proving their corruption, which greatly reduced the debt burden.

It can be based on several legal rules, as noted by legal scholars at McGill University (2020), where they picked up where Alexander Sack left off, and sought to provide legal, financial, and political analysis of the application of the principles of the hateful doctrine of debt in the twenty-first century, based on international norms (precedents), and general principles of law, such as undue enrichment , abuse of right, and the obligations of agents, or based on the principle of good faith in international relations, (the conclusion of any loan violates the requirements of fair dealing and exceeds the limits of reasonableness in its conditions, and is considered hateful because it violates the principle of good faith, and therefore it is not obligatory to pay it. [19] , judicial decisions and jurisprudential studies.

It is also based on international conventions, such as the Vienna Treaty Convention of 1969, indirectly[20], because the Vienna Convention is concerned with treaties, not with bilateral financial contracts between a debtor State and a creditor, but the concepts contained in the Convention, in particular non-binding of third parties, and the express acceptance clause, are used as a general legal basis to support the argument against the repayment of odious loans.

Article 34 of the Convention provides that "a treaty shall not create obligations or rights of a State other than its parties without its consent." Article 35 of the treaty also provides that "a treaty shall establish an obligation on a State other than its parties only if the parties to the treaty intend to create such an obligation and the said State has expressly accepted it in writing."

Add to the text of Article (37) which states: "If an obligation is created on a State other than its Parties in accordance with Article

35, such obligation may not be cancelled or modified except with the consent of the said State and the parties to the Treaty."

According to these articles of the agreement, these articles emphasize the principle of "the agreement does not bind others."

Article 38 of the same convention provides for an exception to this principle in the event that the provisions of the treaty become customary international rules, as it stipulates that "the provisions of articles 34 to 37 shall not prevent a provision of a treaty from becoming binding on a state other than its parties if it becomes a provision reflecting a rule of customary international law recognized as a general rule of law."

If we want to apply these principles to odious loans, the signing of a loan agreement between a dictatorial state and a creditor does not bind the successor government, the successor state can be based on the article

(34) of the Vienna Convention, it has not been an actual party or consent to this Convention, and it is not obliged to implement it, nor can it rely on Article (35), there are no obligations without its explicit acceptance, and the new State may declare that it would not have accepted this debt, and that the agreement was concluded against the will of the people.

Finally, with regard to the text of the treaty that a treaty can bind non-parties if it becomes an international custom, the answer here is that there is no established international custom that considers abhorrent loans to be binding, so the successor state can exclude its binding on the basis of the absence of a binding custom.

3-2-2- Resorting to concluding international agreements that regulate odious loans : by determining the definition, controls and application, according to the President of the World Bank, corrupt lending requires closing the portfolio of the lending countries by disavowing the hateful corrupt debts, because it is a

more logical way to move forward than adding more burdens and taxes on future generations. The amounts of loans are contrary to their reality [21].

3.2.3- Resorting to international arbitration or international courts, and therefore to challenge the legitimacy of debts, as South African countries have done, as they have resorted to filing lawsuits in the United States of America under the Alien Claims Act against multinational companies and banks on charges of complicity in human rights violations committed by the apartheid regime, and through these lawsuits they have sought to obtain compensation for the victims, but they have not sought to benefit from the principle of hateful debts, even though it is a way available to them, because of their fear. on its credibility before other countries regarding its repayment of its debts[22].

However, this path is not without difficulties, especially legal difficulties related to the issues of determining jurisdiction, the statute of limitations, and how to prove direct collusion between autocratic rulers and these lenders. However, the matter can first be referred to the International Court of Justice or the International Investment Courts, international arbitration, and domestic courts[23], in order to make such cases palatable, then the courts dealing with this can be determined by international efforts, where special courts can be established to hear such cases.

3.2.4 Diplomacy and international pressure**:** new government can seek support from organizations such as the United Nations, the International Monetary Fund, the World Bank, and human rights organizations, to put pressure on creditors to renegotiate or forgive debts under the principle of odious loans.

From an international perspective, there are reports on this from the United Nations, such as the report on the effects of foreign debt on the enjoyment of human rights, which emphasized that

illegitimate or repugnant debt undermines development [24]and human rights.

There are also committees that have focused on this issue, such as the Committee for the Cancellation of Illegal Debts (CADTM), where an international network was formed on March 15, 1990 in Belgium, and focused on the cancellation of the public external debts of developing countries, where the main objectives of this committee were embodied in the following: [25]

- Cancellation of illegitimate debts: The Commission seeks to cancel debts that it considers illegitimate, which are often the result of unfair fiscal policies or imposed by international financial institutions such as the International Monetary Fund and the World Bank.
- Social and environmental justice: It calls for alternative development models that focus on social justice and environmental sustainability, away from policies that promote poverty and inequality.
- Reform of the global financial system: It calls for a radical reform of international financial institutions such as the International Monetary Fund, the World Bank, and the World Trade Organization, the regulation of financial markets, and the abolition of tax havens.
- Promotion of human rights: including economic, social and cultural rights, as it considers that external debt affects the ability of a human being to enjoy these rights, and based on this, the United Nations Human Rights Council resolution (2024) was issued on April 3 on "The effects of foreign debt on the full enjoyment of all human rights".

3.2.5 Enactment of domestic laws: criminalizing the use of borrowed funds to the detriment of the people, and giving the legitimate government the power to reject illicit loans.

Thus, we have ended our topic about the hateful loans that were defined by Sack in 1927, but this theory developed by Sack did not develop, and it was not embraced by the states, nor was it codified, but remained only purely theoretical ideas, and it became only a moral or political principle, so through this research, we defined the concept of hateful loans and their characteristics, and we also dealt with the effects of these loans, and the extent to which this theory can be worked, and finally we dealt with the alternative areas for the expiration of this type In the absence of the legalization of this theory, we have reached a set of conclusions and recommendations.

5-Results:

- The theory of odious loans is merely a moral or political principle and has not been codified by international conventions.
- There are a number of characteristics that must be met in order to be in front of odious loans, the most important using these loans to achieve illegitimate goals based on oppression and corruption, with the knowledge of creditors of this.
- odious loans have many negative effects, the most important of which is that they undermine the development process in the country, and lead to the payment of money free of charge that serves the development process, in addition to that they can be accompanied by the conclusion of agreements against the interest of the borrowing country.
- There are several methods of expiration of odious loans, as they are in addition to the traditional methods of expiring loans by repayment or consumption, which can end in denial, restructuring, or an attempt to erase the loan after a series of negotiations with countries for humanitarian or political reasons.

5. Recommendations:

Perhaps our recommendations in their entirety are addressed to the international actors in international decisions, because these debts are not only an internal affair in countries, but also affect international relations, and we summarize them as follows:

- We recommend the necessity of adopting the theory of abhorrent loans under international agreements, which establish a clear definition of them, define their characteristics, and control their availability, and develop legal mechanisms to apply them in accordance with local national legislation based on those agreements.
- We recommend that the methods of expiration of these loans be codified and focus on erasing them because they are considered illegal because they lack the most important pillar of their convening, which is the consent of the people through their representatives in parliaments, and because they violate the human rights of self-determination, and its economic and social rights. The illegality of these loans can be established on many legal grounds, such as unjustified enrichment, abuse of the right, and violation of the civil, political and economic rights of peoples.
- Opening the way for debtor countries to demand compensation from creditor countries commensurate with the extent of the destruction caused by the loan to their infrastructure, as well as the moral damage inflicted on the peoples as a result of the financing of authoritarian governments, in order to be a deterrent to countries that exploit the conditions of other countries to achieve their benefits at the expense of the peoples.
- When the international community seeks to pressure a government that suppresses democracy and human rights, it

usually imposes economic sanctions. They often harm the people of the targeted government, and increase their poverty through the loss of national income, so we propose a new form of sanctions which is a ban on loans to those dictatorial states, which is a means of pressuring dictators to make necessary reforms by limiting their ability to borrow from abroad and then loot the borrowed money – or use the money to finance the repression of their own people. as It protects the interests of the peoples by freeing them from the obligation to pay off the accumulated debts after they finally get rid of their illegitimate government.

- We recommend that specialists in the field of diplomacy and international relations work in an effort to activate this theory, because it will have an impact on the conditions and future of developing countries in particular, because working with this theory is enough to prevent it from falling at the mercy of the major countries, with the fact that it is in a weak position, which makes it a tool to implement the conditions of those countries to provide assistance in this regard.

Endnote

[1] - **Patrick Bond**, **Should South Africa Follow the Law of the Jungle – or the Doctrine of Odious Debt?** 30 April 2020 , http:// www.cadtm.org/Should-South-Africa-Follow-the-Law-of-the-Jungle-or-the-Doctrine-of-Odious-Debt#south_africa_should_join_the_club_questioning_odious_debt, 18/5/2025, 12:26 PM.

[2] Harvey S. Rosen ,Ted Gayer, public finance , McGraw-Hill Education , New York, 2013, p400

[3] - Alexander Nahum Sack, The Effects of State Transformations on Their Public Debts and Other Financial Obligations, Paris, France, 1927.

[4] - Jeff King , "The Doctrine of Odious Debt" , Cambridge University Press, 2016, p30-61.

[5] It should be noted, however, that the Constitution of the Republic of Iraq of 2005 (in force) did not specify an explicit provision that obliges the public loan to be a law, similar to taxes and fees. However, Article 110 stipulates the following: Federal authorities shall have the following exclusive competences: First: drawing up foreign policy, diplomatic representation, negotiating, signing and concluding international treaties and agreements, borrowing policies, and drawing up sovereign foreign economic and trade policy.

Under this provision, it singled out the federal authority for borrowing, signing and concluding policies, without specifying either of the two powers, whether legislative or executive.

I have raised jurisprudence that this text refers to the legislative authority rather than the executive, but it is clear to us that the text is ambiguous, as it does not give the competence to conclude public loans definitively.

To address this ambiguity, the **Financial Management Law No. (6) of 2019 (as amended) was** issued, which stipulates in Article (12) that the House of Representatives has the authority to ratify loans, sovereign guarantees, and international agreements. In addition, **Public Debt Law No. 94 of 2004 (as amended) empowers** the Minister of Finance to conclude optional loans, while not addressing compulsory loans, meaning that this type of loan requires its own legislation.

See: Hanan Abdul Khader Hashem Al-Musawi, Hussein Ali Awish Al-Shami, Public Loans and Their Developmental Effects on Investment Spending in Iraq for the Period 2004-2020, Al-Ghari Journal for Economic and Administrative Sciences, Vol. 18, Special Number, (Nov 2022), pp. 159-180.

[6] - Dr. Adel Ahmed Hashish, Fundamentals of Public Finance, Dar Al-Nahda Al-Arabiya, Lebanon, 1992, p. 221.

[7] - Hanan Abdul Khader Hashem Al-Musawi, Hussein Ali Awish Al-Shami, Public Loans and Their Developmental Effects on Investment Expenditure in Iraq for the Period 2004-2020, Al-Ghari Journal for Economic and Administrative Sciences, Vol. 18, Special Number, (Nov 2022), pp. 159-180.

[8] - United Nations, General Assembly, **United Nations Human Rights Council Resolution (2024): "Effects of Foreign Debt on the Full Enjoyment of All Human Rights", ref.** A/HRC/RES/55/6 , **3** April 2024.

[9] - These rights are enshrined in the International Covenant on Economic, Social and Cultural Rights , which is one of the two fundamental documents in international human rights law, along with the International Covenant on Civil and Political Rights. It was adopted by the United Nations General Assembly on December 16, 1966, and entered into force on January 3.

[10] The Arab Charter on Human Rights stipulates that the right to development is one of the basic human rights, and all countries must develop development policies and measures necessary to guarantee this right.
See: Mead Yousef Al-Shirawi, Faisal bin Halilo, The Role of the United Arab Emirates in the Preparation and Activation of the Arab Charter on Human Rights of 2004, Journal of the University of Sharjah for Legal Sciences, Vol. 21, No. 2, June, 2024, pp. 87-121.

[11] - February 27-24, 2017, See: Pascal Fouad Daher, The **Principle of Odious Debts in International Law and the Extent to which the Lebanese State Can Benefit from It, published in Al-Nahar newspaper.**
https://www.annahar.com/arabic/article/1138895**, 5/30/2025,2:6 AM.**

[12] - Dr. Mohamed Ahmed Hamad, The Theory of Abhorrent Religion in Public International Law, Journal of Legal Sciences, Vol. 7, No. 1, 2012, p. 34.

[13] - The Spanish-American War took place in 1898 after the explosion of the American destroyer "USS Maine" in the port of Havana, and Spain was blamed at that time, so the United States intervened militarily in Cuba, which was one of the colonies of Spain at the time, and supported the Cuban revolutionaries against Spanish rule, and resulted in Spain's defeat and loss of its colonies in Cuba, Puerto Rico and Guam, in addition to selling the Philippines to the United States of America. Spain ceded Cuba to the United States under the Treaty of Paris in December 1898.

[14] For example, South Africa's apartheid regime borrowed from private banks during the 1980s, while much of its budget went to fund the military and police and suppress the African majority. The people of South Africa have borne the debts of their oppressors. The Archbishop of Cape Town has campaigned for the apartheid-era debt to be declared abhorrent and

cancelled. South Africa's Reconciliation Commission has expressed a similar view. But the post-apartheid government has submitted to current international standards and accepted responsibility for the debt, fearing that default would hurt its chances of attracting foreign investment.

[15] - Jeff King , *The Doctrine of Odious Debt in International Law: A Restatement* (Cambridge University Press, First published 2016 , p 62-87.

[16] - *Era Dabla-Norris* (2019) , Debt and Entanglements Between the Wars, International Monetary Fund , pp121-173.

[17] - United Nations Conference on Trade and Development (UNCTAD). "The Concept of Odious Debt in Public International Law, No. 185 July 2007, https://unctad.org/system/files/official-document/osgdp20074_en.pdf.

[18] - **Patrick Bond**, **Should South Africa Follow the Law of the Jungle – or the Doctrine of Odious Debt?** 30 April 2020 , http:// www.cadtm.org/Should-South-Africa-Follow-the-Law-of-the-Jungle-or-the-Doctrine-of-Odious-Debt#south_africa_should_join_the_club_questioning_odious_debt, 18/5/2025, 12:26 PM.

[19] - - The Hateful Religion and the Legitimacy of the Debts Arranged by the Assad Regime, Nama Center for Contemporary Research, August, 2021. See: www.nmaresearsh.com , 5/6/2025, 2:10 PM.

[20] - - United Nations Conference on Trade and Development (UNCTAD). "The Concept of Odious Debt in Public International Law, No. 185 July 2007, https://unctad.org/system/files/official-document/osgdp20074_en.pdf.

[21] - **Patrick Bond**, **Should South Africa Follow the Law of the Jungle – or the Doctrine of Odious Debt?** 30 April 2020 , http:// www.cadtm.org/Should-South-Africa-Follow-the-Law-of-the-Jungle-or-the-Doctrine-of-Odious-Debt#south_africa_should_join_the_club_questioning_odious_debt, 18/5/2025, 12:26 PM.

[22] - Susan Hawley, Odious Debt, Human Rights and the Democratic transition in south Africa

[23] - - **Patrick Bond**, **Should South Africa Follow the Law of the Jungle – or the Doctrine of Odious Debt?** 30 April 2020 , http:// www.cadtm.org/Should-South-Africa-Follow-the-Law-of-the-Jungle-or-the-Doctrine-of-Odious-Debt#south_africa_should_join_the_club_questioning_odious_debt.

[24] - https://unctad.org/debt-and-finance/research,4/5/2025,1:16PM

[25] - https://www.cadtm.org

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i. Patrick Bond, Should South Africa Follow the Law of the Jungle – or the Doctrine of Odious Debt? 30 April 2020, http:// www.cadtm.org/Should-South-Africa-Follow-the-Law-of-the-Jungle-or-the-Doctrine-of-Odious-Debt#south_africa_should_join_the_club_questioning_odious_debt, 18/5/2025, 12:26 PM.
ii. Harvey S. Rosen ,Ted Gayer, public finance , McGraw-Hill Education , New York, 2013, p400
iii. Alexander Nahum Sack, The Effects of State Transformations on Their Public Debts and Other Financial Obligations, Paris, France, 1927.
iv. Jeff King , "The Doctrine of Odious Debt" , Cambridge University Press, 2016, p30-61.
v. It should be noted, however, that the Constitution of the Republic of Iraq of 2005 (in force) did not specify an explicit provision that obliges the public loan to be a law, similar to taxes and fees. However, Article 110 stipulates the following: Federal authorities shall have the following exclusive competences: First: drawing up foreign policy, diplomatic representation, negotiating, signing and concluding international treaties and agreements, borrowing policies, and drawing up sovereign foreign economic and trade policy.
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has the authority to ratify loans, sovereign guarantees, and international agreements. In addition, **Public Debt Law No. 94 of 2004 (as amended) empowers** the Minister of Finance to conclude optional loans, while not addressing compulsory loans, meaning that this type of loan requires its own legislation.

ix. See: Hanan Abdul Khader Hashem Al-Musawi, Hussein Ali Awish Al-Shami, Public Loans and Their Developmental Effects on Investment Spending in Iraq for the Period 2004-2020, Al-Ghari Journal for Economic and Administrative Sciences, Vol. 18, Special Number, (Nov 2022), pp. 159-180.

x. Dr. Adel Ahmed Hashish, Fundamentals of Public Finance, Dar Al-Nahda Al-Arabiya, Lebanon, 1992, p. 221.

xi. Hanan Abdul Khader Hashem Al-Musawi, Hussein Ali Awish Al-Shami, Public Loans and Their Developmental Effects on Investment Expenditure in Iraq for the Period 2004-2020, Al-Ghari Journal for Economic and Administrative Sciences, Vol. 18, Special Number, (Nov 2022), pp. 159-180.

xii. United Nations, General Assembly, **United Nations Human Rights Council Resolution (2024): "Effects of Foreign Debt on the Full Enjoyment of All Human Rights", ref.** A/HRC/RES/55/6 , **3** April 2024.

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xiv. The Arab Charter on Human Rights stipulates that the right to development is one of the basic human rights, and all countries must develop development policies and measures necessary to guarantee this right.

xv. See: Mead Yousef Al-Shirawi, Faisal bin Halilo, The Role of the United Arab Emirates in the Preparation and Activation of the Arab Charter on Human Rights of 2004, Journal of the University of Sharjah for Legal Sciences, Vol. 21, No. 2, June, 2024, pp. 87-121.

xvi. February 27-24, 2017, See: Pascal Fouad Daher, The **Principle of Odious Debts in International Law and the Extent to which the Lebanese State Can Benefit from It, published in Al-Nahar newspaper.**

xvii. https://www.annahar.com/arabic/article/1138895**, 5/30/2025,2:6 AM.**

xviii. Dr. Mohamed Ahmed Hamad, The Theory of Abhorrent Religion in Public International Law, Journal of Legal Sciences, Vol. 7, No. 1, 2012, p. 34.

xix. The Spanish-American War took place in 1898 after the explosion of the American destroyer "USS Maine" in the port of Havana, and Spain was blamed at that time, so the United States intervened militarily in Cuba, which was one of the colonies of Spain at the time, and supported the Cuban revolutionaries against Spanish rule, and resulted in Spain's defeat and loss of its colonies in Cuba, Puerto Rico and Guam, in addition to selling the Philippines to the United States of America. Spain ceded Cuba to the United States under the Treaty of Paris in December 1898.

xx. For example, South Africa's apartheid regime borrowed from private banks during the 1980s, while much of its budget went to fund the military and police and suppress the African majority. The people of South Africa have borne the debts of their oppressors. The Archbishop of Cape Town has campaigned for the apartheid-era debt to be declared abhorrent and cancelled. South Africa's Reconciliation Commission has expressed a similar view. But the post-apartheid government has submitted to current international standards and accepted responsibility for the

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xxii. *Era Dabla-Norris* (2019) , Debt and Entanglements Between the Wars, International Monetary Fund , pp121-173.

xxiii. United Nations Conference on Trade and Development (UNCTAD). "The Concept of Odious Debt in Public International Law, No. 185 July 2007, https://unctad.org/system/files/official-document/osgdp20074_en.pdf.

xxiv. **Patrick Bond**, **Should South Africa Follow the Law of the Jungle – or the Doctrine of Odious Debt?** 30 April 2020 , http:// www.cadtm.org/Should-South-Africa-Follow-the-Law-of-the-Jungle-or-the-Doctrine-of-Odious-Debt#south_africa_should_join_the_club_questioning_odious_debt, 18/5/2025, 12:26 PM.

xxv. The Hateful Religion and the Legitimacy of the Debts Arranged by the Assad Regime, Nama Center for Contemporary Research, August, 2021. See: www.nmaresearsh.com , 5/6/2025, 2:10 PM.

xxvi. United Nations Conference on Trade and Development (UNCTAD). "The Concept of Odious Debt in Public International Law, No. 185 July 2007, https://unctad.org/system/files/official-document/osgdp20074_en.pdf.

xxvii. **Patrick Bond**, **Should South Africa Follow the Law of the Jungle – or the Doctrine of Odious Debt?** 30 April 2020 , http:// www.cadtm.org/Should-South-Africa-Follow-the-Law-of-the-Jungle-or-the-Doctrine-of-Odious-Debt#south_africa_should_join_the_club_questioning_odious_debt, 18/5/2025, 12:26 PM.

xxviii. Susan Hawley, Odious Debt, Human Rights and the Democratic transition in south Africa

xxix. **Patrick Bond**, **Should South Africa Follow the Law of the Jungle – or the Doctrine of Odious Debt?** 30 April 2020 , http:// www.cadtm.org/Should-South-Africa-Follow-the-Law-of-the-Jungle-or-the-Doctrine-of-Odious-Debt#south_africa_should_join_the_club_questioning_odious_debt.

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