

Beyond the Numbers

Rule of Law in Jordan

Justice Center for Legal Aid
2022


مركز العدل
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Introduction

Jordan is widely considered a relatively stable country embedded in an extremely unstable region. Despite repeatedly asserting its adherence to the principles of rule of law and human dignity and its commitment to obligations under international human rights law, the government of Jordan exhibits autocratic features. It is therefore to be classified as a semi-democracy. On the ground, harmful practices of corruption, nepotism, and weak or uneven implementation of laws and policies have negatively impacted access to justice and judicial independence. This has further hindered Jordan's socioeconomic development.

Access to justice influences socio-economic development. At JCLA, we witness the downstream effects of poverty in the course of our work providing legal advice and representation. The Jordanian Department of Statistics averages that 96 percent of people in conflict with the law come from extremely low-income households, and that 47,000 people a year who engage with the court system cannot afford a lawyer.¹ Legal representation, or the lack of it, is a critical issue. The early involvement of a lawyer impacts the duration of detention: spending an additional day in jail while waiting for trial may mean losing a job, not being able to pay rent, failing to put food on the table, or leaving children without a parent present (introducing the generational effects of criminalization). These realities for already-disadvantaged criminalized people have long-term impacts not only on the defendants themselves but also their families, creating cycles that become difficult to break. The consequences of losing a job create even more precarious circumstances that lead to further criminalization—whether due to desperate behavior in desperate circumstances, or on the basis of inability to pay debt. Similarly, the same obstacles that hinder vulnerable people from attempting to prove their innocence within the legal system—namely, fear of retribution, being unable to take time off work, being unable to secure alternative childcare, etc.—discourage and prevent many from proactively assessing legal rights, such as seeking redress for wage theft. As such, access to justice and respect for rule of law are key priorities for reducing socio-economic inequalities, achieving development, and accomplishing legitimate reform.

To address Jordan's challenges, efforts for reform have been underway. Over the past decade, several special committees have been established to fight against corruption, uphold rule of law, and enable political reform. This includes the 2005 Royal Committee for the National Agenda, the 2011 National Dialogue Committee, and the current Integrity & Anti-Corruption Commission.² This underscores the importance of adherence to the rule of law. Despite these reform efforts, however, the World Justice Project (WJP) Rule of Law Index indicates that Jordan's adherence to the rule of law has declined post-pandemic, declining by approximately three percent in 2021.³ Despite displaying theoretical awareness of the importance of rule of law, a dissonance to practical implementation becomes apparent.

¹ This study was conducted in 2011, prior to the larger influx of Syrian refugees, and the much later COVID-19 crisis; the current increased population and higher proportion of people unemployed and in poverty strongly suggests that the absolute number of people without representation has, at minimum, doubled.; Justice Center for Legal Aid (2018). "It All Begins With Justice."

² Osama Al Sharif, Al Monitor. (2021) "King appoints new commission for political reform in Jordan." <https://www.al-monitor.com/originals/2021/06/king-appoints-new-commission-political-reform-jordan#ixzz7q60Fh6j>

³ Rule of Law Index, World Justice Project 2021 <https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf>

Rule of law is upheld when laws and institutions guarantee and provide equality under the law, an independent judiciary, transparent laws, and access to justice. From a human rights perspective, the principle of rule of law revolves around three pillars: Firstly, the ways in which legislation is articulated to be practically implemented rather than merely theoretically delineated, secondly, how laws are enforced to ensure implementation and accountability, thirdly, providing inclusivity in application so that no one is exempt from its implementation.

This paper does not aim to validate or negate WJP rankings or the numbers of Jordan. It will scrutinize the underlying challenges or factors that strengthen or weaken the rule of law in Jordan, forming the basis of the WJP ranking.

This paper proposes actions that may improve the reality of justice and rule of law and could subsequently improve the rankings in the index. It is intended to be used by stakeholders to plan and advocate for improvement in the application of criminal justice and of policies that impact freedoms and basic human rights.

Methodology

As an Index (hard numbers) is used as basis for more open discussions, one could compile the information from the FGD and interviews to create an overall insight to “perceived rule of law” which can then be juxtaposed to the Index to identify whether Index and population perception show the same results. Thus, this paper utilizes the World Justice Project (WJP) Rule of Law Index⁴ as a base for evaluation of the perceived implementation of rule of law in Jordan. Furthermore, the WJP Index has been utilized to guide focus group discussions and key informant interviews in preparation of this paper. This paper identifies those priority areas that need reform and must be tackled to advance rule of law in Jordan. The authors of this paper anticipate that acting according to these identified areas of required change will lead to an improved ranking of Jordan in future WJP indices.

This paper has utilized a qualitative analysis approach, relying on both primary and secondary sources. The authors of this paper have taken the following steps:

1. Developing a Desk Review on relevant legislations, reports and studies, including:
 - Gender Justice Report
 - National Center for Human Rights (NCHR) Annual Report 2020
 - Women Access to Justice in Sharia Cases
 - Criminal Procedures Law
 - Cyber Crimes Law
 - The Jordanian Constitution and its amendments
 - Crime Prevention Law
 - Legal Aid Bylaw

⁴ Rule of Law Index, World Justice Project 2021 <https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf>

2. Conducted five focus group discussions (FGDs), with each of the following groups being represented in a gathering of 5-8 people:
 - Youth
 - Criminal lawyers
 - Lawyers from various disciplines
 - Women rights' leaders
 - Litigants Focus Group
3. Conducted 10 interviews with Key Informants and experts, including: lawyers, former judges, human rights defenders, and experts in criminal justice in Jordan.
4. Conducted a workshop with multiple stakeholders to obtain feedback.

This paper examines the rule of law index within three factors. While we recognize the importance of conducting further assessment of all factors, the focus will be aligned with JCLA's area of specialization. The following ROL Index factors were used as base for guiding discussions in the Focus Group Discussions (FGDs) and Key In Depth Interview (KIDs);

Factor 4: Fundamental Rights

Factor 7: Access to Civil Justice

Factor 8: Effective Criminal Justice System

These three factors were chosen because they are interlinked and are considered the core prerequisites for reform. Additionally, they fall within the Justice Center for Legal Aid's area of specialty. Additional research and analysis to cover all factors of the ROLL Index is highly recommended.

The focus groups and interviews held to conduct this assessment examined the application of these rights to analyze how the law is enforced to protect those rights and to which level the people are practicing such rights.

Background

About the WJP Rule of Law Index

The WJP Rule of Law Index is a quantitative assessment tool for original, independent data on the rule of law; it aims to measure the adherence of 139 countries and jurisdictions around the world to the rule of law. The World Justice Project defines the rule of law as a durable system of laws, institutions, norms, and community commitment that delivers: accountability, just laws, open government, and accessible justice. The Index relies on more than 138,000 household surveys and 4,200 legal practitioner and expert surveys to measure how the rule of law is experienced and perceived worldwide. The World Justice Project (WJP) - which is an independent, multidisciplinary organization working to create knowledge, build awareness, and stimulate action to advance the rule of law worldwide - designs and calculates the Rule of Law Index on an annual basis. The index value is calculated by aggregating nine different factors. Within each of those factors, there is a set of indicators that are measured and then accumulated.

Jordan's Performance in the Rule of Law Index

In 2021, Jordan ranked 59 out of 139 countries on rule of law, dropping two positions, as its overall rule of law score decreased 3 percent in the Index from 0.57 in 2020 to 0.55 in 2021. In 2022, Jordan's score dropped further to 0.54.

WJP Rule of Law Index 2021 performance (1 is best)

FACTOR	GLOBAL RANK	REGIONAL RANK	INCOME RANK
	IN 2021	IN 2021 ⁵	IN 2021 ⁶
Constraints on Government Powers	97/139	6/8	28/40
Absence of Corruption	46/139	2/8	7/40
Open Government	106/139	4/8	34/40
Fundamental Rights	94/139	2/8	30/40
Order and Security	56/139	2/8	13/40
Regulatory Enforcement	56/139	2/8	12/40
Civil Justice	46/139	2/8	7/40
Criminal Justice	41/139	2/8	5/40

⁵ Countries and jurisdictions measured in the Middle East and North Africa region: Algeria; Egypt, Arab Rep.; Iran, Islamic Rep.; Jordan; Lebanon; Morocco; Tunisia; United Arab Emirates

⁶ Upper-middle income countries and jurisdictions: Albania; Argentina; Belarus; Belize; Bosnia and Herzegovina; Botswana; Brazil; Bulgaria; China; Colombia; Costa Rica; Dominica; Dominican Republic; Ecuador; Georgia; Grenada; Guatemala; Guyana; Indonesia; Iran, Islamic Rep.; Jamaica; Jordan; Kazakhstan; Kosovo; Lebanon; Malaysia; Mexico; Namibia; North Macedonia; Paraguay; Peru; Russian Federation; Serbia; South Africa; St. Lucia; St. Vincent and the Grenadines; Suriname; Thailand; Turkey; Venezuela, RB

Overview of the Rule of Law in the Jordanian Constitution

The Jordanian Constitution of 1952 established a constitutional monarchy regime, in which the Monarch is exempt from liability and responsibility and rules through the ministers within the executive branch of the government.⁷ The constitution does not expressly stipulate that rule of law is a principle that the state has to observe and adopt. Yet, it establishes the separation of the three branches of government (executive, legislative and judicial) and creates checks and balances among them.

The constitution furthermore recognizes the fundamental rights of citizens. These include rights to equality before the law, freedom of expression, freedom of the press, right to personal freedom, right to practice religious beliefs, right to peaceful assembly, right of association, freedom from torture, right to privacy, right to movement, right to nationality. Also, the socio-economic rights such as right to property, education and work, and restriction expropriation under the law.

The constitution refers to the laws and legislations to regulate the fundamental rights and stipulates that such laws cannot undermine the core rights guaranteed within the constitution.⁸

Jordan's constitution underwent significant amendments within the past decade. The amendments to the Constitution in 2011, which were developed in response to the Arab Spring and general unrest, are some of the most significant as they enshrined principles related to the rule of law within the constitution while strengthening constitutionally protected civic freedoms.⁹

Analysis

The WJP subfactors were not examined in the focus groups and the interview conducted to develop this paper. At each session, the JCLA team would summarize Jordan's rank in each subfactor. Participants were informed that the purpose of the meetings was not to validate or evaluate the WJP index, but rather use it as an entry to discuss and examine the rule of law in Jordan in common areas of discussion within those subfactor areas. Participants focused on different areas of challenges based on their backgrounds and interests. JCLA did not guide the discussion and analyzed the outcome based on participants' feedback and commentary. JCLA complemented the analysis through desk research and based on its practical experience and findings.

⁷ Jordan's Constitution of 1952 with amendments in 2011. https://www.constituteproject.org/constitution/Jordan_2011.pdf

⁸ Article 128/1 of the Jordanian Constitution. (Laws that are promulgated in accordance with this constitution to regulate the rights and freedoms cannot impact the core of such rights or undermine its foundation).

⁹ Salameh, M. T. B. (2017). POLITICAL REFORM IN JORDAN: Reality and Aspirations. *World Affairs*, 18(4), 47–78. <https://www.jstor.org/stable/26510626>

Fundamental Rights

The Jordanian Constitution in principle guarantees the basic human rights including the rights that are encompassed as sub-factors within Factor 4 of the rule of law index (Fundamental Rights), the constitution guarantees equality and absence of discrimination among Jordanians, the right to personal freedoms, independence of the judiciary, and access to justice. It also guarantees the dignified procedures in criminal procedures. Additionally, the constitution guarantees freedom of opinion and expression and media, as well as freedom of association. The following section further examines these fundamental rights guaranteed to Jordanians by the constitution and its amendments where it relates to the rule of law.

Freedom of Expression

The NCHR, which is a quasi-governmental institution mandated with oversight on human rights violations in its annual reports, documented a continued trend of arbitrary imprisonments, especially for political activists. In 2021, there were 25,000 individuals under administrative detention in Jordanian jails, with no recourse to trials or public representation.¹⁰ Harsh cybercrime laws, which are often vague and poorly defined, are used to pursue arbitrary arrests. A lack of differentiation between criticizing public officials and engaging in slander provides for murky guidelines on what is incriminatory under this law. The law has been used repeatedly against journalists, activists, politicians and private citizens.

Indeed, there has been a downward trajectory for free speech in Jordan, beginning with overhaul of the Press and Publication Law in 2012. Ever since, the Jordanian government has passed various other laws that place strict restrictions on the freedom of expression. Jordanian authorities routinely invoke these laws to suppress dissenting voices by prosecuting activists and journalists.¹¹

Although the press and publications law in Jordan was amended to restrict pretrial detention to journalists, the cybercrime law is used to do so instead, as most newspapers and media outlets are issued online. The introduction of the overly broad 2015 Cybercrime Law - which criminalizes "hate speech" and "fake news" - has been used as grounds for detaining and jailing citizens for publishing articles or social media. The penalty for offending someone within these ramifications on the internet, is imprisonment for a time of three months to three years.¹²

Another law that is restrictive and has vague articles is the anti-terrorism law. This law has been used to charge activists and politicians with crimes such as "committing acts that may jeopardize the relation with another state". Such a crime here falls within the definitions of the crime of terrorism. Under the anti-terrorism law - which broadens the definition of terrorism to include acts that are deemed to disturb "public order" or "relations with a foreign state" - journalists may face

¹⁰ US Embassy (2021). Jordan Human Rights Report. <https://jo.usembassy.gov/wp-content/uploads/sites/34/JORDAN-2021-HUMAN-RIGHTS-REPORT.pdf>

¹¹ Phenix Center for Economic and Informatics Studies. CPED-Report-on-Civic-Space-in-Jordan-Before-and-After-COVID (2021).

¹² Electronic Crime Law no. 27 of 2015.

imprisonment or sanctions when expressing views that are deemed offensive or critical of government institutions, foreign countries, or insult the King of Jordan.¹³

One additional practice that experts identified as impacting freedom of press and speech were gag orders that are issued by prosecutors in public opinion cases.¹⁴ There are no controls that guarantee such orders. The judiciary regularly issues gag orders which limit journalists' access to information on sensitive issues. A recent legislative amendment increased the penalty on violating gag orders to prison time no less than three months.¹⁵

The negative effects of these legislative changes and sharpened repercussions were mirrored in our focus group discussions. Participants indicated that they do self-censor when using social media. This was particularly emphasized by the focus group discussion session centering on youth in Jordan, who expressed that they do fear arbitrary detention if they express their opinions freely regarding political events. Human rights activists interviewed indicated that they believe journalists also exercise self-censorship widely. Participants in the focus group discussion session indicated their belief that editors in media outlets were exercising their role in a "reverse manner", as they were more likely to censor reports than push for scoops due to fear of legal repercussions.

This is further indicated in Jordan's score in the Reporters Without Borders Press Freedom Index, which declined from 57.11 in 2021 to 48.66 in 2022.¹⁶ The World Press Freedom Index, compiled by Reporters Without Borders (RSF), reflects the degree of freedom that journalists, news organizations, and netizens have in each country. Moreover, Jordan's rating has declined from "partly not free" to "not free" according to Freedom House's annual study of political rights and civil liberties worldwide.¹⁷ This indicates a downwards trend with regards to respect for civil liberties.

Right to Peaceful Assembly

The Public Assembly Law in Jordan was amended in 2011, removing the need to obtain permission from the governors to hold public meetings. The current law only requires organizers of a public event to notify their governor. This is meant to provide notice for the executive authority to evaluate if they need to take steps towards protecting participants or demonstrators as applicable. The 2011 amendment of the Public Assembly Law provided further protection for citizens' right to freedom of assembly, as it decriminalized peaceful assembly and no longer required the obtainment of a written authorization by an administrative governor to organize a demonstration. However, the amendment of the law did not go as far as to codify enforcement for citizens' rights to assembly: authorities continued to selectively restrict public gatherings.¹⁸ Moreover, the law dictates that organizers must provide notification to the governor at least 24 hours in advance, including names, addresses and details of the organizers as well as the purpose, time and venue of the gathering.

¹³ Phenix Center for Economic and Informatics Studies. CPED-Report-on-Civic-Space-in-Jordan-Before-and-After-COVID (2021).

¹⁴ Jordan Stiffens 'Gag Order' Violations to a 3-Month Jail | Al Bawaba, <https://www.albawaba.com/news/jordan-stiffens-gag-order-violations-3-month-jail-1474851>

¹⁵ Center for Defending Freedom of Journalists, *Annual Report on Freedom of Press*. (2018). <https://cdfj.org/حريّة-عالمية-تقرير-حالة-الحرّيات-الإعلا>

¹⁶ Reporters without Borders, Freedom Index. (2022). <https://rsf.org/en/index?year=2022>

¹⁷ Freedom House, *Freedom in the World: Jordan*. (2021). <https://freedomhouse.org/country/jordan/freedom-world/2021>

¹⁸ Phenix Center for Economic and Informatics Studies. CPED-Report-on-Civic-Space-in-Jordan-Before-and-After-COVID (2021).

Additionally, despite the letters of the law, the widespread practice is that governors give or deny permissions. If the governor denies permission, the only way to appeal that decision is before the administrative court.¹⁹ There is no expedited process for challenging the decision. Since the administrative court procedures are time-consuming and the decision will probably be issued months following the planned date of the public gathering, there have never been any attempts to challenge such decisions in court. In case the organizers ignore the rejection by the governor, the security forces might prevent the public gathering, at times even forcefully.

One such example has been documented by the NCHR. During the Teachers' Syndicate protests in 2019, the governor of Amman refused to allow protesters to convene their demonstrations at the location chosen, and the teachers decided to ignore the decision of the governor. The gendarme and public security forces closed all streets, which effectively resulted in closing the capital that day due to unprecedented restrictions and traffic. The security forces ended the protest forcefully, and there were arrests. The government later issued an apology for the way the protests were handled.

This shows that governors' orders have been used to stop civil society from convening workshops or events. Civil society has also documented practices where governors demand information and documentation beyond their legal authorization for mere consideration of the request. Such inquiries pertain to names of all participants, copies of IDs of non-Jordanian participants, and even correspondence with government agencies regarding the event prior to granting permissions.

Non-Profit organizations continue to seek permission from Jordan's Interior Ministry to host public gatherings and Jordanian law makes no provision for spontaneous demonstrations. Furthermore, the protection of the right to freedom of assembly that the constitution guarantees extends only to Jordanian citizens.

As in other countries, the COVID-19 pandemic has proven to be a challenge to fundamental freedoms and the rule of law in Jordan. During the pandemic, stay-at-home orders set in place by the Prime Ministry criminalized the public gathering of 20 or more individuals, which prevented people from gathering legally to protest. The decree of a state of emergency under Article 124 of Jordan's Constitution on account of the coronavirus pandemic validated the activation of emergency provisions of Defense Law 13 of 1992, has allowed state power to expand beyond what would ordinarily be considered constitutional. According to the decree and the Defense Law, the Prime Minister has the authority to suspend certain individual rights, including freedom of movement and expression. As not all restrictions have been lifted at the time of writing, the current state of the right to peaceful assembly in Jordan is challenged and is not practiced fully.

Right to association and restrictions on civil society

Civil Society Organizations (CSOs) in Jordan have reported restrictions on their work as well as delays and blocking to their funding. The Associations Law for the year 2008 requires that CSOs obtain approval for foreign funding from the cabinet. The law stipulates that if the association sends an application to the government to obtain approval, the cabinet has 30 days to respond. If they fail to respond within said period, then the application is legally considered as approved. In theory, this is an improvement over the previous system. However, in reality, the government has created two

¹⁹ Human Rights Watch (2009). "Administrative Detention Undermines the Rule of Law in Jordan." <https://www.hrw.org/report/2009/05/26/guests-governor/administrative-detention-undermines-rule-law-jordan>

processes, through which the application is received and revised by a committee appointed by the cabinet to review the application prior to it being sent to the cabinet. The practice is that the committees will take long periods to review the application, and the actual legal duration decided by the law does not begin until the actual receipt of the application by the cabinet. Therefore, the legal safeguard granted by the law is in fact not being applied.

CSOs representatives interviewed have indicated that the “review” process was originally meant to ensure that funding is not used to support terrorism or to launder money, or to engage in illegal activities. They say that now this process is used to control civil society and to limit their ability to conduct their work independently. Several interviewees stipulated that they believe they are being punished for work which has monitoring or advocacy components.

The government representatives have previously indicated that lack of proper governance within the CSO sector is the main driver behind the tightened oversight. To address this allegation, Hiram (A coalition of civil society organizations) have proposed a governance and transparency module which they presented to the government. They demanded that the government impose governance requirements instead of control mechanisms.

The space for civil society in Jordan is currently rated as ‘obstructed’ by the CIVICUS Monitor, indicating that “civic space is heavily contested by power holders, who impose a combination of legal and practical constraints on the full enjoyment of fundamental rights.”²⁰

Civic space in Jordan does not only include CSOs, but also trade unions. The situation of trade unions in Jordan is also marked by the repression of freedoms of association, expression, assembly, and collective bargaining. Although the Jordanian Constitution solidifies the right to these freedoms and the freedom to join a union, this has been limited in practice through unduly restrictive laws. The number of legally recognized trade unions is restricted to a mere 17 pre-existing trade unions, under mandatory affiliation with the General Federation of Jordanian Trade Unions. No new trade unions have been legally recognized since 1976, as Jordanian law imposes other challenges for the establishment of new trade unions. For instance, the general assemblies of the trade unions are deprived of the right to choose their own by-laws, and there is an absence of mechanisms of internal democratic action on these trade unions. Jordanian labor laws deny the majority of workers in the private sector the right to enter into collective bargaining with employers.²¹

For the past two decades, the 17 trade unions that are recognized by the Government of Jordan have become highly undemocratic. In 2020, 16 out of 17 trade unions did not hold elections as was planned; instead, trade union leadership was nominated. The formally recognized trade unions are controlled by the Government and by the public sector. The leadership of these unions is not composed of workers, but rather of retirees and business owners. Most heads of trade unions in Jordan have remained unchanged for years amid a lack of democratic elections.

In 2019, the Labor Law’s amendments further restricted trade union rights by denying workers who are not members of the 17 formally recognized unions the right to participate in collective bargaining. Additionally, the term “labor dispute” was redefined to mean disputes arising between employers and formally recognized unions, rather than disputes between employers and workers.

²⁰ Civicus, *Monitor: Tracking Civic Space - Ratings*. (2018). <https://monitor.civicus.org/Ratings/>

²¹ The Jordanian Labor Law No. (8) Of 1996.

This has effectively denied hundreds of thousands of workers in Jordan the right to participate in collective bargaining.

Administrative Detention

Administrative Detention is a form of extrajudicial detention that is widely practiced by Jordanian authorities. The Jordanian 1954 Crime Prevention Law gives authority to the governor to detain persons if they are deemed a threat to the community or public order. The law provides this authority in 3 cases:

1. If the suspect has a record of theft and is accustomed to committing crimes.
2. If the suspect being at large is a threat to the community or certain people.
3. If the suspect was arrested in "suspicious circumstances that led the governor to believe he/she is about to commit a crime."

The law mandates that the governor observes the procedures mandated in the criminal procedures law which includes providing the suspect the right to be represented by an attorney. According to the law, the governor does not issue a detention order but rather asks for a guarantee or bail that a person shall not commit any crimes. In case the person cannot or does not provide bail then the governor can detain them for a period up to one year. The common practice is that the governors will set bail at an unreasonably high amount that they know the person they wish to detain cannot pay. The average value for setting bail in these cases is 200,000 JOD. The majority of participants in the lawyers' focus group discussions and key expert interviewees indicated that this practice is in fact unconstitutional as it infringes on the authority of the judiciary and violates the rule of law.

It is very common to use administrative detention against demonstrators or persons wishing to practice their right to peaceful assembly. For instance, in 2021, a teacher and trade union activist carried out a peaceful one-man march in front of the Irbid Teachers' Union Branch towards the headquarters of the Amman Union Branch and was placed under administrative detention.²² It is very common as well to use administrative detention against persons who have been released by prosecutors in criminal cases that are controversial or have offended the public. Exacerbating the issue is the fact that administrative detention is not subject to oversight of the judiciary in most cases. The governor's decisions can be reviewed by the administrative court, but the administrative court is not accessible for most persons due to high fees and mandatory representation by an attorney with an experience of minimum of five years. The court proceedings are challenging, and most cases are repealed due to technicalities in the case files.

Administrative detention forces arbitrary detention on both men and women, depriving them of their liberty and right to security under Article 9.1 of the International Covenant on Civil and Political Rights. Furthermore, administrative detention creates discriminatory practices that target women. Female administrative detainees represented 65 percent of all female inmates in Jordan in 2017.²³ Consider the case of one anonymous woman, represented by the Justice Center for Legal Aid (JCLA), who was charged with a crime in 1987 and sentenced to seven years in jail. After completing her

²² Jordan Labor Watch, *Teacher and Unionist Rams Al-Batran Arbitrarily Held Under Administrative Detention*. (2021). <https://labor-watch.net/en/read-news/152353>

²³ Thompson, Rosie-Lyse, *Jordanian Women Imprisoned in Name of Family Honor*. Thomson Reuters Foundation. (2017). www.reuters.com/article/us-jordan-women-prison/jordanian-women-imprisoned-in-name-of-family-honor-idUSKCN1AW0IO

sentence in 1994, she was held in administrative detention “for her own protection” for an additional 19 years until a JCLA-appointed lawyer was able to get her released. She spent the last four years of her life alone, living in poverty and in fear, until she died of cancer in February 2019.²⁴

Access to Civil Justice

The WJP ROL index examines this factor through the following subfactors:

- 7.1 People can access and afford civil justice.
- 7.2 Civil justice is free of discrimination.
- 7.3 Civil justice is free of corruption.
- 7.4 Civil justice is free of improper government influence.
- 7.5 Civil justice is not subject to unreasonable delay.
- 7.6 Civil justice is effectively enforced.
- 7.7 Alternative Dispute and Resolution Mechanisms are accessible, impartial, and effective.

Those subfactors were used to guide the questions in the interviews or the focus groups, but they were not followed strictly as the paper aims to provide insight into the realities faced by practitioners more than to reexamine the same factors and validate them. Participants in the groups in general agreed with the overall direction that was indicated in the WJP report. They agreed that accessibility, delay and enforcement were the major challenges faced in the Jordanian system.

Accessibility of the Justice System

The justice system is not equally accessible due to the high court fees. Litigants have to pay court fees, power of attorney fees, stamps with significant value for producing evidence in addition to Experts' fees. Fee waivers exist by law, yet their reach is limited, as the requirements to be eligible are complex and, in most cases, the litigants must pay the fees before the execution of the case is completed.

Obligatory Representation by lawyers

Jordanian Law mandates obligatory representation by lawyers in all civil cases valued at 1,000 JD and above, which means that people who cannot afford lawyers and do not have access to legal aid services are denied justice. This requirement is a major impediment stopping the poor from accessing justice.

Lack of availability of Legal Aid in Civil Cases

Jordan's national legal aid system that is managed by the Ministry of Justice does not cover legal aid provision in civil cases. The main legal aid provider in civil cases is supposed to be the Jordan Bar

²⁴ Khaberni.org, *Jordanian Woman Under Administrative Detention for Her Own Protection Since 1994*.
<https://www.khaberni.com/news/134866?fbclid=IwAR0Fp2h35zBaNFoy7Pk2yKE0Y75IEilzyBuJKUKpsFFG76XRd5syyonpTgY>

Association (JBA). The JBA system, however, is not well developed, and has not issued a legal aid bylaw. Their eligibility criteria are not clear, and the overall quality of services is questionable. Civil Society Organizations do provide legal aid services, but mostly in labor, documentation and family cases. While they are quite effective and have quality and oversight systems, they do not provide services in the vast majority of cases.

Case Delay

Delay of cases in the Jordanian courts was frequently named by experts within the FGDs and KIs as a problem which is consistent with the WJP Rule of Law index for this sub-factor. It is customary to have one hearing every two weeks, and the average case ordinarily takes one year.

The law stipulates that certain cases, such as labor cases, are considered “expedited cases”, yet lawyers and practitioners stated that it is quite common for cases to take much more than the limits stated by the law.

Experts interviewed also said that the average duration of cases does not consider the stages of appeals and cassation or the execution of the cases. They said that execution can take years. Experts indicated that the Jordanian Ministry of Justice piloted a small claims track for cases valued by less than 3,000 JODs, but the pilot was neither completed nor rolled out due to legislative and institutional challenges.

Execution of Court Decisions

Execution of court decisions in Jordan requires that the litigant wishing to execute the court judgment register an execution case which is independent from the original case. The execution case requires the payment of fees, and the law mandates representation by a lawyer if the case value is over 3,000 JODs. Execution has long delays, and judges tend to rely heavily on debt imprisonment as a means to force the defendant to settle the value that is due. The Jordanian Execution law allows for the debtor to be imprisoned with an order of an Execution Judge if the debt is not settled. According to a 2020 study by Jordan’s Economic and Social Council, the number of individuals wanted for failure to repay debt rose tenfold in only four years, from 4,352 in 2015 to 43,624 in 2019.²⁵

Under the law, imprisonment does not end the debt, and a creditor can request imprisonment of a debtor if the debt goes unpaid in the following year.

In 2022, the Execution Law was amended, and it has improved the situation for people who are in debt. Prison time has been restricted and cases where imprisonment can be ordered due to debt have been narrowed. It is currently not permitted if the debt value is less than 5,000 JOD and if the debtor has a serious illness, among other reforms. The law, however, still violates the international human rights criteria which prohibit imprisonment of persons who cannot meet their civil obligations.

²⁵ Human Rights Watch, *We Lost Everything: Debt Imprisonment in Jordan*. (2021).
<https://www.hrw.org/report/2021/03/16/we-lost-everything/debt-imprisonment-jordan>

Effective Criminal Justice System

The ROL index examines effectiveness of the criminal justice system through the following subfactors.

- 8.1 Criminal investigation system is effective.
- 8.2 Criminal adjudication system is timely and effective.
- 8.3 Correctional system is effective in reducing criminal behavior.
- 8.4 Criminal system is impartial.
- 8.5 Criminal system is free of corruption.
- 8.6 Criminal system is free of improper government influence.
- 8.7 Due process of the law and rights of the accused.

Those subfactors were used to guide the questions in the interviews or the focus groups, but they were not followed strictly as the paper aims to provide insight into the realities faced by practitioners more than to reexamine the same factors and validate them. Participants in the groups in general agreed with the overall direction that was indicated in the WJP report, yet discussed the practices and challenges of the criminal justice system independent of it. The index ranking was only used as an entry point for discussions.

The following areas were discussed and evaluated by the study participants

Effectiveness of criminal investigations

Criminal investigations are effective; however, it might be argued that their effectiveness is not consistent. It is reliant on the type of case, so grave criminal cases that are a danger to the community are usually handled with professionalism and a high level of care. Murder cases are usually solved effectively and rapidly.

Yet it is common for the police to rely on defendants' confessions. Mistreatment, threats and even torture are not an uncommon practice in police stations, particularly in drugs and narcotics cases. Focus group participants indicated that participants believed that police resort to force to solve crimes, or sometimes as a means to punish the defendant that they perceive as a criminal.

Experts interviewed acknowledged that Jordan has good forensic medicine and criminal investigations labs. This reflects positively on Jordan's capacity for rule of law. The Public Security Directorate (PSD) does invest in training their officers and members of the police force on human rights principles and the right of the detainees to decrease unlawful practices. However, experts interviewed for the study also agreed that mistreatment of detainees within the Jordanian criminal justice system "is not uncommon."

Rights of the Detained Persons

Rights of the accused are still lacking in the Jordanian legislations. A person who is detained does not have the right by the law to be informed of the accusations against them. The accused are not

informed of their right to remain silent, and in many cases are not permitted to have access to a lawyer even if they ask.

Physical and mental mistreatment are common; while it is not common for police to inflict severe physical harm, mistreatment and mental bullying are widespread. The NCHR considers mistreatment at pretrial a not systematic, yet frequent practice.²⁶

Jordan's law lacks a definition of torture. In practice, the Jordanian legal system treats acts of torture as misdemeanor crimes in cases where it does not lead to grave harm or permanent damage. The Penal Code stipulates in Article (208) the prohibition of torture with the intent of obtaining a confession or obtaining information about a crime. The NCHR reports a high level of impunity as police officers accused of torture and/or mistreatment are mostly accused of simple assault crimes or misconduct rather than crime of torture.

Pre-Trial Detention

Pre-trial Detention was identified as a serious problematic practice that infringes on human rights. The problem is in practice not the letters of the law. The criminal procedures law limits the authority of the police and limits police incarceration to a maximum of 24 hours. The same law regulates the authority of the prosecutors and sets limits on maximum periods of detention based on the type of case and the maximum penalty allowed by the law.

In 2017, the law was amended to stipulate clearly that detention was an exceptional course of action, and to identify factors that govern the detention orders. According to the law, prosecutors can issue detention orders in cases where the accused is a flight risk, the defendant's actions may construe a danger to the public and must be controlled to protect the community, or in case that the accused has the power to tamper with evidence, to threaten / influence witnesses or to impact the course of investigation.

The experts and participants in focus groups agreed that this amendment was not being truly implemented. Detention decisions were being made based on the severity of the crime and whether the victim has waived their right to compensation or given permission to release the defendant on bail. It was agreed that detention was in fact more controlled due to limitations on maximum periods of detention, yet the decision-making process of the prosecutors was not transparent. The practice leaves a lot of room for selectivity, nepotism, and government influence. They also stated that in fact pretrial detention was being used as a penalty to the accused.

Judiciary is free from influence

Participants in the study highlighted challenges in the Judicial Independence Law. The main challenge described is the unrestricted power of the judicial council, and the sanctions that judges may face, namely early retirement, being moved to other positions or having their career path changed) with no checks or oversight by any independent authority. While judges may not face

²⁶ The Jordanian National Center for Human Rights (2020). "The seventeenth annual report on the situation of human rights in the Hashemite Kingdom of Jordan." <https://bit.ly/3YxI8h5>.

intervention in their work in most cases, there are, however, certain pressures in highly politicized cases or in cases of public interest.

Study participants also brought up the issue of business and private sector influence on policies. Various examples were discussed, and many referenced pressure groups and lobbies using their economic and political weight to influence not only legislation but also overall judicial policies and practices.

Participants indicated that they agreed with the Index's finding that judges are more likely to be influenced by the government - including security agencies - than they are influenced by monetary and financial corruption. The case of the teachers' syndicate members detention, and the related attorney general decision to suspend the work of the board of the syndicate for two years, was given as an example. Participants further indicated that it is highly likely that prosecutors will issue detention orders in political cases against activists and journalists.

Rehabilitation and Recidivism

Correctional and rehabilitation facilities in Jordan seriously lack the minimum facilities to tackle the rehabilitation and reintegration of detainees and inmates into Jordanian society. The NCHR issued a report in 2020 analyzing the deficiencies in the practices and legislation of rehabilitation. In the report the NCHR highlighted the deficiencies in the various Correctional and Rehabilitation Centers in Jordan, which include (amongst others) lack of effective education programs, poor access to healthcare including psychological care, prolonged detentions, insufficient natural light and ventilation in the centers, overcrowding, understaffing and lack of medical supplies and safe transportation vehicles. Inmates have complained of being placed in solitary confinement and the difficult conditions of their detentions, including both psychological and physical, which is the result of insufficient legislation regarding the standards for full or partial confinement and the correct procedure. Detainees and inmates of these centers lack basic human rights and treatment such as access to safe and clean housing, prolonged and unjustified detentions and searches and seizures, poor segregation of patients etc.

In addition, recidivism is high in Jordan. A study of the one million crimes committed between 2013 and 2017, conducted by the Ministry of Justice, showed that return to crime often coincides with the lack of job opportunities in the labor market, the availability of free living in these centers, continued bad social relationships, society's lack of acceptance of rehabilitated offenders and an absence of social deterrents. Over half of the inmates in the correctional and rehabilitation centers expressed that rehabilitation as an alternative to imprisonment would reduce recidivism. It is clear, however, from both the NCHR study and the Ministry of Justice study that recidivism and access to sufficient rehabilitation are deeply intertwined, where the lack of a clear legal framework delineating proper procedure and affording inmates access to basic human rights, treatment, and educational programs continue to be roadblocks to reintegration and reduced recidivism.

Non-Discrimination Based on Gender

The most recent constitutional amendments in 2022 have codified that Jordanian women have equal rights to Jordanian men. From an international law perspective, Jordan ratified CEDAW in 1992, but maintains reservations to Article 9(2) and Article 16(1)(c), (d), and (g). Jordan lifted its reservation to Article 15(4) in 2009, which relates to women's freedom of mobility and freedom to choose their own residence. In 2007, the publication of CEDAW in the official Gazette codified it into domestic law and had the effect of giving it the force of law.²⁷

Women face the same structural challenges faced by men while interacting with the justice system, yet their challenges are compounded due to economic and social factors, in addition to the culture of patriarchy which is dominant in the justice institution. Jordanian institutions of justice and law enforcement are not adequately educated or trained on gender concerns. Despite the fact that women have been appointed to positions in the judiciary since 1995, just 19 percent of judges and 27 percent of all practicing attorneys are female. The first female judge of the Court of Cassation was appointed in 2018.

Women have less access to and authority over economic means, restricting their ability to access the justice system. Even if they can access and register cases in courts, they are less likely to do so effectively as they are less likely to afford an attorney and have to self-represent.

Lack of legal awareness among women is a big challenge which impedes their ability to access justice or demand their rights. Women are more affected by case delay, and it is likely to put pressure on them to relinquish their rights or to accept unfair settlements. Justice structures are not women friendly; courts do not accommodate for child-accompanied parents; sexual harassment is common in courts as well as the public sphere.

Sharia courts are not inclined to side with women, even in their facilities or court structures. There are no women judges in the Sharia courts, and no female court staff. This increases the chances that women will avoid navigating avenues of official justice. As women have less access to financial and economic means – for example, Jordanian women participation in the workforce is one of the lowest in the world²⁸ – they are heavily impacted by structural challenges like nepotism and corruption and court delays.

Women activists have reported that authorities have resorted to use of social pressures and sexual insinuations to deter them from their activism. Some of them had the authorities inform their families of potential detention orders against them to leverage the social stigma and to instigate families to put pressure on the female activists. Some have reported being physically and mentally abused due to this interaction with the authorities. Women are thus disproportionately represented among those in need of legal aid. 70 percent of JCLA's clients are women. Although JCLA and other CSOs offer legal aid services to women, the services offered remain insufficient to meet demand.

²⁷ UNESCWA (2018). "Jordan: Gender Justice and the Law." <https://www.unescwa.org/sites/default/files/inline-files/jordan-adjusted.pdf>

²⁸ MEI (2020). "Women's Labor Force Participation and COVID-19: Jordan." <https://www.mei.edu/publications/womens-labor-force-participation-and-covid-19-jordan>

Conclusion

Rule of Law must be a key priority area of reform in Jordan, as it is a vital element in any recipe for wider societal reform. Jordan is experiencing changes and multiple efforts for reform in different fields, and rule of law is the prerequisite for any progress that might be achieved.

This paper concludes that Jordan's current legislations and policies construct a framework that meets the minimum theoretical requirement of legislations and institutions to uphold rule of law, yet such policies, legislations and institutions are designed to uphold rule by law more than rule of law. In a system of rule by law, legal interpretations will be applied in favor of the government and authority, not in favor of those who are vulnerable. In a system of rule of law, however, everyone is equal before the law and no one is above the law. This is a key obstacle preventing Jordan from achieving greater political reform.

Challenges facing rule of law in Jordan are multi-faceted, and usually they are interlinked, one area of weakness will lead to further violations and fragilities in the other areas. Rule of law is the end goal and the means at the same time.

This paper summarizes the cycles of weakness in rule of law in Jordan as follows:

1. Vagueness of legislations and policies which leaves room for arbitrary interpretation and implementation of such laws. It is very common for fundamental rights to be violated by the authorities by using their authorities underlined in the pertinent laws and legislations.
2. Selective upholding of laws and regulations. Different legislative requirements and authorities are implemented in a selective manner. It is very common that law be enforced against protestors or people criticizing the public policies while similar acts are not criminalized or referred to trial if committed by members of the public office or individuals who are considered as pro government.
3. Pretrial Detention and Administrative Detention continue to be used as a penalty and are done so in an arbitrary manner, to influence the public and impose self-censorship among the public, media, and human rights activists.
4. Impunity for public officials violating the law is a very common pattern.

Individuals continue to respect the judiciary, the police and security agencies. There is still hope that reforms, if undertaken now, can stop the degeneration in confidence of rule of law and the justice system in general, as perceived by participants in the stakeholders' workshop. Reforms, however, cannot be limited to the proclamation of goodwill and generic strategies. There needs to be structural change in how such rights are treated and protected. This will require change in governmental practices, and such change rarely is driven without pressure from the community, civil society or by directive of the judicial or legislative authorities. This paper sets forth recommendations that could serve to improve the perception and reality for protection of basic freedoms, improvement of judicial oversight and enhance rule of law in Jordan.

Recommendations

To cement rule of law in Jordan, it is key for all reform strategies and policies to address the areas of weakness in the Jordanian systems; Laws need to be more precise and not leave room for vague interpretations. Accountability for government officials who are violating the law must be implemented without delay, and Access to Justice needs to be enhanced, particularly access to the administrative court. For this to happen, obstacles must be removed.

It is not a simple task to categorize the recommendations as the sections of the paper, as all rights and factors are interrelated and intersectional. It cannot be envisioned that one area of recommended reforms can be achieved without improvement in the other. For example, fundamental rights cannot be protected without the judicial direction and oversight to restrict arbitrary practices and policies, yet this would not be possible if judicial independence is not safeguarded.

Short and Mid- Term Recommendations

For the Judiciary

Expedited Process for case review in human rights violations cases

- Create an expedited judicial track to challenge governors' decisions to deny permission to hold public meetings, and administrative detention orders. And ensure that the court fees for such tracks are set at the minimum rate. This does not require legislative amendment, rather it needs a decision by the Judicial Council, for setting up the procedures and appointing judges.
- The Administrative court must review its procedures to engage with other stakeholders on proposing new procedural law for the administrative court cases.

Judicial Training

- Train Judges and prosecutors on international standards and their role in upholding and protecting fundamental rights, develop the training curriculum and institutionalize it through the Judicial Institute.
- Train judges and prosecutors on the guidelines that were developed previously on pretrial detention and use for alternatives to pretrial detention including the use of the electronic bracelets and technology to limit pretrial detention.
- Train Appeal judges and Judicial Inspectors on review of cases and complaints relevant to extended or unnecessary pretrial detention.
- Hold dialogue sessions and roundtables with judges and prosecutors to change attitudes and understanding of detention.
- Train prosecutors on criteria of issuance of gag orders, and for the application to be systematic and not selective.
- Train judges on mediation in civil cases to avoid unnecessary delays.

Judicial Practices

Oversight on arbitrary detention and practices

- Enforce review on other judicial and prosecutors' orders such as gag orders.
- Enforce the judicial inspection to ensure that pretrial detention is limited and not being abused.
- Hold governors accountable for illegal decisions to stop public assembly both administratively and criminally in both judicial and administrative tracks.
- Bring criminal charges against governors or administrative officials using their authority to restrain a person illegally.

Civil Justice

- Implement fees deferrals as articulated in the civil procedures code and ensure that litigants who postpone fees payments in the courts are not obliged to pay prior to the final stage in the case.

For the Executive Authority

To control administrative detention

- The Ministry of Interior should train governors on the safeguards that are stipulated in the current Crime Prevention Law and develop Procedures Manuals to regulate administrative detention orders. Internal inspection and complaints mechanisms should be enhanced to ensure that governors are not abusing or exceeding the authorities granted to them in the law.
- To enhance access to civil justice, the Ministry of Justice should continue the Small Claims Program in the Jordanian Courts, and conduct the needed legislative amendments to make self-representation possible in those cases.
- To limit illegal practices and to enhance fair trial standards, Police should allow access to lawyers at police stations without unnecessary delays and constraints. The Human Rights and Transparency Unit at the PSD must exercise oversight and improve its complaints management from lawyers when they are denied access to their clients in police stations and the Drugs and Narcotics Department.
- Training Programs targeting Police Officers on rights of detainees and fair trial standards must continue.
- Legal Aid: The Ministry of Justice must work on enhancing the current legal aid system by improving quality oversight and by ensuring that the system is more accessible to the defendants by ensuring that court staff and prosecutors inform the accused of the availability of the services.

To protect right to Association

- The government must end practices restricting civil society organizations by interfering in their missions and activities. The government must revise its policy, refrain from requiring permission of governors to allow for gatherings and activities, and limit the requirements to legal ones. In order to do so, the government must develop a policy and circulate to all governors with guidance on what is the definition of public gathering requiring notice, and to create an expedited process to communicate with the civil society in case there is a conflict.

- The Ministerial cabinet must revise the Foreign funding approval process to ensure its alignment with the laws and constitution and prevent that funding approvals could be used as an illegal tool to control civil society. All procedures must be unified and automated, staff involved must be trained. Additionally, the government must collaborate with civil society to identify areas of funding priorities that are announced and are not left to the whims and opinions of staff at different line ministries.

For Civil Society Organizations

- Civil society organizations must use strategic litigation to challenge practices of the executive authority construing a violation of human rights.
- Conduct studies to document accessibility of the administrative court to persons seeking retribution and correction of government and public administration decisions and practices.
- Invest in advocacy programming to enhance laws and practices including advocacy through international avenues and human rights mechanisms.
- Collaborate with the government and the judiciary to develop and implement training programs relevant to access to justice, enhancing freedoms and fair trial guarantees.
- Continue to implement awareness programs to educate the public about rule of law and fundamental rights to encourage engagement in civic space and better understanding of constitutional rights and systems.
- Continue to monitor the Rule of Law Index and develop more papers examining other factors and areas of focus, and to generate interest among the decision makers to follow up and improve the ranking of Jordan by improving the realities.

Long Term Recommendations

Legislative Amendments

Enhancing Fundamental Rights

- Amend the Anti-Terrorism law, ensure definitions are clear and remove vagueness of the law.
- Repeal the Crime Prevention Law or at least amend it and create a link between governors and prosecutors to ensure that all detention orders are restrictively issued by the judicial authorities only.
- Amend the Cybercrime Law to differentiate between libel and criticism of public officials and to review penalties and restrict pretrial detention in public speech related cases.
- Legislate restitution and compensation for victims of human rights violations. Without restitutions, the cost for such violations will continue to be minimal and therefore, less likely to be documented, and accountability measures less likely to be undertaken.

Independence of the Judiciary

- Amend the Judicial Independence Law to safeguard judges from the threat of early retirement, and punitive transfer.
- Amend the law to create independent venues to review judicial council disciplinary decisions over judges.

Fair Trial Standards

- Amend the Criminal Procedure Law to mandate informing the arrested person of their rights including the right to remain silent.
- Amend the Criminal Procedure Law to mandate the right to representation by lawyers starting from the moment of arrest and to mandate that detained persons be informed of their rights.

Legal Aid

- Amend the law to expand the scope of state funded legal aid. Legislate an independent law for legal aid that regulates legal aid services in civil and family cases and offers services to victims and witnesses as well as defendants.

Institutions

- Establish an Independent Commission for Civil Society that is mandated in the regulation and oversight and enhancement of the role and operation of civil society. This entity should have a clear mandate which is to enhance the independence, governance, and impact of civil society. It should have an independent board where civil society organizations are represented and can influence the policies and practices governing their work.
- Establish an independent Legal Aid Commission to have one unified body that is regulating legal aid services and ensuring that no one is denied justice.

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About Friedrich-Ebert-Stiftung

The Friedrich-Ebert-Stiftung is a non-profit foundation committed to advancing social democratic values. It is the oldest German political foundation and was established in 1925 as the political legacy of the first democratically-elected German president, Friedrich Ebert.

The Friedrich-Ebert-Stiftung - Jordan aims to strengthen and support democracy and political participation and to further progress towards social justice and gender equality, as well as environmental sustainability, peace, and security in the region.

About the Justice Center for Legal Aid

Established in 2008, JCLA is a Jordanian non-profit and non-governmental organization registered with the Jordanian Societies Registry.

Since 2008, JCLA has grown from one legal aid clinic in Amman to become the largest legal aid provider in Jordan, providing legal aid services at 21 clinics located across all 12 governorates. Each month, JCLA assists approximately 375 beneficiaries through legal consultations, provides legal representation to approximately 150 beneficiaries across 200 cases, and reaches approximately 3600 vulnerable people through its awareness sessions.

