

JORDAN'S CRIMINAL JUSTICE SYSTEM

PUTTING THEORY INTO PRACTICE

A REPORT BY
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Arab Renaissance for Democracy and Development



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I. INTRODUCTION

When King Abdullah II assumed the throne of the Hashemite monarchy in 1999, the promise of reform in Jordan was ripe. King Abdullah attempted to embark on a number of reform initiatives that would impact Jordanian political and economic life. And indeed, since the year 2000, important initiatives were introduced to create a democratic environment, enhance political participation and create a human rights culture. Most notably, the establishment of the National Centre for Human Rights (2002)¹ as one of the accredited National Human Rights Institutions worldwide and the Ministry of Political Development (2003)² were considered milestones in the process.

A decade later, though, many of the promised reforms were left unimplemented. As Marwan Muasher, vice president of the Carnegie Endowment for International Peace, writes, “after a decade of political reform efforts in Jordan, it does not appear that the process has made any significant advances.”³

Judicial reform remains an important part of overall efforts to change Jordan, but these efforts too have fallen short of what is needed. The February 2012 meeting between King Abdullah II and Judicial Council President Mohammad Al Mahameed was only the latest indicator of continuing interest in judicial reform initiatives.⁴ But significant problems remain.

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- 1 Asia Pacific Forum, “Jordan,” <http://www.asiapacificforum.net/members/full-members/jordan> (accessed March 6, 2012).
 - 2 Embassy of the Hashemite Kingdom of Jordan, “Domestic Politics and Reform,” <http://www.jordanembassyus.org/new/aboutjordan/dp2.shtml> (accessed March 6, 2012).
 - 3 Marwan Muasher, Carnegie Endowment for International Peace, “A Decade of Struggling Reform Efforts in Jordan: The Resilience of the Rentier System,” May 2011, http://carnegieendowment.org/files/jordan_reform.pdf (accessed February 22, 2012)
 - 4 King supports judicial development strategy,” Jordan Times, February 8, 2012, <http://www.jordanembassyus.org/new/newsarchive/2012/02082012001.htm> (accessed February 21, 2012).

Domestically, Jordan's judicial system is beset by some institutional obstacles, including problems in accessing state counsel, the poor role of the bar and structural issues that face courts. For example, in December 2010, there were 9,113 practicing lawyers registered in Jordan. Yet at the same time, the number of first class, experienced lawyers that appear before the Major Criminal Court and plead before tribunals doesn't exceed 35 lawyers, of which only 3 are female lawyers. Accordingly, the percentage of lawyers who are experts in major criminal cases does not exceed 0.04 percent, or 4 criminal lawyers for every 1,000 practicing lawyers. These numbers illustrate the dire need for increased initiatives that encourage young lawyers to specialize in criminal law. This disparity needs to be addressed in reform efforts.

One path to reform in Jordan is to pursue reconciliation between Jordan's national practices and the international legal system. Jordan is a party to international human rights treaties, and the country has signed the most relevant treaties in the field of international criminal justice, including: the International Covenant on Civil and Political Rights; the Convention Against Torture; and the Convention on the Rights of the Child⁵. Therefore, Jordan is legally obliged to respect human rights as protected under international legal standards. But implementing those treaties into Jordanian national practices has not fully occurred.

The following paper seeks to identify some of the key deficiencies in Jordan's judicial system and recommend initiatives to correct those shortcomings.

⁵ Rule of Law in Armed Conflicts Project, "Jordan: international treaties adherence," Geneva Academy of International Humanitarian Law and Human Rights, October 12, 2010 (accessed February 22, 2012).

II. THEORETICAL CONSTRUCT OF CRIMINAL JUSTICE & CRIMINAL LAW

'Theories of criminal law' could just be general theories of law applied to the particular case of criminal law, such as natural law and legal positivism. The aim and function of criminal law, as much as its legitimation rise immediate further questions: whether it is part of the essence of criminal law that it must satisfy, or make, certain kinds of moral demand; whether criminal law can be adequately understood in purely instrumental terms; whether we should take the criminal law's apparent pretensions to rationality and principle seriously, or should rather see it as an oppressive exercise of political or economic power, or as the site of conflicts which produce an irredeemably contradictory, unprincipled set of doctrines and norms.

Criminal Law, to begin with, deals with crimes. What constitutes a crime, and therefore is penalized by law is defined by the particular society. Howard Becker demonstrates the important principle that legal rules are produced by specific interest. The way in which rules are enforced and applied are essential element of their functioning. Simplified to its purposes and benefits Criminal Law serves society, one can spot five main causes:

- Maintaining order. Criminal law provides predictability, letting people know what to expect from others. Without criminal law, there would be chaos and uncertainty.
- Resolving disputes. The law makes it possible to resolve conflicts and disputes between quarreling citizens. It provides a peaceful, orderly way to handle grievances.
- Protecting individuals and property. Criminal law protects citizens from criminals who would inflict physical harm on others or take their worldly goods. Because of the

importance of property in capitalist America, many criminal laws are intended to punish those who steal.

- Providing for smooth functioning of society. Criminal law enables the government to collect taxes, control pollution, and accomplish other socially beneficial tasks.
- Safeguarding civil liberties. Criminal law protects individual rights.

In a more critical manner, Hein Steinert elaborates the social functions of criminal law by stressing that: “Criminal Law is in no sense free form social conflicts and struggles in the way in which it is sometimes presented (“Criminal Law as the guarantee of the necessary minimum of order”), rather it has its function in the midst of these conflicts. Its services are enlisted by particular interests through various mechanisms and it normally stand on the side of those forces which are interested in stabilizing the status quo⁶.”

The characteristics of Criminal Law highly depend on its conceptualization as well as on the political philosophy, ethics, and the theory of criminal justice, which lie beneath. Philosophical theories of criminal law can be (1) analytical in nature, i.e. when one seeks to explain the concept of criminal law and related concepts such as crime, or (2) normative in nature, i.e. when one seeks to not just define what criminal law is, but what it should become. Whether analytical or normative, theories of criminal law rely on, and are derived from, other branches of philosophical and empirical studies, such as political philosophy, ethics, jurisprudence and moral philosophy.

There are two predominant ways to conceptualize criminal law, through the lens of an instrumentalist or a moralist. The instrumentalist approaches criminal law much in the way a utilitarian approaches political philosophy— as an instrument to serve the best possible ends. For an instrumentalist, as for a utilitarian, criminal law can be justified only in so far as it is producing results that serve the greater good of society as a whole.

6 Heinz Steinert, On the Functions of Criminal Law, Contemporary Crises 2 (1978) 167-193.

In contrast, moralists perceive criminal law as an end in itself. Criminal law through the lens of a moralist means it is permissible for the state and legal system to use coercive power to enforce what is perceived as the society's collective morality.

Just as political philosophy and ethics influence the theory of criminal law, so too does the theory of criminal justice. The theory of criminal justice is largely concerned with punishment, specifically the questions of whether and whom societies should punish for wrongdoing. It is also concerned with the questions of methods of punishment and how much punishment should be used. The four different types of criminal justice theories—preventive theory, deterrence theory, reformatory theory, and retributive justice—offer different answers to these questions regarding punishment. The first three philosophies (preventative, deterrence and reformatory) are utilitarian.

Deterrence is another purpose of administering punishment as punishing the offender illustrates the consequences and the cost of committing offences, discouraging the offender from repeating the offence. Rational choice theorists would assert that the cost of committing a criminal act alone is not sufficient to prevent rational individuals from engaging in such acts.

Those who subscribe to reformatory theory argue that sentences passed against offenders must take into consideration the need to rehabilitate and reform rather than prison being the sole means of prevention. Rehabilitation leads to less recidivism.

Relying on punishment as the only means of preventing future crimes is insufficient as it fails to address the reasons why the crime was committed to begin with. Rehabilitation and reformation address the root causes and/or incentives behind the criminal act, mitigating the reasons behind the offender's proclivity to repeat/commit the offence in the future. Such causes could

be physical, emotional, or social problems.

Juvenile offenders are highlighted as the most important category to be targeted by reformative justice efforts. The social stigma attached to especially juvenile offenders often causes their marginalization and exclusion from society, driving them to commit crimes for the benefits they would otherwise have access to legally.

Retributive justice rests upon the instrumental principle that punishment is the proper consequence of committing a criminal and harmful act against other individuals and the society. Maintaining a criminal justice system with all its costs and the burden it places on the state is hardly reasonable if the benefit of punishing offenders is merely punishing immoral acts, since this approach does not aspire to prevent further offences. If punishing offenders is its own reward or benefit, the assumption is that there will be no reduction in crime, which will continue to require resources from the state to maintain the criminal justice system for no return to the victim, the society, or the state.

As these are the main approaches to justifying criminal law in states to bolster and respect the rule of law, certain laws – specifically those categorized as human rights laws – are also designed to insure that such punishment is justified and deserved and to counter the ostensible harshness of inflicting punishment. Human rights law protects all individuals' right to a fair trial and a multitude of other rights that are associated with this right, such as the right to counsel. Litigating on behalf of individuals, whether they are offenders or victims, is granted in international human rights law but states oftentimes lack the resources to appoint attorneys to represent defendants who cannot afford to do so.

The international community has defined binding standards concerning criminal law, which

have to be followed by the national legislation – regardless of their own theories of justice and criminal law at large. With the implementation of the ICC one further step has been taken towards an international criminal justice system.

III. JORDAN: CONSTITUTIONAL & LEGAL FRAMING

Jordan faces various limitations when it comes to adapting international standards, two of the most profound challenges emerge from outdated legislation which regulates the right to state appointed council for those charged with criminal offenses. A deeper problem is the lack of systemic initiatives for lawyers to practice criminal law.

The Reality and Right to a Fair Trial in Jordan law

The Jordan Constitution guarantees the right to a public hearing. Article (101) states: (1) “The courts shall be open to all and shall be free from any interference in their affairs.” And (2) “The sittings of the courts shall be public unless the court considers that it should sit in camera in the interest of public order or morals.”

Article (171) of the Jordan Criminal Procedure Act No.(9) of 1961 states that “The sittings of the courts shall be public unless the court considers that it should sit in camera in the interest of public order or morals. However, in all circumstances, the court has a discretion to exclude juveniles from all or part of hearings when the interests of juveniles so require.”

Despite these Jordanian legislation lacks fair standards of access to defense counsel provided by the State. Currently, eligibility for State appointed counsel is based on the seriousness of the crime on the one hand, and on a case-by-case estimation of the serious possibilities resulting from the lack of counsel on the other. According to Article 208 of Jordan Criminal Procedural Law, only if the accused faces the possible penalty of capital death, servitude or life imprisonment, do they have the right to defense counsel appointed by the State. All other

felonies penalized by temporary servitude or imprisonment for 20 years or less, do not have the right to a State appointed counsel.⁷

Thus the vast majority of Jordanian citizens who cannot afford counsel, don't receive counsel and are left to fend for themselves. Without access to legal assistance, defendants are often unaware of their right to freedom, right to remain silent during interrogations by law enforcements, unaware of their right to examine the witnesses, experts and others involved in the case.

Reality & Right to Counsel: Confining the Appointment of a Delegated Lawyer to the Trial Stage

Articles 63-66 of the Jordan Criminal Procedure Act protect the right of the accused to have access to adequate defense during the investigation phase. But in reality, State appointed counsel are not granted unconditional access to the accused. Article 65/1 of the Jordan Criminal Procedure Act further stipulates that the defendant facing a criminal charge has the right to receive access to a lawyer of their choosing. And Article 208/ 1 of the Criminal Procedural Law stipulates:

[A]fter filing the case docket with the court, the chief of the court or his delegated judge in the crimes penalized by capital punishment, life servitude or life imprisonment shall subpoena the accused and ask him if he has selected a defense lawyer; if not, and if his financial condition does not allow him for the same, the chief or his deputy shall appoint a lawyer for him.

In reality, however, lawyers rarely visit their clients in court jails except for the purpose of signing the power of attorney. In addition, the times during which clients and legal counsel

⁷ According to the *The Guide for Fair Trials*, "The Right to Assign A Defense counsel for the Accused and his/ her Right to Obtain Free Legal Assistance."

can meet are dictated by the correction or rehabilitation center where the defendant is awaiting trial. Due to the limited access of visitation between legal counsel and client--not only during the investigation stage, but also the trial stage--defendants are often not able to meet with their State appointed legal counsel.

In addition, it is a common practice in Jordanian courts to appoint counsel under article 208 only during the trial stage. This means the defendant does not have access to legal counsel during the initial investigative stages unless s/he can afford to pay for legal assistance. By waiting till the trial stage to appoint a lawyer to the defendant, the courts are infringing on the rights of the accused—rights of which the accused are often not aware.

Article 66 of the Jordan Criminal Procedure Act further stipulate that the public prosecutor has the power to forbid communication with the defendant for up to ten days. This does not, however, apply to legal counsel—which a detained person is entitled to communicate with at all times. And Article 152 of the Jordan Criminal Procedure Act states “Communications between a detained or imprisoned person and his legal counsel shall be inadmissible as evidence against the detained or imprisoned person”. In other words, no interference or censorship of written or oral communication between the accused and the legal counsel is allowed. This also ties in with international standards which specify that consultations may take place within the sight of law enforcement officials, but not within hearing.

Article 208 infringes greatly on the rights of vulnerable populations who do not have the means to afford proper legal assistance. Such populations include women, juveniles, seniors, handicapped and refugees. These marginalized populations are not aware of their rights, and not able to pay for legal assistance if their crime has not been considered serious enough to merit State appointed legal counsel. In addition, women, for example, are occasionally deprived from their right to counsel if their family is upset, or in a case where the woman is likely to be abandoned by her family due to her crime.

The Jordan Juvenile Law permits a parent or custodian to represent the juvenile, which can be extremely detrimental to their fate if their parent do not have enough legal knowledge to properly defend them. Similarly, seniors and handicapped people who are in need of special treatment because of their health or social conditions, are often denied assistance if they're unable to pay. The same applies to refugees who are often deprived of their civil and political rights due to a lack of awareness, resources and language barriers. It is crucial that Jordan provides disadvantaged and marginalized groups' access to additional resources that will assist them in having full access to a fair trial.

Right to a Presumption of Innocence

As with many countries with modern legal systems, the accused is presumed innocent until proven guilty, thus leaving the burden of proof on the prosecution. Jordan's constitution does not explicitly cite the right of presumption of innocence, but it is a right recognized recently by the Criminal Procedure Act, Article 147/1. Furthermore, according to article 63/1 of the Jordan Criminal Procedure Act, the accused must be told s/he has the right to remain silent.

Poor Role of the Bar and Inactivation of Article 100 of the Bar Law of 1972 as Amended

The Jordan Bar does not play a committed role in the activation of Article 100⁸, which is considered a major obstacle for vulnerable populations attempting to access justice and obtain free legal representation, especially in criminal cases. The Bar Association abstains from actively addressing the performance of its members and their moral commitment to

8 Article 100 stipulates: "a. The Chief of the Bar Association may assign any lawyer to a professional service free of charge to be provided once a year, this free service shall be confined to carrying out any of the following: ... to defend a person whose poverty and inability to pay any fees to a lawyer is established by the Chief of the Bar; in such case the court shall rule on the imposition of the legal fees upon the litigant against his attorney, if it is proven that the litigant is unrightfully. b. Every lawyer that refuses, without reasonable grounds, to provide assistance after engaging him in the provision thereof or omits in the honest defense duty shall be subject to disciplinary penalties."

realize justice. A more proactive role towards implementing Article 100 is one important way to bridge the gap in providing this type of service. The activation of the Bar's role would have a positive impact on the criminal justice sector.

IV. JORDAN & INTERNATIONAL LAW: RECONCILING THEORY & PRACTICE

Jordan has been active within the international arena as well as within regional mechanisms in areas pertaining to human rights. For example, Jordan is party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR).⁹ The ICCPR and ICESR, along with the Universal Declaration of Human Rights, form what is known as the international bill of human rights. The ICCPR mirrors the UDHR, and essentially turns that non-binding document into a binding one. The ICCPR outlines key rights, similar to those found in the UDHR, but binds states that have ratified the treaty to uphold those rights¹⁰. In addition, Jordan is a party to various international human rights conventions, and was also one of the first seven countries to ratify the Arab Charter for Human Rights (ACHR), which was developed by the League of Arab States.

Nevertheless, the overall situation of human rights in Jordan has been fluctuating over the past decade. Like other countries in the region, reform initiatives related to human rights were followed by setbacks after September 11.

Recent reports on the situation of human rights in Jordan have highlighted various challenges that require the consolidated efforts of all actors in the field, including the public sector and civil society.

9 Rule of Law in Armed Conflicts Project, “Jordan: international treaties adherence.”

10 Legal Aid Jordan, “Mapping Refugee Minds: A Report from Jordan,” September 2011 (accessed March 1, 2012).

These challenges include, but are not limited to, the following:

- Capital punishment remains a part of Jordanian legislation¹¹
- Although the Jordanian leadership has repeatedly issued directives against it, torture remains a common occurrence.
- Freedom of association still faces various restrictions, as recent laws that were passed governing civil society organizations and political parties show¹²; and
- Infringements on freedom of expression and freedom of the press¹³ continue to take place

Although the above provides a great challenge to Jordan's fulfillment of its international commitments, there are available opportunities that existing organizations can build on in order to enhance the situation of human rights. Certainly, the leadership of Jordan has offered prominent support for human rights practices in recent years. Furthermore, the available judicial system could take a leading role in promoting human rights, the rule of law and good governance. The rhetoric of support for human rights needs to line up with more action.

11 Amnesty International USA, "Jordan Human Rights," <http://www.amnestyusa.org/our-work/countries/middle-east-and-north-africa/jordan> (accessed March 4, 2012).

12 Euro-Mediterranean Human Rights Network, "Freedom of Association in Jordan: King Abdullah II Should Reject New Societies' Law," July 22, 2009, <http://www.euromedrights.org/en/news-en/emhrn-releases/emhrn-statements-2009/3823.html> (accessed March 6, 2012).

13 Freedom House, *Freedom of the Press 2011 - Jordan*, September 23, 2011, <http://www.unhcr.org/refworld/docid/4e7c84f328.html> (accessed 6 March 2012).

International Standards for Criminal Justice

Current national legislation and its implementation with regards to the right to a fair trial still fall short in some aspects from adhering to international standards. Most importantly, the right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty. This principle is “designed to ensure that all individuals are protected by law throughout the criminal process, from the moment investigation or detention begins until the final disposition of their case.”¹⁴ The right to a fair trial is guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”¹⁵ The right to a fair trial means that a party in a case has the ability to present their case in the courtroom under conditions that do not place them at a disadvantage when compared with the other party.

Article 14 of the ICCPR also mandates free legal assistance if someone “does not have sufficient means to pay for it.”¹⁶ However, the Jordanian Constitution does not line up with that principle. Defendants who face potential sentences of death or life imprisonment are assigned counsel free of charge. But this means that the determination of whether the “interests of justice require appointment of counsel depends primarily on the seriousness of the offense and the severity of the potential penalty.”¹⁷ Other United Nations documents also seek to establish an international norm of legal aid for all defendants. For example, regulations adopted by the Eighth UN Congress on the Prevention of Crime and Treatment read, “Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of

14 Sami Hamdan Al-Rawashdeh and Rama KhaderErekat, “Criminal Trials Observation: The Jordan Case,” *European Journal of Social Sciences*, Volume 14 (2) 2010.

15 United Nations, International Covenant on Civil and Political Rights, December 16, 1966, <http://www2.ohchr.org/english/law/ccpr.htm> (accessed March 6, 2012).

16 *Ibid.*

17 Sami Hamdan Al-Rawashdeh and Rama KhaderErekat, “Criminal Trials Observation: The Jordan Case.”

the offense assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.”¹⁸ Similarly, the UN Special Rapporteur on Torture has called for “provisions” to ensure that “detainees are given access to legal counsel within 24 hours of detention.”¹⁹ In this specific case, Jordan does not fully live up to international standards.

The ICCPR contains some other important principles that form core parts of international criminal justice norms. Article 9 of the treaty, for example, prohibits arbitrary arrest or detention and mandates that anyone arrested has the right to know of the charges against them and the right to a speedy trial.²⁰

Apart from the ICCPR, the United Nations has outlined comprehensive standards for the minimum treatment of prisoners.²¹ These standards address everything from sleep accommodations to hygiene to medical services. Although Jordan has some safeguards that align with the UN standards, the country should move to ensure that their own criminal justice system fully aligns with international norms..

18 United Nations, Basic Principles on the Role of Lawyers, August-September 1990, <http://www2.ohchr.org/english/law/lawyers.htm> (accessed March 6, 2012).

19 Rehabilitation and Research Centre for Torture Victims, “Submission to the UN Committee against Torture for its consideration of the 2nd Period Report of Jordan,” April 2010, http://www2.ohchr.org/english/bodies/cat/docs/ngos/RCT_Jordan44.pdf (accessed March 6, 2012).

20 United Nations, International Covenant on Civil and Political Rights.

21 United Nations, Standard Minimum Rules for the Treatment of Prisoners, <http://www2.ohchr.org/english/law/treatmentprisoners.htm>, 1955; 1957; 1977, (accessed March 6, 2012).

VI. OBSTACLES & CHALLENGES FACING LAWYERS & COURTS

Legislation makes it difficult for marginalized and disadvantaged citizens in Jordan to have access to the resources they need to ensure a fair trial. Further complicating the challenges are the structural barriers that hinder lawyers from properly defending these marginalized communities. The following is a short summary of challenges lawyers face when practicing criminal justice law in Jordan.

Courts

Courts suffer from many problems: lack of resources; poor organization and management; and a lack of judicial accountability. In addition, there is not enough correlation between the policies regulating the work of law schools on one hand, and the Bar, the Ministry, the Judicial Council, the Supreme Judge, courts and lawyers, on the other hand. The following is a summary of the issues courts face.

- There is an abundance of unqualified staff on the Bar, in the Ministry of Justice and courts. There is also a high turnover rate in the Ministry of Justice, which in turn leads to a lack of cohesive strategic planning and implementation.
- Within the judicial and legal reform movements, there is a lack of correlation between Civil Society Organizations (CSOs), concerned donors and activists. This in turn leads to poor strategic planning. In addition, there is a general lack of employees with proper legal qualifications and experience working with CSOs, resulting in an inability to implement and execute a strategy that influences and betters civil society.

- There is a lack of transparent affiliation regarding the interactions of the Bar Association and the Ministry of Justice—currently there is no clear and direct connection between lawyers and the Ministry of Justice.
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- An unclear relation between the Ministry of Justice and the Ministry of Planning regarding developing strategies and cooperation.
- The attempt to paralyze the civil society and human rights organizations' interference in monitoring violations and calling for judicial and legal reform.
- The board members of the Jordanian Bar Association are influenced by private political alliances, often adopting partisan visions that at times run contrary to the previous Bar directives.
- There is poor follow up and response from reports that evaluate the state of the judiciary—reports which are often issued by authoritative international entities who request Jordan observes and comply with international judicial standards.
- There is a need for more experts within the judiciary that are able to deal with human rights issues, especially those of a political nature.

Lawyers

There are a number of issues facing lawyers in Jordan, both structural and procedural—from basic needs such as proper heating in work facilities, to more complex problems such as proper training. The following is a summary of the challenges lawyers face in Jordan both in general, and in particular when defending criminal cases.

- There needs to be a proper investment in infrastructure used by the legal community, which will in turn better assist lawyers with efficiently carrying out their duties. Currently, legal buildings often lack proper access for employees with disabilities, such as access to an elevator. In addition, the buildings are old and not properly heated.
- There is a general lack of familiarity with other international experiences and a lack of ability to compare international experiences to those experienced by lawyers working in Jordan.
- In general, there is insufficient training, development and expertise exchange opportunities for lawyers in Jordan.
- Since lawyers are considered the other arm of the judge, there needs to be better observation of their work in addition to better fiscal compensation. Currently there is a large discrepancy between the compensation judges receive and compensation lawyers receive.
- There is a high demand for legal counsel involving the representation of minor criminal cases since State appointed counsel is only applicable when dealing with felony, and more serious crimes. While there is a demand for representation in felony criminal

cases, these people often prefer to be represented by lawyers with more experience than pro-bono lawyers due to lack of trust in legal aid system.

- Long trial procedure is a defining factor of criminal cases tried in Jordan. In addition there are often long delays by between when the accused is taken into custody, when evidence is collected, and witnesses examined.
- Due to a lack of proper criminal law training, newly graduated and even mid experienced lawyers are often inexperienced and without guidance. Additionally, the long litigation process and limited income from criminal law cases, discourages lawyers both from entering the field of criminal justice law, and from staying in that field.
- There is in general a lack of awareness in disadvantaged and minority communities about both their legal rights and the available access to free legal assistance. This in turn can jam up the legal system, and can contribute to recidivism.
- State security cases, such as drug trading and usage, are considered to be one of the main challenges to Legal Aid due to a general lack of specialty in this area of legal focus. Legal Aid has received several applications requesting representation from people accused of drug related offenses. These applicants cannot afford the high fees for representation requested by well-experienced lawyers.
- It is vital that those who are not able to afford legal consultation are provided with a state appointed attorney, especially in state security related cases since those verdicts cannot be overturned, no matter the circumstances.

Criminal procedure law allows for two stages of litigation for high criminal case litigation. When dealing with felony court, verdicts can be appealed, but not to the Court of cassation. The appeal process is long and costly in criminal cases.

The Effects Increased Crime Rates Have on Legal Representation

Due to various factors, there is an increasing rate of crime in Jordan, leading to an increased demand for specialized legal representation in criminal cases. But there are factors that prevent those who need this legal help from seeking it. The following is a summary of why disadvantaged and marginalized communities, suffering from increased crime rates, are unable to access proper legal council.

Unsystematic Approach of the Courts in Appointing a Lawyer

There are limited guidelines courts follow when appointing lawyers. The process is unsystematic and lawyers are often appointed during the hearing of a case due to the sudden withdrawal of prior legal representation. The process of reappointing a lawyer in the middle of a case often occurs in a rushed manner that overlooks the rights of the accused, such as the right to be offered the opportunity to have a say in the appointment process, and the ability to have enough time to prepare a proper defense. Without better standards of reappointing a lawyer in the middle of a trial that include allowing for enough preparation time for both the accused and the lawyer to become familiar with the case. If the process were not so rushed, the lawyer will have more time to be sure they're capable of representing the accused so the accused can receive their due share of defense especially in juveniles cases.

Another issue, which will be explored in more depth later, is the limited choices judges in Jordan have when assigning criminal lawyers to cases due to the limited amount of specialized lawyers in the field.

Limited Representation by Experienced Lawyers in Major Criminal Cases

In December 2010, there were 9,113 practicing lawyers registered in Jordan. Yet the number of the first class, experienced lawyers that appear before the Major Criminal Court and plead before tribunals during this same time, doesn't exceed 35 lawyers, of which only 3 are female lawyers. Accordingly, the percentage of lawyers specialized in major criminal cases does not exceed 0.04 percent, or 4 criminal lawyers for every 1,000 practicing lawyers.

Legal Aid conducted a preliminary analytic study using a simple survey distributed to jurists, legal advocates, lawyers in training and law schools students. The aim of the study was to uncover the reasons for why there are not more lawyers in Jordan specializing and practicing criminal law. The survey addressed many of the issues outlined in this report, such as access to training opportunities in the criminal justice field, salary, the length of criminal procedure and other issues pertaining to the justice system, the seriousness of the cases, and the lawyer's gender.

These numbers illustrate the dire need for increased initiatives that encourage young lawyers to specialize in criminal law. Currently, lawyers are appointed to criminal cases by a judge, and because of their limited knowledge, the long litigation time criminal cases require and the limited amount of compensation received²², lawyers appointed to a criminal case often find excuses to refuse the appointment, or drop the case when the opportunity arises. More specialized criminal justice lawyers will save litigation time in the long run, and give those from a disadvantaged background a better chance of accessing proper legal counsel.

22 Article 208/2 of the Criminal Procedural Law stipulates that a lawyer appointed to a criminal defense case "shall be paid the amount of ten Jordan Dinars for every session he attends provided that such fees are not less than two hundred Dinars and not exceeding five hundred Dinars to be paid from the Government Treasury." This only further emphasizes the poor compensation received by criminal defense lawyers, which in turn devalues the importance of their role in society at large.

VI. CASE STUDIES

The French Embassy funded Legal Aid with small grant to represent five cases to identify existing problems in the Jordanian legal system. The following two juvenile case studies were part of that program. The grant will be repeated annually to monitor problems and identify progress in the Jordanian criminal system.

Case #1: Ibrahim K.

Ibrahim K. was convicted of sexual molestation on December 15, 2011 in East Amman's Criminal Court. An examination of this minor's case by Legal Aid sheds light on systematic deficiencies in the Jordanian criminal justice system, as well as why legal representation before courts is so important.

Khalil was accused of sexual molestation along with two other children. The case was handled by the Family Protection police, which then referred the case to court.

Although this case demonstrates the importance of the Family Protection Department, police conduct on juvenile issues needs to be corrected. In this case, Khalil says he was incredibly fearful at the sight of a room full of police; it is clear that, given the subject's age, a more tranquil place would have suited Khalil and the police's investigation. Relatedly, Khalil and his father reported that while waiting for his hearing, seeing criminals behind bars was damaging to their psyche.

This case also demonstrates some systemic issues in the Jordanian justice system. One is how

long these cases drag out. A complaint was made on August 20, 2010, but a decision in the case was not made until December 2011. The jury has also been changed more than once in this case. And it was tried in a criminal court when it was a juvenile case.

On the other hand, because Legal Aid was tapped to help Ibrahim Khalil, an impartial trial was ensured. This shows why adequate counsel and legal representation before courts is so essential. Lawyers were there to answer the Khalil's questions and to direct them how to behave in court, and also monitored the legal procedures for the family.

As a result of Legal Aid's observations, a number of recommendations can be made to reform Jordan's criminal practices. The Family Protection Department should work to create a special office in each security center to prevent the possibility of a rejected complaint if the security center does not refer it to the Family Protection Department. This leads the complainant into thinking that their rights have been lost.

Another recommendation is for special rooms that could be established for prosecuting juveniles. Judicial accountability should also be a priority, and committees to review the work of judges to ensure that there is an activation of the procedures stipulated in Article (10) of the Juveniles Act No. (24).

Lastly, reforms among probation officers should be pursued. Probation officers should be allowed to speak with a child in private, and not while his parent or guardian is there. The model of a probation officer should be similar to that of officers in developed countries, where probation officers are educated in the psychology of children.

Case #2: Tyseer S.

The case brought by Tyseer S. on behalf of his son Mohammed is another pertinent study in how the Jordanian criminal system works.

On September 23, 2010, Legal Aid received Mr. Tyseer, who reported that his son was sexually molested by three other juveniles in April 2009. The case was filed in Amman's criminal court. The accused juveniles were convicted, and then an appeal was filed, although the same punishments for the convicted juveniles came down.

When Mr. Tyseer first went to the police, his complaint was not accepted and was told to turn to the family protection administration/capital division. The father then went to the family protection administration, where procedures were followed in accordance with the law. Mohammed gave a statement on his case to a video camera, as the law stipulates. Other procedures, like the referral of the case to an attorney general and that 24 hours was given to appoint an attorney, were also followed soundly.

It is important to note that some aspects of the case did go wrong.

The first records of court sessions related to this case do not signify that court sessions were closed—something that is a violation of Jordanian juvenile law. Legal Aid recommends that committees of confidential control over judges be established in order to ensure that the correct procedures in juvenile cases are followed. The duration of cases like these are also extremely lengthy, something that Legal Aid believes should be addressed.

Another stumbling block to the Jordanian criminal and juvenile process is the fact that calling forth public prosecution witnesses is difficult. This arises because law enforcement parties do

not catalog more than one address and telephone number for witnesses, and that when you call for witnesses who are clerks, criminal inquiry officers or traffic comptrollers, they often do not show up.

Legal Aid saw no indication in the proceedings implying the existence of a probation officer's report on the accused juveniles, and no indication that the court had commissioned a report. This is contrary to the spirit of Jordanian juvenile law. And the court sentencing went awry when they decided to detain suspects at the juvenile care house, despite the fact that they have reached legal maturity and hence should not be detained at the juvenile care houses, but at reform and rehabilitation centers.

Lastly, this case study looks at the importance of representation in court. In this case, Legal Aid did not represent the client from the beginning, since we were approached after the public prosecution finished their argument. But the importance of having an attending attorney early in the trial with the complainant is important for studying the case and judging whether there is strong evidences for conviction.

Still, an attorney was appointed in the case. This secured a fair and integral trial, and ensured that everyone involved in the case knew their proper role.

VII. CONCLUSION

The Jordanian leadership's commitment to reform is welcome. But a lot more needs to be done, especially in regards to the Jordanian criminal justice system.

This report has laid out some of the challenges in the legal system as well as some recommendations for further reform. Problems in accessing state counsel, the poor role of the bar and structural issues that face courts are some of the more prominent domestic legal issues that Jordan faces. Specifically, marginalized and disadvantaged citizens in Jordan do not have proper access to the resources that would ensure a fair trial. And in Jordanian courts, it is commonplace to appoint counsel only during the trial stage, meaning that defendants do not have access to legal counsel during the initial investigative stages unless they can afford to pay for legal assistance. As statistics cited in the report on Jordanian lawyers demonstrate, there is a need for increased initiatives that encourage young lawyers to specialize in criminal law. Successful initiatives that bring in more criminal lawyers and more new qualified judges would go a long way towards ensuring that both the highest domestic and international standards on criminal justice are implemented in Jordan.

Jordan's commitment to human rights offers a clear pathway towards resolving these issues. As a signatory to the International Covenant on Civil and Political Rights, Jordan has an obligation to align its domestic legislation with the covenant. While steps have been taken in this direction, this report identifies some of the areas where Jordan falls short. Additionally, Jordan should look to the various other UN proclamations and documents that seek to establish international norms for a fair criminal justice system.

By implementing these international standards, reform within Jordan would truly be on the right track. And by doing so, Jordan could be a regional leader in human rights among countries currently undergoing radical change

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