

Justice

Legal Analysis Series

Volume 2

Strengthening Access to Healthcare Services and Legal Protection among low-income Jordanians and Refugees

An end to the retention of personal identification documents by Jordanian hospitals



ARDD

النهضة العربية للديمقراطية والتنمية
Arab Renaissance for Democracy & Development

Legal Analysis Series Volume 2

Strengthening Access to Healthcare Services and Legal Protection among low-income Jordanians and Refugees

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This brief is the second of ARDD's legal analysis series.

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1. Summary

Since 2020, ARDD has been monitoring a concerning trend, that of Jordanian hospitals retaining identification documents of both Jordanians and non-Jordanians as a guarantee that they will pay the due medical fees. This is an illegal practice with vast consequences, as it denies individuals, especially refugees, the right to normal life. It prevents them from engaging in everyday activities or from obtaining governmental or non-governmental services, such as health, education, transportation, and work.

Having realized the extent of the number of cases through field research in northern, central and southern governorates in Jordan, ARDD initiated an intensive legal protection campaign that has consisted of in-depth documentation of cases, consultation and communications with key experts and specialists in the field of public health, and one-on-one communication with key stakeholders and institutions involved. Upon concluding this extensive research and consultation process, ARDD approached the Ministry of Health (MoH) with its findings, along with a set of specific and clear set of recommendations that fall within the competence of the MoH, that did not require lengthy, complex, and costly endorsement procedures.

ARDD has always considered MoH an essential partner in the effort to reach a successful resolution to this issue and has kept MoH duly informed about developments. The issuance of Circular No. 748 on January 25, 2022, by MoH is testimony to the successful collaboration between government institutions and specialized organizations in protecting the rights of individuals in Jordan, regardless of their legal status. The circular, which includes clear guidelines that forbid the seizure of identification documents of those who fail to pay the cost of hospital treatment, along with the legal procedures that should be followed in such cases, paves the way for securing the right to health and legal protection for individuals in Jordan.

2. Introduction

The health sector is vital and most essential, and the first line of defense, as was made amply evident over the past two years that witnessed the spread of the COVID-19 pandemic. Despite being a fundamental human right, access to health services remains elusive for many in Jordan and the Middle East region. While the cost of healthcare services in Jordan is not considered high in absolute terms, lack of affordability of healthcare services stands among the most important challenges facing users. According to WHO estimates, between 40% and 75% of health spending in the Middle East and North Africa region is borne by the families themselves. In Jordan, where only 78% of the population is covered by any form of health insurance, out-of-pocket health expenditures were estimated to stand at around 26%, which only compounds the financial difficulties many families in the Middle East and North Africa face. In some cases, families run the risk of falling below the poverty line due to high health expenses. (WHO, 2014) In the case of Syrian refugees, the 2014 copayment procedure requiring them to pay the non-insured Jordanian rate (20% to 25% cost of most public health services) increased the costs of accessing health services, with 65% of Syrian refugees not being able to access them due to its high cost involved. (UNICEF-MoH, 2018)

Along with the right to access health services, personal identification documents are essential to individuals. Article 6 of the Universal Declaration of Human Rights stipulates that every person has the right to be recognized everywhere as a person before the law, which entails a set of obligations on states and governments. The most prominent is guaranteeing the right to citizenship and the identification documents that ensure that individuals enjoy all their rights within the state. Therefore, the loss or the seizing of an identification document constitutes a violation of the individual's rights and an obstacle to obtaining and exercising his rights.

Personal identification documents are essential to individuals, yet individuals may find themselves without such documents. In situations of war and conflict, many individuals become refugees and displaced persons, forced to leave their areas of residence without carrying any of their belongings or identification documents, and many may lose or abandon these documents to ensure their safety and security in an unsafe world. This threatens the legal personality of these individuals and their access to their fundamental rights, which international laws have guaranteed. In this context, the international community has been keen to ensure the right of refugees and displaced persons to identification documents, as stipulated in the 1951 Convention on the Status of Refugees, articles 27 and 28 on the right of refugees to obtain individual identity cards and travel documents in the asylum state.

ARDD looks at the identification documents from a legal and human rights perspective, which considers obtaining an identification document a right of every human being, whether citizen of the state, foreigner, resident, or refugee. At the same time, it is a tool that ensures that individuals enjoy their legitimate right to health, education, work, and movement, among others.

Withholding individuals' identification documents, especially those of refugees, creates many complications. For a refugee, the lack of identification documents results in the inability to access a range of services; hence, in such cases, refugees have difficulty dealing with official institutions to obtain, say, a work permit or a birth certificate, to register their children, or to access medical services. At the same time, the lack of identification documents makes moving from one area to another fraught with dangers, with the possibility of arrest looming, as refugees who cannot identify themselves may be arrested and kept in detention until they prove their identity.

As a result, it must be emphasized that the process of retaining identification documents cannot be viewed in isolation from the broader framework, as it affects the essence of the human rights of individuals and results in more problems for individuals and society alike.

3. Documenting an Illegal Practice: The Seizure of Identification Documents at Jordanian Hospitals

Withholding identification documents as a guarantee for payment of medical services rendered is an illegal form of enforcing payment of financial claims. This practice has been documented by ARDD in both public and private hospitals. Prior to the implementation of this practice, hospitals used to ask refugees to come up with a Jordanian guarantor to ensure the payment of their financial dues. However, due to the general inability of most refugees to produce a Jordanian sponsor, over time hospitals shifted to seizing their identification papers instead, especially the documents issued by UNHCR, as a way of guaranteeing payment of hospital costs. In the case of low-income Jordanians, in most cases hospitals still ask for a guarantor/sponsor to ensure payment.

ARDD became aware of this illegal practice through its work providing legal aid services to Jordanians and non-Jordanians alike. ARDD noticed a growing trend regarding complaints and requests for legal assistance from individuals whose identification documents had been retained by Jordanian hospitals. While some complaints were directly related to the withholding of identification documents at hospitals, in other cases refugees were unable to obtain a birth certificate for their children, for example, because they did not possess an identification document, since it had been seized by hospitals as a payment guarantee.

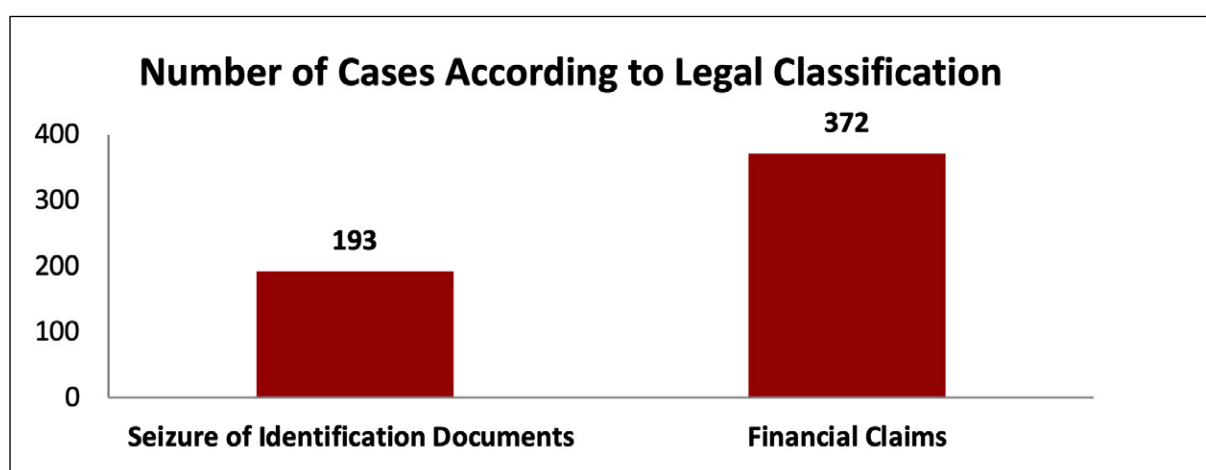
The recurrence of these cases at ARDD's legal department prompted the formation of a legal team to conduct an in-depth statistical study to determine the extent of this practice and its reasons.

The work was carried out at two levels. The first consisted of hospitals visits of individuals whose documents had been seized to assess the cases and attempt to reach a solution.

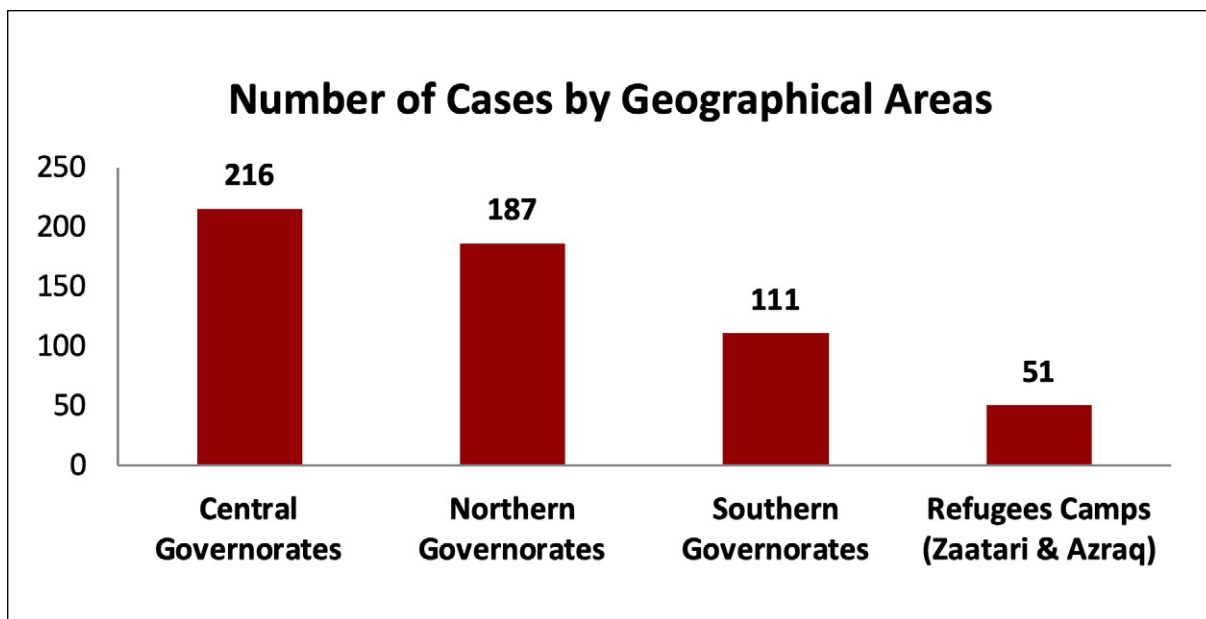
The second level consisted of work on the legal aspect of the issue, since many hospitals had argued that they had the legal authority to seize identification documents; that led to an analysis of the relevant legal texts that govern hospital work, including hospital administrations, health directorates, insurance departments, and the MoH legal department.

3.1 Overview of Identification Documents withheld at Jordanian Hospitals

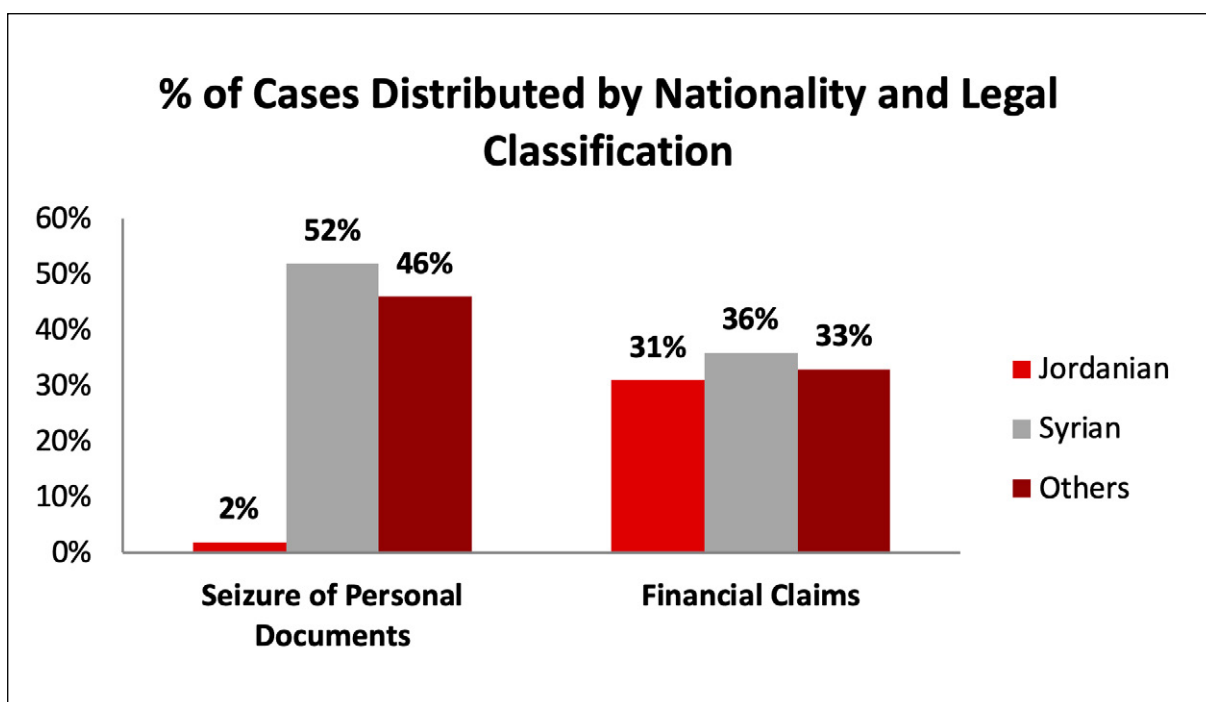
In the period 2020-2021, the Legal Aid Department of ARDD monitored a total of 565 cases related to claims regarding Jordanian hospitals. The cases documented revolved around two main issues: financial claims and retention of documents.



The table below shows the distribution of cases across regions in Jordan. The majority of cases were registered in governorates located in the northern and central regions in Jordan, where most Syrian refugees live. Syrian refugees are at heightened risk of having their identification documents retained than Jordanian citizens.



National Laws and the Seizure of Identification Documents at Jordanian Hospitals



3.2 National Laws and the Seizure of Identification Documents at Jordanian Hospitals

After a comprehensive analytical review of the legal systems in place and consultations with experts, ARDD concluded that hospitals do not have any legal authority to seize identification documents.

For the purposes of collecting treatment expenses from a patient, according to the provisions of the Public Funds Collection Law No. 6 of 1952, the hospital administration and the accounting department have the right, three months after the due date, to submit the claim to the pertinent administrative governor to proceed with the measures necessary to collect the financial dues.

Moreover, a set of internal circulars issued by the MoH and hospitals provide guidelines as to the different processes available to patients and hospitals to settle financial claims, without hospitals resorting to withholding patients' identification documents.

Two different sets of practices should be distinguished here, those initiated by a patient, and those initiated by the hospital.

Patients may request to be exempted from paying their financial dues if they do not exceed JD1,000, by submitting a request for waiver through the Prime Minister's Office. The request is studied by MoH and a recommendation is issued and submitted to the prime minister, irrespective of the nationality of the patient. Patients also have the possibility of paying their financial dues in installments, with the debtor submitting a request to the Health Insurance Committee so that his/her case is studied. In most cases, and regardless of nationality, the decision has been that the amount can be paid in installments.

In the case of financial dues, specifically of refugees, hospitals can send their claims to the administrative governor, who then will send the request for payment to UNHCR.

None of the existing circulars grant hospitals the right to retain a patient's identification documents. Most importantly, the Jordanian Civil Status Law considers withholding individuals' identification documents a crime punishable by law. According to Article 50 of the Jordanian Civil Status Law: "A penalty of imprisonment for no less than six months and no more than three years or a fine of no less than one hundred JD and not more than five hundred JD, or both penalties together, shall be inflicted on whoever:

- a) An identity card or family book was found with him illegally, or he assumed the name of the third party in relation to the family book or ID card.
- b) S/he gave the ID card or the family book to another person to use or mortgage in return of some kind of benefit

3.3 Resolution mechanisms applied by ARDD

Upon receiving claims, ARDD usually deals with the cases received from individuals whose documents had been held by hospitals through a mediation process aimed primarily at recovering the identification documents and at resolving the main issue, which in most cases is related to the patient's financial dues.

The mediation process includes communicating with hospital administration officials, specialists and decision makers with the aim of recovering the identification document and trying to reach a solution to the payment of the financial dues, usually by finding some installment mechanism, thus bringing the two parties closer to a resolution.

Some mediation cases taken on by ARDD lawyers succeeded, but most of them were unsuccessful due to several obstacles, the most prominent of which were:

- 1- Hospitals' refusal to cooperate with the organization's lawyers. On this point, it is important to differentiate levels of engagement and reasons for refusal according to location. While hospitals in northern and central parts of Jordan were more likely at first to accommodate mediation attempts by ARDD lawyers, over time cooperation faded away due to the complexity of procedures involved and the prolonged time required to reach officials with the relevant administrative authority. In turn, hospitals in southern regions categorically refused to engage in mediation attempts by ARDD lawyers, as they considered it was their legal right to retain the patient's identification documents.
- 2- Refusal, by many hospitals, to accept the organization lawyers' mediation to return the identification documents and reach to some agreement regarding the financial dues incurred by the patient for various reasons, including the long period of indebtedness, the large size of the debt, and the hospital's dissatisfaction with the installment mechanism suggested by the patient.
- 3- The financial inability of the document holders to implement ARDD lawyers' suggestions to pay dues in installments or securing checks or bills to guarantee payment., regardless of the value.

As a result of these obstacles faced by the ARDD lawyers and the harmful effect the practice has on the daily lives of non-Jordanians, ARDD saw the need to reach a solution to this matter, other than withholding the identification papers of the defaulting patients.

In view of the authority MoH has over health issues, ARDD considered that the most effective way to put an end to this illegal practice by hospitals was to communicate directly with MoH, the body responsible for supervising hospitals and medical centers in Jordan.

Under Public Health Law No. 47 of 2008, and its amendments, MoH is responsible for:

- 1- Preserving public health and providing health services.
- 2- Organizing and supervising the health service provided by the private and public health sectors.
- 3- Providing health insurance to citizens.

MoH is furthermore considered the body administratively responsible for supervising and inspecting all hospitals and public health centers to ensure their compliance with their work requirements and with the laws and regulations in force.

In its communication with MoH, ARDD's immediate goal was that the ministry issue a circular preventing the hospitals from withholding identification documents of patients of any nationality.

4. Strengthening Access to Healthcare Services: MoH Circular 748 of January 25, 2022

The efforts led by ARDD succeeded in prompting MoH, as the competent authority, to issue circular 748 of January 25, 2022, prohibiting hospitals and their staff from seizing patients' identification documents. Article 1 of the circular *prevents seizure "of any personal identification documents of Jordanian and non-Jordanian patients who failed to pay the costs of their treatment in the hospitals of the Ministry of Health under legal accountability."*

To ARDD's merit, it is the first circular of this kind to be issued based on a letter by a local civil society organization, which is an essential indication of the significant and sensitive role that Jordanian local community organizations can play in advocacy processes, changing policies and solving societal problems. Moreover, the circular emphasizes the need to comply with the rule of law, as His Majesty King Abdullah II stressed in his directives, including in the sixth discussion paper, in order to protect the public interest and surmount all challenges to the general wellbeing of Jordanians.

This circular will set the legal framework governing patients' payment of financial dues to hospitals. Thus, based on this circular, ARDD lawyers and other relevant institutions working in this field will be able to help Jordanian and non-Jordanian patients more effectively as it provides a legal guarantee that individuals' rights to health and legal protection are respected.

The most prominent characteristics of the circular are that:

- 1- It preempts any further discussions about the legality of retaining identification documentation of patients, since it decided that documents may not be seized, and therefore practicing is illegal.
- 2- It clarifies that the guarantee that hospitals are entitled to obtain is a pledge, signed by patients or their guardian/s, confirming the obligation to pay the financial dues.
- 3- It clarifies the mechanism for paying the financial dues of Jordanian and non-Jordanian patients, as follows:
 - a. If the patient is Jordanian, claims of less than JD100 are submitted by the hospital to the administrative governor in the area of residence of the taxpayer. Claims of more than JD100 are forwarded to the Health Insurance Department.
 - b. If the patient is not Jordanian, the financial claims are submitted to the Health Insurance Department and then to the Ministry of Interior Affairs.

One of the critical points in the circular is the direct reference to the authorities that have jurisdiction to deal with financial claims. Consequently, the lawyer's task will become clearer in the presence of a specified competent authority, which will help reduce the time and simplify the procedures needed to issue appropriate decisions, especially since financial dues to government hospitals are considered public funds, which may make it difficult to reach a settlement that may include exemptions, installments, or discounts with the hospital administration that may not have the power to take the final decision except under the powers stipulated in the relevant legislation.

5. Way Forward: Monitoring and Advocacy

The issuance of Circular No. 748 of January 25, 2022, by the Ministry of Health is a significant achievement at the level of human rights, legal and humanitarian work in Jordan, since it confirms that possessing supporting identification documents is a right protected by the law for every individual, regardless of his/her legal status in a country, that is, regardless of whether he/she is a citizen, a foreigner, or a refugee.

The existence of this circular will contribute to clarifying the legal procedures needed to reach financial settlements due to the public treasury without hospitals having to resort to withholding the identification documents of Jordanian or non-Jordanian patients. The circular will become an essential tool for lawyers of ARDD and other institutions working in this field, to be used during negotiations with hospitals; it will shift the entire focus in finding a solution to the issue of financial dues.

The circular circulating in government hospitals can also be relied upon when dealing with the private medical sector regarding the same issue, even if they are not administratively subjected to the MoH rules; the ministry's role is limited to supervising and controlling private hospitals in accordance with relevant laws and regulations.





As such, the next step ARDD will take is to get in touch with the Jordanian Private Hospitals Association to urge private hospitals to adopt the circular, thus stopping the seizure of identification documents by these hospitals as well.



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