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RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME

الشبكة الأوروبية - المتوسطية لحقوق الإنسان

JORDAN

The Independance and Impartiality of the Judiciary



The Independence and Impartiality of the Judiciary - Jordan

A report by

Attorneys

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EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK

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INTRODUCTION

A. The Euro-Mediterranean Human Rights Network and its working groups

The Euro-Mediterranean Human Rights Network (EMHRN) was created in 1997 by a number of human rights organizations, from both north and south of the Mediterranean, in response to the establishment of the Euro-Mediterranean Partnership. Based in Copenhagen with branch offices in Brussels, Rabat and Amman, the EMHRN currently comprises approximately 80 member organizations and individual members from more than 30 countries. The EMHRN's mission is to promote and strengthen human rights and democratic reform within the framework of the Barcelona process and EU-Arab cooperation. The Network seeks to develop and strengthen partnerships between NGOs in the EuroMed region by facilitating the development of human rights mechanisms and disseminating the values of human rights.

To achieve its goals, the Network has established six working groups in order to address specific human rights issues in the EuroMed region: Justice; Freedom of Association; Women's Rights and Gender; Migrants, Refugees and Asylum Seekers; Palestine, Israel and the Palestinians; Human Rights Education and Youth. Each of the working groups comprises the member organisations most active in the field concerned, chosen following a call for participation and a selection process based on a series of qualitative criteria. The task of each working group is to design and implement specific policies and programmes, to advise the EMHRN executive bodies within their respective fields of expertise and to ensure the effective delivery of the EMHRN's mandate and agenda.¹

B. The EMHRN's Working Group on Justice

The EMHRN's Working Group on Justice was first created in 2002 and re-established in 2006 following a call for participation to all EMHRN members². In order to gain an overview of the situation of justice in the Euro-Mediterranean region, in 2003 the working group entrusted two legal experts³ with the task of researching the main problems and challenges faced by the judiciaries of the region. This process led to the publication in 2004 of a comprehensive report entitled *Justice in the South and East of the Mediterranean Region*.⁴

In 2006, building on the conclusions and recommendations of this regional report, the working group launched a regional project focusing specifically on the issue of the

¹ Detailed information on the EMHRN and its Working Groups is available at www.euromedrights.net.

² The EMHRN Justice Working Group comprises Wadih al-Asmar (Solida, Lebanon); Raed Al-Athamneh (Amman Centre for Human Rights Studies, Jordan); Dolores Balibrea Perez (Federacion de asociaciones de defensa y promocion de los derechos humanos/Catalan Human Rights Institute, Spain); Houcine Bardi (Comité pour le respect des libertés et droits de l'Homme, Tunisia); Noureddine Benissad (Ligue algérienne de défense des droits de l'Homme, Algeria); Khawla Dunya (Damascus Centre for Theoretical and Civil Rights Studies, Syria); Karim El Chazli (Cairo Institute for Human Rights Studies, Egypt); Mohammed El Haskouri (Association marocaine des droits humains, Morocco); Abdellah El Ouallad (Organisation marocaine des droits de l'Homme, Morocco); Naomih Hughes (Bar Human Rights Committee of England and Wales, UK); Mohammed Najjar (Palestinian Human Rights Organisation, Lebanon); Mokhtar Trifi (Ligue tunisienne de défense des droits de l'Homme, Tunisia); Michel Tubiana (French League for Human Rights, France) as well as following individual members: George Assaf (Lebanon); Madjid Benchikh (Algeria/France); Anna Bozzo (Italy); Jon Rud (Norway) and Caroline Stainier (Belgium). The details are available at www.euromedrights.net under 'Themes/Justice'.

³ Mohammed Mouaqit and Siân Lewis-Anthony.

⁴ Available in English, French and Arabic at www.euromedrights.net under 'Publications'.

independence and impartiality of the judiciaries in the EuroMed region. In its first phase (2006-07), this project focused on four of the region's countries: Morocco, Tunisia, Lebanon and Jordan. In each of these countries, the EMHRN organised a two-day seminar to assess and discuss the main problems affecting the independence and impartiality of the judiciary as well as the challenges to come and the reforms which have been – or still need to be – undertaken in order to strengthen the independence of the judiciary.

The seminar on the Jordanian judiciary took place in Amman on 13-14 January 2007. It gathered a large number of judges, prosecutors, representatives of the Jordanian Ministry of Justice and other judicial bodies, lawyers, local and international NGOs, international institutions and representatives of the European Union as well as a number of member states⁵. In the aftermath of the seminar, the Working Group on Justice asked two Jordanian lawyers, Zuha Al Majali and Omar Qaddoura, to draft a national report on the independence and impartiality of the Jordanian judiciary, taking into account the conclusions of the seminar.⁶

C. Report on the Independence and Impartiality of the Jordanian Judiciary

The report on the independence and impartiality of the Jordanian judiciary aims to describe the main features of the Jordanian judiciary, with particular focus on the problems and circumstances affecting its independence and impartiality. The examples mentioned in the report illustrate the serious consequences that a lack of independence and impartiality within the justice system can have on the rights of citizens. Following a description of the reforms that have already been made, the report includes a series of detailed recommendations concerning the constitutional, legal and administrative changes that are required in order to achieve a level of judicial independence in accordance with international standards. The recommendations are primarily directed towards the Jordanian authorities who are requested to demonstrate the political will that is required in order to achieve real and substantial progress in this area. Other recommendations are directed towards external actors and donors, including the European Union and civil society.

It is hoped that this report will be a useful resource, not only for members of the Jordanian judiciary, but also for Jordanian civilian organizations which wish to engage actively in the process of promotion and strengthening of the judiciary's independence. These organizations have been involved in the drafting of this report and it is expected that they will continue to actively promote the reform process.⁷

During the drafting of this report, the authors - both experienced lawyers working in connection with local Jordanian NGOs - have taken into consideration the content and conclusions of the discussions held during the January 2007 EMHRN seminar in Amman and the existing reports and literature in the field. The Amman Center for Human Rights Studies,

⁵ The minutes of the seminar (in Arabic, French and English) as well as the programme and the list of participants are available at www.euromedrights.net.

⁶ A similar project has been undertaken in Tunisia and Morocco. The national reports on these two countries are also available at www.euromedrights.net. The report on Lebanon will be published in the course of 2008. A similar report is expected to be drafted in Egypt, and possibly in Algeria, in the period 2008-09.

⁷ Following the publication of this report, the EMHRN intends to pursue its work at national level. A follow-up seminar will be organised in Jordan during the course of 2008-09 during which participants – members of the judiciary, lawyers and NGOs – will discuss the content and implementation of the conclusions and recommendations of the report.

Jordanian member of the EMHRN Working Group on Justice, has been closely involved with the work of the authors.

The report was initially drafted in Arabic, and subsequently translated into English and French. The three versions are available on the EMHRN website.⁸

⁸ www.euromedrights.net.

1. THE LEGAL FRAMEWORK AND STRUCTURE OF THE JORDANIAN JUDICIARY

The independence of the judiciary plays a major role in providing justice within society and protecting human rights. The lack of an independent judicial system jeopardises the rights and freedoms of citizens and renders them vulnerable to violations by the executive or legislative authorities or by those in power. Meanwhile, an independent and impartial judiciary curbs arbitrariness, ensures non-interference and upholds the rights of citizens. The mission of the judiciary cannot be realised without impartial, honest, trustworthy and competent judges who are able to issue verdicts in accordance with the law. They must do so with complete impartiality and under no influence, whether material or moral, from any individual or institution regardless of the end sought by this influence, be it political, social, partisan, occupational, economic or otherwise. An independent judge guarantees the establishment of justice and equality in society, distances the judiciary from suspicion, and protects the course of justice in society.

Numerous international instruments on human rights guarantee the right to take legal action, in particular Article 8 of the *United Nations Universal Declaration of Human Rights* of 1948, which states: "Everyone has the right to an effective remedy from the relevant national tribunals for acts violating the fundamental rights granted him by the Constitution or by law". Article 10 of the same declaration stipulates: "Everyone is entitled, in full equality, to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him", while Article 11 stresses the importance of holding public trials that offer the necessary safeguards for defending suspects charged with penal offences.⁹

According to international covenants and domestic laws, ensuring the right to litigation and the independence of the judiciary requires that the following points be met:

1. Providing easy access to courts, and the establishment of courts in all regions of the state.
2. Achieving equality and non-discrimination among all individuals before the law.
3. Appointing qualified, well-respected and experienced judges based on the principles of integrity, transparency and non-discrimination.
4. Entrenching the principle of separation of powers, abstaining from interfering in judicial affairs, providing the necessary assistance to strengthen the independence of the judiciary, and protecting the jurisdiction of the courts.
5. Ensuring financial independence for the judiciary, represented by an independent budget administered by the judicial authority.
6. Granting judges immunity in the exercise of their judicial duties, and against discharge from office without legal basis.
7. Setting up fair trials in accordance with international standards and ensuring that no violations of human rights are committed.
8. Ensuring the right of individuals to appeal to a higher judicial body.
9. Compensating individuals for damages that they may have suffered as a result of an error or abuse of the law.
10. Implementing and respecting final judicial decisions. Such decisions must not be disrupted or delayed under penalty of criminal and civil law.

⁹ Articles 14 and 18 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 reiterate the same provisions.

A. International standards regarding the independence of the judiciary and the right to a fair trial

Despite the lack of binding international instruments specifically dedicated to the independence of the judiciary and the right to a fair trial, there are several standards and principles relating these two issues contained in international human rights instruments:

1. Binding international instruments

- Universal Declaration of Human Rights¹⁰
- International Covenant on Civil and Political Rights¹¹
- Convention on the Rights of the Child¹²
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹³
- International Convention on the Elimination of All forms of Racial Discrimination (ICERD)¹⁴
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁵

Jordan has ratified all the conventions mentioned above, and is therefore bound to respect the rights and obligations contained therein, respect the independence of the judiciary, and ensure a fair trial, without fear of any form of discrimination, for all persons appearing before Jordanian courts. In accordance with Jordanian constitutional procedures, international conventions and treaties must first be submitted to the National Assembly in order to be enshrined in law and then forwarded to the King for ratification. Upon the completion of these procedures the new laws are then published in the Official Gazette.¹⁶ With the sole exception of the *Convention on the Rights of the Child*, which has successfully passed through the above procedures,¹⁷ the remainder of the aforementioned conventions remain, to date, legally non-enforced. Nonetheless, Jordan claims, in international forums and in meetings with representatives of international bodies, that it applies international conventions, except in cases that pose a threat to public security.¹⁸

| Treaties | Signature | Ratification/ Accession | Reservation |
|-----------------|------------------|------------------------------------|--------------------|
|-----------------|------------------|------------------------------------|--------------------|

¹⁰ Articles 8-11 of the UDHR, adopted and proclaimed by the UN General Assembly Resolution 217 A (III) of 10 December 1948. In spite of the fact that the UDHR is not a treaty, it has a legal value amounting to a binding degree given the number of times it was cited by, and mentioned in, the majority of human rights conventions.

¹¹ Article 14 of the ICCPR. Adopted and opened for signature, ratification and accession by UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976 in accordance with Article 49.

¹² Adopted and opened for signature, ratification and accession by UN General Assembly resolution 44/25 of 20 November 1989, entered into force on 2 September 1990 in accordance with Article 49.

¹³ Adopted and opened for signature, ratification and accession by UN General Assembly Resolution 34/180 of 18 December 1979, entered into force on 3 September 1981 in accordance with Article 27(1).

¹⁴ Adopted and opened for signature and ratification by UN General Assembly Resolution 2106 D (XX) of 21 December 1965.

¹⁵ Adopted and opened for signature, ratification and accession by UN General Assembly Resolution 39/46 of 10 December 1984, entered into force 26 June 1987 in accordance with Article 27 (1).

¹⁶ Article 33/2 of the Jordanian Constitution.

¹⁷ The law endorsing the Convention on the Rights of the Child of 2006, published in the Official Gazette on 16-10-2006 issue No. 4787 P. 3991.

¹⁸ According to the Jordanian government it informed the Committee Against Torture of the Convention against Torture in its preliminary report to the Committee No. cat/c16/add,5, para26.

| | | | |
|--|------------|------------|--|
| International Covenant on Civil and Political Rights | 30.06.1972 | 28.05.1975 | none |
| ICCPR First Optional Protocol (Individual communication) | X | X | |
| ICCPR Second Optional Protocol (Death penalty) | X | X | |
| Convention on the Rights of the Child | 28.08.1990 | 24.05.1991 | Articles 14, 20 and 21 |
| Convention on the Elimination of All Forms of Discrimination against Women | 3.12.1980 | 1.07.1992 | Articles 9/2, 15/4, 16/1 c), d) and g) |
| CEDAW Optional Protocol | X | X | |
| International Convention on the Elimination of All forms of Racial Discrimination | | 30.05.1974 | none |
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | | 13.11.1991 | none |
| CAT Optional Protocol | X | X | |
| International Covenant on Economic, Social and Cultural Rights | 30.07.1972 | 28.05.1975 | none |
| Arab Charter on Human Rights | | 2004 | |

2. Non-binding international instruments

- United Nations Basic Principles on the Independence of the Judiciary, 1985¹⁹
- United Nations Basic Principles on the Role of Lawyers, 1990²⁰
- Guidelines on the Role of Prosecutors, 1990²¹
- Code of Conduct for Law Enforcement Officials, 1990²²
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985²³

3. Non-binding regional instruments

- European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950
- African Charter on Human and People's Rights of 1980
- Arab Charter on Human Rights of 2004 (not yet entered into force)
- American Convention on Human Rights of 1969

The Arab Charter on Human Rights, adopted by the Arab League in 2004,²⁴ accepts

¹⁹ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

²⁰ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

²¹ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

²² Adopted by UN General Assembly resolution 34/169 of 17 December 1979.

²³ Adopted by UN General Assembly resolution 34/40 of 29 November 1985.

²⁴ Adopted by Arab League Council resolution 5427 in May 2004.

internationally recognized human rights standards related to justice and includes, in particular, provisions that require countries to guarantee the right of litigation and equality before the law. Article 9 of the Arab Charter states: "*All persons are equal before the law and everyone within the territory of the state has a guaranteed right to legal remedy*". Jordan was the first Arab state to ratify the Arab Charter on Human Rights. In accordance with its Article 49b, this charter will enter into force on 24 March 2008, two months after the seventh ratification, which took place on 24 January 2008.

4. Declarations and recommendations

In addition to the instruments mentioned above, there are an array of declarations and recommendations issued by international conferences of non-governmental organizations, as well as guidance notes on the independence of the judiciary and fair trials. Examples include the Fair Trials Manual issued by Amnesty International in 1998, and the 2003 manual by the United Nations High Commissioner for Human Rights entitled *Human Rights in the Administration of Justice*, in addition to additional related resolutions and recommendations issued by other international bodies.²⁵

As for the Arab region, the efforts of non-governmental organizations include:

- The Beirut Declaration: Recommendations of the First Arab Conference on Justice, June 1999
- The Cairo Declaration on Judicial Independence, issued by the Second Arab Justice Conference, February 2003.

The above instruments are considered an important reference in defining the legal framework for the independence of the judiciary and fair trials at the international level. In particular, the instruments adopted by the United Nations represent the will of all the members of the general assembly. However, many states, including Jordan, have not met the obligations they committed to upon signing the agreements, nor have they incorporated them into their domestic laws.

B. The internal legal framework

The nature and functioning of the Jordanian judicial system is defined and regulated by several provisions of the Jordanian Constitution as well as a number of specific laws.

1. The Jordanian Constitution of 1952

The Jordanian Constitution has established the general foundation for the independence of the judiciary in the following provisions:

- Article 6/1: "*Jordanians shall be equal before the law. There shall be no discrimination between them with regard to their rights and duties on grounds of race, language or religion.*"
- Article 27: "*Judicial powers shall be exercised by the courts of law in their varying types and degrees. All judgments shall be given in accordance with the law and pronounced in*

²⁵ The Council of Europe, the European Commission for the efficiency of Judicial and Justice, as well as the Council's recommendations on the role of public prosecutors in the European criminal justice system (recommendation No. 19/2000). For further information visit:
http://www.coe.int/t/dg1/legalcooperation/cepej/default_en.asp

the name of the King."

- Article 97: "*Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law.*"
- Articles 99 to 103 regulate the establishment of courts in general.

The Jordanian legislation, by incorporating the above constitutional provisions, concurs with relevant international conventions. Foremost among these is Principle 1 of the Basic Principles on the Independence of the Judiciary, which states: "*The independence of the judiciary shall be guaranteed by the state and enshrined in the Constitution or the law of the country. (...)*".

Overall, the Jordanian Constitution contains a set of provisions that guarantee the right to litigation for all and the independence of the judicial authority and the judges and is thus, technically consistent with international standards in this respect. However, it should be noticed, however, that the Constitution does not guarantee the principle of security of tenure for judges. This major shortage will be mentioned further below in the report.

Constitutional provisions set principles that must not be violated as they give individuals the right to litigation.²⁶ Regular laws then provide a framework upon which citizens can exercise such rights.

2. Law No. 15 of 2001 on Judicial Independence

This law includes explicit provisions dealing with the independence of the judicial authority, including the establishment of mechanisms that ensure the enforcement of such independence, such as setting up the High Judicial Council and granting it the power to oversee the affairs of the judiciary. However, as explained later in this report, the Jordanian High Judicial Council does not conform to international standards relating to the independence of the judiciary.

3. Law No. 17 of 2001 on the Establishment of the Regular Courts

This law also includes provisions pertaining to the independence of the judiciary. Article 2, in particular, stipulates: "*Regular courts in the Kingdom exercise the right to judge all individuals in all civil and penal cases with the exception of those that fall under the jurisdiction of religious or special courts under the provisions of any other law*".

4. The principle of the independence of the judiciary under Jordanian legislation

Articles 97 to 101 of the Jordanian Constitution recognise the independence of the judiciary and guarantee its impartiality and integrity. Article 97 states: "*Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law*". Article 101/1 stipulates: "*The courts shall be open to all and shall be free from any interference in their affairs*".

These principles are reiterated under Article 3 of Law No. 15 of 2001 on Judicial Independence: "*Judges are independent, and in the exercise of their judicial functions they*

²⁶ Articles 97-99 of the Jordanian Constitution.

are subject to no authority other than that of the law". In order to ensure complete impartiality, judges are prohibited from assuming jobs outside the judiciary as stipulated in Article 17 of the law: *"Judges may not undertake commercial business, act as members of a board of directors of a company, institution or authority, or take on any job or career under penalty of law"*.

Articles 132 to 140 of Civil Procedure Law outline under what circumstances judges may be deemed incompetent and the reasons for disqualifying or dismissing them.

A comparison between constitutional and legal provisions in force in Jordan and those of international standards on the independence of the judiciary shows the following:

- The Jordanian Constitution guarantees equality among all individuals before the law regardless of their race, religion or language. This conforms to Article 14.1 of the International Covenant on Civil and Political Rights, which stipulates: *"All persons shall be equal before the courts and tribunals (...)"*, and also to Article 7 of the UDHR which states: *"All are equal before the law and are entitled without any discrimination to equal protection by the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination"*.
- Both the Constitution and Law No. 17 on the Establishment of the Regular Courts grant Jordanian courts the authority to adjudicate judicial disputes, in accordance with Article 3 of the Basic Principles on the Independence of the Judiciary: *"The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law"*.
- The Constitution guarantees the independence of all judges in that they are subject only to the law, in accordance with Principle 2 of the Basic Principles on the Independence of the Judiciary: *"The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason"*.

C. The structure of the Jordanian judiciary

According to Article 99 of the Jordanian Constitution, Jordan's courts fall under three categories:

- Regular Courts, which include:²⁷
 - First Level Courts comprising Magistrate Courts and First Instance Courts.
 - Second Level Courts comprising Courts of Appeal and the Court of Cassation, the highest judicial body in Jordan.
 - The High Court of Justice, which has jurisdiction over administrative litigation. The decisions of the High Court are final.²⁸
- Religious Courts, which include:²⁹
 - Shari'a Courts, which consider matters of personal status (marriage, divorce, wills and inheritance) according to Islamic Shari'a law.³⁰

²⁷ Law No. 17 of 2001 on the Establishment of the Regular Courts as amended by Law No. 68 of 2002.

²⁸ Article 26/B of law No. 12 of 1992 as amended by Law No. 2 of 2000.

²⁹ Article 104 of the Constitution. These courts are not further described in this report.

³⁰ Law No. 19 of 1972 on the Establishment of the Sharia Courts.

- Ecclesiastical Courts,³¹ which are particular to non-Muslim communities and consider matters of personal status.
- Special Courts (extraordinary courts).

1. The Regular Court System

Regular Courts in Jordan consist of the following:

a. Magistrate Courts

Magistrate Courts have jurisdiction over filed civil lawsuits that involve amounts of less than 3,000 Jordanian Dinars (JOD) (approx. 2,900 €), as well as criminal cases that involve a two-year prison sentence or less. This is in addition to jurisdiction over particular types of cases.³² There are 43 Magistrate Courts in Jordan employing a total of 183 judges³³ and 498 administrative officers. These courts processed 253,899 cases in 2006, of which 208,509 were received during the same year, while the remaining 45,390 cases were carried over from 2005. Some 205,726 cases were settled by Magistrate Courts in 2006 with 48,135 cases being carried over to 2007. Magistrate Courts consider more cases than any other court in Jordan, and it would be of significant benefit to the country's judicial system if more judges were hired to work in them.

b. First Instance Courts

First Instance Courts have jurisdiction over all civil and penal actions that do not fall under the jurisdiction of any other court.³⁴ In specific cases, stipulated in either Magistrate Court law itself or indeed in any other of Jordan's laws, First Instance Courts also receive appeals against contested Magistrate Court rulings.³⁵ There are a total of sixteen First Instance Courts across the country accounting for 176 judges and 1,610 regular employees. Five of the sixteen courts are located in Amman, employing 95 judges and 751 administrative officers. First Instance Courts in Jordan received 38,111 cases in 2006. In addition 21,316 cases were carried over from 2005, bringing the total number of cases reviewed during 2006 to 59,427. A total of 34,416 cases were settled in 2006, while 23,129 were carried over to 2007. This high volume of cases proves very demanding for judges, weakening performance, prolonging proceedings unnecessarily and negatively affecting the judicial system's ability to ensure a fair trial.³⁶

c. Courts of Appeal

Courts of Appeal have jurisdiction over appeals submitted against rulings issued by courts of First Instance and Magistrate Courts in specific cases, stipulated in Magistrate Court Law or indeed in any other of Jordan's laws.³⁷ There are three Regular Courts of Appeal in Jordan, located in Amman, Irbid and Maan.³⁸ There are also two Courts of Appeal which deal

³¹ The Establishment of the Ecclesiastical Courts No. 4709-6-2005 issued under Law No. 22 of 1938 on the Council for non-Muslim Religious Communities as amended.

³² Articles 3, 4 and 5 of Law No. 15 of 1952 on the Magistrate Courts as amended.

³³ Article 3 of Law No. 17 of 2001 on the Establishment of Regular Courts.

³⁴ *Ibid.* Article 4/A.

³⁵ *Ibid.* Article 4/B.

³⁶ Figures taken from the annual report of court achievements issued by the Judicial Council, 2006.

³⁷ Article 8 of Law No. 17 of 2001 on the Establishment of Regular Courts.

³⁸ *Ibid.* Article 6.

specifically with customs and income tax (see below under Special (extraordinary) court system). These courts employ a total of 110 judges and 234 administrative officers.

In 2006, the Amman Court of Appeal received 47,887 cases, of which 2,356 had been carried over from 2005. The court reviewed a total number of 50,243 cases in 2006, of which 47,889 were settled and 2,354 were carried over to 2007. Irbid Court of Appeal received 21,074 cases in 2006, of which 898 had been carried over from 2005. The court reviewed a total of 21,972 cases in 2006, of which 20,969 were settled and 1,003 were carried over to 2007. Finally, Maan Court of Appeal reviewed 2,387 cases in 2006, of which 91 had been carried over from 2005. The court settled 2,313 cases and carried over 79 to 2007.

The fast pace at which appeal cases are settled is due to a lack of adequate procedures and scrutiny. Jordanian Appeal Courts currently suffer from a shortage of judges as some were made redundant in 2007,³⁹ while others were sent on secondments to neighbouring countries. The High Judicial Council has resorted to promoting First Instance Court judges in order to meet the shortage. However, it is feared that some of the promoted judges may not possess the experience required by their new posts.

d. Court of Cassation

The Court of Cassation, based in Amman, is the highest judicial body in the country. The court, in its capacity as a criminal court, has jurisdiction over appeals submitted against rulings or decisions issued by the Courts of Appeal on all criminal cases which are tried under laws stipulating the right of appeal before the Court of Cassation. In its capacity as a civil court, the Court of Cassation considers appeals against decisions by the Courts of Appeal following rulings issued in civil actions by First Instance Courts provided that amounts involved exceed 5,000 JOD (4,880 €). The Court of Cassation also has jurisdiction over legal disputes involving less than 5,000 JOD in specific cases, deemed as being complex, unprecedented or which involve public interest, and for which the president of the court has granted permission to review the case.⁴⁰ The court employs 24 judges and 67 administrative officers.

The Court of Cassation reviewed 10,356 cases in 2006, 8,641 of which were received in 2006 and 1,895 of which were carried over from 2005. The court settled 8,690 cases in 2006, with 1,666 cases being carried over to 2007.⁴¹ The Court of Cassation also suffers from a lack of judges, due to the same reasons that were mentioned in the case of the Courts of Appeal.

Cases which involve amounts of less than 5,000 JOD (4,880 €) do not allow for an appeal to the Court of Cassation without prior permission from its president. This situation is unfair in terms of equality and the right of access to justice, both rights which are guaranteed in international conventions. Cases involving amounts of less than 250 JOD (244 €) can be submitted neither to the Courts of Appeal nor the Court of Cassation.⁴² Although the restriction imposed on cases involving less than 250 JOD is logical, it is unjust that claimants in cases involving less than 5,000 JOD are deprived of the right of appeal to higher judicial bodies.

³⁹ The Judicial Council Report, 2006.

⁴⁰ Article 10 of Law No. 17 of 2001 on the Establishment of Regular Courts.

⁴¹ According to the annual report of the Judicial Council.

⁴² Article 28/2 of the Magistrate Courts Law.

e. High Court of Justice

The High Court of Justice, which is based in Amman, reviews appeals submitted against administrative rulings. The jurisdiction of the court is outlined exclusively in Article 9 of Law No. 12 of 1992 on the Jordanian High Court of Justice as further amended. The decisions issued by this court are final.⁴³ The High Court employs nine judges and 16 administrative personnel. The High Court reviewed 651 cases in 2006, of which 589 were received that year and 62 of which were carried over from 2005. In 2006, the court settled 555 cases and carried over 96 to 2007.⁴⁴

2. The special (extraordinary) court system

By virtue of Article 99, which defines several categories of courts, the Jordanian Constitution provides for the establishment of Special Courts, considered part of the country's judicial system. These courts are established by virtue of a special law that defines each court's category, jurisdiction, division and administration (Article 100 of the Jordanian Constitution).

Special Courts in Jordan can be divided between those presided over by regular and/or civilian judges (a-g), and those presided over by non regular and/or military judges (h-i):

a. Special courts with regular and/or civilian judges

The High Criminal Court

The High Criminal Court is a special court established under Criminal Court Law No. 19 of 1986. According to this law, the court has jurisdiction over cases of murder, rape and criminal abduction, as well as the attempt of any of these acts.⁴⁵ The High Criminal Court is based in Amman but can convene elsewhere in Jordan upon the decision of its president.⁴⁶ The court has four chambers, each comprising three judges⁴⁷. Judges are appointed to the High Criminal Court by a decision of the High Judicial Council.

The Public Prosecution Office comprises an Attorney General and two Public Prosecutors who direct investigations for all crimes falling under the jurisdiction of the High Criminal Court. The Public Prosecutor begins investigation immediately after a crime occurs and issues charges against the suspect within seven days of the date of the investigation's closure. The charges are communicated to the Attorney General within three days from the date that they were made. The Attorney General then issues an indictment and sends it to the Public Prosecutor within no more than seven days. The Public Prosecutor then has three days to present the accused to the court.⁴⁸ However, as the law does not specify any specific period for closing down the investigation, suspects may remain detained during the entire duration of lengthy investigations.

⁴³ Article 26/B of Law No. 12 of 1992 on the High Court of Justice as amended .

⁴⁴ According to the annual report of the Judicial Council.

⁴⁵ Article 4 of Law No. 19 of 1986 on Criminal Courts.

⁴⁶ *Ibid.* Article 6.

⁴⁷ *Ibid.* Article 3.

⁴⁸ Articles 9-7-3 of Law No. 19 of 1986 on Criminal Courts.

The High Criminal Court is required to start reviewing cases within ten days of the date of submission and to hold its hearings on consecutive days. In principle, it may not postpone a hearing for more than 48 hours.⁴⁹ The court's rulings must be issued within ten days of the end of proceedings, although the court can extend this period, once only, for an additional period of up to a maximum of seven days.⁵⁰

Procedural deadlines before the Jordanian Criminal Court Law are extremely short, especially in view of the types of crimes the Court deals with, which may in certain cases lead to the capital sentence or a life time imprisonment. Accordingly, such deadlines - although not respected in practice, see below -, are detrimental to the rights of the defence.

Decisions of the High Criminal Court can be appealed to the Court of Cassation within fifteen days from the date of the court's ruling or, if the decision was made *in absentia*, from the date that the litigant was informed of the ruling. If the sentence involves the death penalty or an imprisonment of five years or more, the appeal is automatic even if the litigant does not request it. In such cases, the Attorney General is requested to file and submit the appeal within fifteen days from the day the verdict was issued.⁵¹ In this respect, Jordan's Criminal Court Law - and the practice of appeals - is in accordance with international standards on the right to appeal before a higher judicial body, in particular Article 14.5 of the International Covenant on Civil and Political Rights, which stipulates: "*Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*" In addition, Article 6.4 of the United Nations' Safeguards guaranteeing protection of the rights of those facing the death penalty⁵² states: "*Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory*".

The practice of the High Criminal Court shows a low degree of compliance with the law, illustrated by the prevalence of postponements of more than ten days between court hearings as well as lengthy review periods before issuing verdicts. This is mainly due to the large number of cases processed by the High Criminal Court compared with the limited number of judges and public prosecutors available. In 2006, the court processed 1,980 cases, of which 1,222 were submitted during 2006 and 758 were carried over from 2005. The court settled 1,205 cases during 2006, and carried over 775 cases to 2007. The High Criminal Court's Public Prosecution Office considered 1,081 cases in 2006, of which 1,014 were received in 2006 and 67 were carried over from 2005. A total of 983 of these cases were transferred to the court during the same year, while 98 cases were carried over to 2007.⁵³

The High Criminal Court suffers from a limited number of judges and public prosecutors. This shortage is particularly problematic due to the sensitive nature of the court's decisions, which can involve the death penalty.

⁴⁹ *Ibid.* Article 10.

⁵⁰ *Ibid.* Article 12.

⁵¹ *Ibid.* Article 13.

⁵² Approved by Economic and Social Council resolution 1984/50 of 25 May 1984.

⁵³ According to the annual report of the Judicial Council.

First Instance Customs Court and Customs Court of Appeal

The Customs Court and the Customs Court of Appeal are special courts, the establishment of which is provided for under Articles 222-231 of Customs Law No. 20 of 1998.

The Customs Court of First Instance comprises a president and several judges appointed by the High Judicial Council from among practicing judges.⁵⁴ The court has jurisdiction over customs cases such as smuggling, import and export crimes, objections to customs appraisals and other cases related to customs.⁵⁵ It is located in Amman, but may hold its hearings elsewhere in Jordan. Cases are heard by a single judge.⁵⁶ At present, the Customs Court employs four judges and thirteen administrative personnel.

The Customs Court of Appeal comprises a president and a number of judges appointed by the High Judicial Council. It has jurisdiction to consider appeals against judgements issued by the Customs Court of First Instance. Cases are reviewed by a panel of three judges which can make decisions on both a consensus and majority basis. The court may convene in Amman or elsewhere in Jordan. Any appeal must be registered within thirty days of the date of the ruling or, if the decision was made *in absentia*, from the date the litigant was informed.⁵⁷ Appeals to rulings issued by the Customs Court of Appeal, in cases involving an amount exceeding 5,000 JOD (4,880 €), must be made to the Court of Cassation within thirty days.⁵⁸

The Public Prosecution Office is represented in the Customs Court by public prosecutors, appointed by the Minister of Finance from among the lawyers of the Customs Department. The Public Prosecutor has the right to investigate, argue before the court and to appeal against rulings issued by the Customs Courts as stipulated in Article 227/A of Customs Law. These provisions violate international standards regarding the right to a fair trial since the Public Prosecutor is appointed by the Minister of Finance, who is a party to the case.

According to Customs Law Article 231/B, the plaintiff must deposit 25% of the amount requested from him in the form of a cash security deposit or a bank guarantee in order for his claim against the treasury to be heard. This obligation, which can deprive individuals of access to courts because of their lack of financial means, is in violation of international standards concerning the right to a fair trial.

The Customs Court of Appeal reviewed 1,274 cases in 2006, of which 793 were registered in 2006, while 481 were carried over from 2005. The court settled 650 cases in 2006 and carried over 624 cases to 2007. The court employs three judges and five administrative personnel.

⁵⁴ Article 222/A of Customs Law No. 20 of 1998.

⁵⁵ The jurisdiction of the Customs Court is outlined in Article 222/B of Customs Law.

⁵⁶ Article 222 c) and d) of Customs Law No. 20 of 1998.

⁵⁷ *Ibid.* Article 223.

⁵⁸ *Ibid.* Article 225/1.

Income Tax Court of Appeal⁵⁹

Income Tax Law No. 57 of 1985 as amended provides for the establishment of an Income Tax Court based in Amman, but which may convene elsewhere in the country. The court, comprising three judges, reviews appeals against assessment decisions and claims involving income tax, fines and additional amounts. The court reviews cases under an emergency procedure. The court's trials are not public unless it orders otherwise (in fact hearings are usually public). Assessors, certified in law, represent the Tax Department and have the powers of the Assistant Civil Attorney General. Rulings issued by the court may be appealed if the amount of income tax being disputed exceeds 1,000 JOD (976 €).

The fact that the court, in practice, does not convene outside Amman constitutes a financial burden on litigants, who cannot appear before the court without a lawyer. The court seldom receives criticism due to the difficulties for the layperson in understanding the complex accounting information that it typically examines. The court frequently settles cases brought before it by way of settlement between disputing parties or by referring to the judgements of past cases. However, due to the shortage in the number of employees – currently only eight judges and twenty-six administrative personnel – processing times are extremely lengthy. The Income Tax Court of Appeal reviewed 3,124 cases in 2006, of which 1,625 were received during the same year and 1,499 carried over from 2005. The court settled 1,624 cases in 2006 and carried over 1,500 to 2007.⁶⁰ Due to limited staff resources and the large backlog of cases, Income Tax Court judges are forced to cope with significant daily workloads.

Juvenile Courts

Any court that reviews charges against juveniles is considered a Juvenile Court.⁶¹ The Court of First Instance, acting in its capacity as a Juvenile Court, has jurisdiction to settle cases involving a criminal offence. If the criminal offence is committed in complicity with an adult, the court should observe the principles adhered to in Juvenile Courts as far as the juvenile is concerned.⁶² The court convenes on weekends, official holidays and in evenings out of concern for juvenile interests.⁶³ Hearings are confidential and no one is allowed to enter the courtroom except the probation officer and the father, guardian or lawyer of the juvenile and those who have a direct connection to the case.⁶⁴ Investigations involving juveniles are not allowed to take place except in the presence of the juvenile's parent, guardian or lawyer. In the case that these individuals are unable to attend, a probation officer is called to attend the session.⁶⁵ Juveniles detained for a misdemeanour can be released on bail, unless this would disrupt the course of justice. Juveniles detained for a criminal offence can also be released on bail if the court deems that the case involves special circumstances.⁶⁶ The decisions of the court are subject to appeal before a Court of Appeal and subsequent appeal before the Court of Cassation, in accordance with the provisions of Criminal Procedure Law.

⁵⁹ Income Tax Law Article 34 and its amendments No. 57 of 1985.

⁶⁰ According to the annual report of the Judicial Council.

⁶¹ The Juvenile Law No. 24 of 1968 as amended. According to Article 7/A of the law, any court looking into charges raised against a juvenile is a juvenile court. Article 2 defines a juvenile as any person between the ages of 7 and 18.

⁶² *Ibid.* Article 7/B, D.

⁶³ *Ibid.* Article 8.

⁶⁴ *Ibid.* Article 10.

⁶⁵ *Ibid.* Article 1/15.

⁶⁶ *Ibid.* Article 16.

In addition the parent or guardian may act on behalf of the juvenile.⁶⁷ Juveniles may not be sentenced to death.⁶⁸

The Juvenile Courts were established in accordance with Jordan's commitments to international law following ratification of the Convention on the Rights of the Child.⁶⁹ Jordanian legislation is consistent with this convention, in particular Article 37, which stipulates the right of children not to be subjected to torture, sentenced with capital punishment or life imprisonment, or unlawfully detained as well as their right of access to legal assistance, to challenge the legality of their detention and to a prompt decision on such actions.

The Juvenile Courts reviewed 1,613 cases in 2006. They received 1,421 of those cases in 2006, while 192 of them were carried over from 2005. The Courts settled 1,380 cases in 2006 and carried over 233 cases to 2007.

Amman Municipal Court⁷⁰

The Amman Municipal Court is considered a Magistrate Court in all procedural aspects.⁷¹ The court, comprising only one judge, has jurisdiction to review building and traffic violations as well as violations related to industrial vocations, occupational permits, standards, specifications and health.⁷²

As far as both the law governing the Amman Municipal Court and its practice are concerned, the court fails to comply with minimum safeguards concerning its independence and ability to ensure a fair trial. The Greater Amman Municipality is the body responsible for all of the court's expenditures, including the salaries of its employees, equipment and materials - a situation which violates the principles of independence and impartiality.⁷³ Moreover, most procedures before the Amman Municipal Court are conducted in such a way as to violate the law. In practice, trials are conducted by administrative employees instead of by judges who instead merely confirm the court's verdict, particularly when cases are reopened following a first judgement made *in absentia*. Furthermore, citizens tend to avoid resorting to this court because of its lengthy proceedings, partly caused by the fact that witnesses, mostly police officers and employees of the municipality, often fail to attend hearings with no fear of disciplinary action being taken against them.

The Special Labour Court⁷⁴

The Special Labour Court, established in accordance with Article 124 of Labour Law No. 8 of 1996, reviews all collective labour disputes. Although the court comprises three regular judges, appointed by the High Judicial Council, it may convene in the presence of just two of the judges. In the case that the two judges disagree, the third judge is requested to review the case and issue a verdict. The court reviews cases under an emergency procedure within a week from the date that the case is submitted. The court takes measures it deems

⁶⁷ *Ibid.* Article 10.

⁶⁸ *Ibid.* Article 18.

⁶⁹ The Law Endorsing Agreement No. 50 of 2006.

⁷⁰ Article 8 of the Amman Municipal Law No. 39 of 1961.

⁷¹ *Ibid.* Article 8.

⁷² *Ibid.* Article 6.

⁷³ *Ibid.* Article 5.

⁷⁴ Article 124 of Jordanian Labour Law No. 8 of 1996 as amended.

appropriate to settle the case within thirty days and informs the Ministry of Labour of its decisions. The rulings of the Special Labour Court are final and cannot be contested or appealed.

Depriving litigants of the right to appeal rulings issued by the Special Labour Court impairs their right to a fair trial as stipulated by international human rights instruments.

Remuneration Authority

Jordan's Government Cabinet Office may, upon recommendation of the Minister of Labour, appoint one or more experts in labour affairs (called the Remuneration Authority) to consider claims related to workers wages, such as wage reductions, deductions, overtime, and delays in payment. To be able to submit his/her case to the remuneration authority, the worker must still be working or have stopped working within the last six months. If neither of these two conditions is fulfilled, the worker has the right to take legal action within the Regular Courts. If the litigant wishes to contest the decisions of the Remuneration Authority, an appeal must be submitted to the Court of Appeal within ten days of the decision.⁷⁵

The Remuneration Authority was established in order to accelerate the settlement of disputes. Workers who go to the authority voluntarily may further appeal its decisions. However, the establishment of such an authority, outside the judicial system, is not in accordance with international standards on the independence of the judiciary. Instead, the Regular Courts should assume their responsibilities since jurisdiction rests with them. The establishment of courts which lie outside the jurisdiction of the judicial authorities, at the behest of the Government and the Minister of Labour, is not a viable solution. This principle is emphasised in the *Basic Principles on the Independence of the Judiciary*, in particular Principle 3: "*The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law*" and Principle 5 "*Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals*".

b. Special courts with non-regular/extraordinary/military judges (military tribunals)

Police Court⁷⁶

The Director of the Public Security Department may establish a court comprising a president and a minimum of two members certified in law. This court has jurisdiction to consider the crimes outlined in the Military Penal Code, the Penal Code and other laws when committed by public security personnel, students at educational or training public security institutes or the Police Academy, or by those personnel who have terminated their contract with public security bodies but who committed the crime while still in service.

Trials before the Police Court are conducted in accordance with criminal procedures applied by Regular Criminal Courts. A Police Public Prosecutor argues the case before the court.⁷⁷

⁷⁵ *Ibid.* Article 54.

⁷⁶ Established according to Public Security Law No. 38 of 1965.

⁷⁷ Article 85 of Public Security Law.

Like the defendant, the Director of the Public Security Department has the right, through the Attorney General, to challenge the decisions of the court before the Court of Cassation within thirty days of the court's ruling or, if the decision was made *in absentia*, from the date the litigant was informed of the verdict. When the Court of Cassation convenes to review a Police Court's decision, it comprises five judges, one of whom must be a colonel or an officer of higher rank - as mandated by the director of the Public Security Department.⁷⁸

Trying military and security personnel for breaching military or security laws does not constitute a violation of international standards provided that the conditions for a fair trial, impartiality, integrity and independence, especially from the military and security leadership, are fulfilled.⁷⁹ This requirement, stated by all relevant international instruments, applies to all individuals - civilian or military - as emphasised in Article 10 of the *Universal Declaration of Human Rights*: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him". Likewise, according to Article 14.1 of the International Convention on Civil and Political Rights, "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

However, the provisions regulating Police Court Law are not consistent with these international standards; firstly the court is formed on the basis of a decision of the Director of the Public Security Department. Secondly, Police Court judges, administrative employees and members of the public prosecution report to the Director of the Public Security Department. Indeed, the Police Court's Attorney General is also the Director for legal affairs at the Public Security Department. In addition Police Court judges are hired by the Public Security Department and are typically lawyers with no previous experience of working as judges. These judges may, at any time, be transferred from the court to assume positions outside the judiciary. Thirdly, the fact that a public security officer acts as judge within the Court of Cassation clearly interferes with the judiciary's independence and as such is a violation of international standards related to the independence of the judiciary and the right to a fair trial.

Military Courts⁸⁰

The Military Court system is established, and its judges appointed by, the Chairman of the Joint Chiefs of Staff as follows:

- 1- The Permanent Military Court is based in Amman but may convene elsewhere upon the decision of its president. The court comprises the president and two other members, all of whom are military personnel. The president must be a lieutenant colonel or an officer of higher rank. The court has jurisdiction over crimes defined in the Military Penal Code, the Penal Code or any other of Jordan's laws.⁸¹
- 2- The Temporary Military Court's establishment, powers and location are defined by the Chairman of the Joint Chiefs of Staff and comprises a president and two additional members. If no judges are available to occupy the positions of the two additional

⁷⁸ *Ibid.* Article 88.

⁷⁹ Fair Trials Manual, Amnesty International.

⁸⁰ Law No. 32 of 2002 on the Establishment of the Military Court.

⁸¹ *Ibid.* Articles 3/A 4 and 8.

members, military officers can then be appointed to complete the court.⁸²

- 3- The Single Judge Court is presided over by a member of the military and is appointed to a specific military unit to review misdemeanours and infractions committed by unit staff which are punishable by a fine or prison term of up to two years. Single Judge Courts also consider misdemeanours of neglect, outlined in the Military Penal Code, if the value of the resulting damages does not exceed 500 JOD (485 €).⁸³
- 4- The Military Court of Appeal, which comprises a minimum of three judges, reviews contested cases.⁸⁴

Persons who stand trial before the Military Courts include:

- 1- Officers and armed forces personnel.
- 2- Students at military universities, colleges and academies and military students in the armed forces.
- 3- Officers and personnel who have ceased to serve with, but who committed a crime while still enrolled in, the armed forces.
- 4- Military service conscripts.
- 5- Prisoners of war.
- 6- Army officers and personnel of an allied state who are present on Jordanian territory with consent from their respective state.
- 7- Civilian and military perpetrators of war crimes.⁸⁵

The Public Prosecutor is represented by the Military Attorney General and a number of military judges, appointed by the Chairman of the Joint Chiefs of Staff. The Ministry of Defence's Military Justice Director acts as the Military Attorney General. Before the Court of Appeal, the Public Prosecutor is represented by an assistant to the Attorney General. Before Single Judge Courts, dealing with minor offences committed within a specific unit, the functions of the Public Prosecutor are exercised by a judge.⁸⁶

As mentioned earlier, the establishment of military courts in order to try military personnel does not constitute a violation of international law and standards regarding the right to a fair trial as long as these courts comply with these international standards, particularly those concerning independence and impartiality. However, Military Court judges, as is the case with those acting in Police Courts, report directly to the supreme military command and can be transferred or dismissed upon the decision of their superiors. As a result, they clearly lack the necessary independence and impartiality. In addition, members of the military courts often lack adequate experience in procedural and legal matters.

Military Courts in Jordan have jurisdiction over civilian perpetrators of war crimes and prisoners of war.⁸⁷ Under present circumstances, Military Courts rarely prosecute civilians as Jordan is not at war. In addition the State Security Court, also of a military nature, has broad jurisdiction over civilians. The State Security Court will be discussed in detail later in this report.

⁸² *Ibid.* Articles 3/B and 5.

⁸³ *Ibid.* Articles 3/C and 10.

⁸⁴ *Ibid.* Articles 3/D and 6.

⁸⁵ *Ibid.* Article 9.

⁸⁶ Article 11 of the Law on the Establishment of the Regular Courts.

⁸⁷ Article 5/G of Law No. 32 of 2002 on the Establishment of Military Courts.

2. THE JORDANIAN JUDICIARY BETWEEN SUBORDINATION AND INDEPENDENCE

A. The status of judges

As mentioned before, the Jordanian Constitution recognises the independence of judges and guarantees their impartiality and integrity. Article 97 states: "*Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law*", while Article 101/1 stipulates: "*The courts shall be open to all and shall be free from any interference in their affairs*".

These principles are reiterated under Article 3 of Law No. 15 of 2001 on Judicial Independence: "*Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law*". In order to ensure complete impartiality, judges are prohibited from accepting offers of employment out with the judiciary as stipulated in Article 17 of the same law: "*Judges may not undertake commercial business, act as members of a board of directors of a company, institution or authority, or take on any job or career under penalty of law*".

1. The High Judicial Council

One guarantee of the independence of the judiciary is the establishment of an independent body, fully comprised of judges or at least a majority of judges, entrusted with the task of overseeing judicial affairs such as the appointment, transfer, career management and disciplining of judges. Jordanian laws provide for the establishment of a High Judicial Council and grant it the powers necessary to manage judicial affairs, as shown below:

a. The Composition of the Judicial Council

The High Judicial Council (HJC) consists of eleven members, all of whom are regular judges, and represents the judicial authority:⁸⁸

- The President of the Court of Cassation, acting as president of the HJC.
- The President of the Supreme Court of Justice, acting as vice-president.
- The Chief Public Prosecutor of the Court of Cassation.
- The two most senior judges of the Court of Cassation.
- The heads of the three Courts of Appeal
- The most senior Regular Court inspector.
- The Secretary General of the Ministry of Justice.
- The President of Amman's Court of First Instance.

As a result, the HJC is composed exclusively of judges, but none of them is elected by the judges themselves. In addition, the presence of the Secretary General of the Ministry of Justice as a member of the HJC may be seen as adversely affecting the independence of the HJC since his appointment is based upon a recommendation from the Minister of Justice, not the Judicial Council. As a result, the Secretary General might feel inclined to be faithful to the authority that enabled his appointment.

⁸⁸ Article 4 of the Law on Judicial Independence.

b. High Judicial Council's meetings and decision-making

The High Judicial Council convenes when summoned by its president. Its meetings, which require the attendance of at least seven members, are not public.⁸⁹ HJC decisions are, in principle, reached by consensus or absolute majority. If the vote is a tie, the most senior judge of the Cassation Court joins the Council and casts the deciding vote.⁹⁰

In principle and in accordance with the values of transparency that govern all areas of public service in Jordan, HJC meetings should be public and only held in private in exceptional circumstances.

c. Powers of the High Judicial Council

The High Judicial Council manages the affairs of the judicial authority, which include:

- Appointing judges upon recommendation of the Minister of Justice (Article 14/A-B);
- Terminating the services of judges while in their probation period (Article 12 of the Law on Judicial Independence);
- Retiring judges upon recommendation of the president of the HJC (Article 16/A);
- Transferring judges or sending them on secondments (Article 22/A);
- Sending judges on secondments or extending the length of secondments in accordance with the decision of the president of the HJC (Article 23/A);
- Appointing, upon recommendation of the Minister of Justice, a high ranking judge as Secretary General of the Ministry of Justice (Article 24);
- Judicial Supervision. The president of the HJC has the right to exercise judicial supervision over judges (Article 27);
- Warning Judges. The president may, *ex officio*, warn judges regarding their conduct (Article 28);
- Temporarily suspending judges. The HJC may, *ex officio* or upon request of the Minister of Justice, the Attorney General or the judge himself, temporarily suspend a judge (Article 30);
- Setting up disciplinary committees (Article 31).

Although the law grants considerable powers to the High Judicial Council concerning the management of judicial affairs, many of these powers are in fact concentrated in the hands of its president. At the same time, the Minister of Justice retains significant power in a number of situations, enabling the executive branch of the government to interfere in the management of judicial affairs. Moreover, the HJC has no significant powers regarding the inspection of judges, which are instead vested in the inspection services of the Ministry of Justice. Similarly, administrative supervision of courts is also the responsibility of the Ministry of Justice. As a result, the HJC cannot appoint administrative officers in any court as this task falls under the exclusive jurisdiction of the Ministry of Justice. All court administrative staff members are subject to the provisions of the Civil Service Code.⁹¹ Accordingly, the executive power, through the Ministry of Justice, has retained the power to interfere in matters that should in principle fall under the HJC's jurisdiction in order to ensure the greatest possible level of impartiality and independence. In general, the law does not contain clear provisions

⁸⁹ *Ibid.* Article 7.

⁹⁰ *Ibid.* Article 6.

⁹¹ Civil Service Code No. 55 of 2002 and No. 109 of 2002, which manages the affairs of public servants in terms of appointment, promotion, retirement, etc.

defining the powers of the High Judicial Council.

Each year, the president of the HJC prepares an annual report providing information on the work and functioning of the Jordanian courts. This report is submitted to the King and the Minister of Justice. The HJC Annual Report for 2006 included a recommendation that the power to recommend appointments within the judiciary be granted to the president of the HJC rather than to the Minister of Justice.⁹²

d. Disciplinary proceedings

Disciplinary measures against judges fall under the jurisdiction of the HJC, which sets up Disciplinary Committees to deal with these matters. According to Article 31 of the Law on the Judicial Independence, such committees are composed of three judges at least from amongst HJC members. The ministry of Justice is formally not involved in disciplinary proceedings against judges, although informal intervention in specific cases happens; this is even more the case that there are no established procedures and rules to be followed by the Disciplinary Committee.

The hearings of the Disciplinary Committee are not public. Judges can be represented by a lawyer. Decisions by the HJC's Disciplinary Committee can be appealed before the High Court of Justice.

2. Financial and administrative independence of the judiciary

According to Article 7 of the UN Basic Principles on the Independence of the Judiciary, "*It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions*". In order for this to be realized, the judiciary should have its own independent budget, the detail of which should be defined or at least partly defined, by the HJC.

Contrary to international standards, the Jordanian Ministry of Justice is responsible for the management of all financial and administrative matters pertaining to judicial authority. Even the salaries of judges are paid by the Ministry of Justice under the Judicial Service Code for Judges No. 26 of 2001. This regulation was issued on the basis of Article 120 of the Constitution which covers several issues, including the establishment of government departments as well as the appointment and dismissal of public servants. However the article does not include the salaries of judges since they are not considered as civil servants in order to ensure the impartiality, integrity and independence of the judiciary.⁹³ As a result many argue that the present system is unconstitutional.⁹⁴

The judicial authority, represented by the High Judicial Council, does not enjoy financial autonomy, a state of affairs which affects its ability to perform effectively and efficiently and

⁹² The High Judicial Council's Annual Report of 2006.

⁹³ Article 120 of the Constitution: "*The administrative divisions of the Hashemite Kingdom of Jordan, the establishment of the Government Departments, their classification, designations, the plan of operations and the manner of the appointment of civil servants, their dismissal, their discipline, supervision and the limits of their competence and powers shall be determined by regulations issued by the Council of Ministers with the approval of the King.*"

⁹⁴ Dr. Hamzah Haddad, a former Jordanian Minister of Justice, stated: "*Such regulations are unconstitutional as a question of form, although I was one of those who approved regulations No. 65 of 1999 when I was a minister. I admit that I was wrong*", published online at: <http://www.lac.com.jo/articles3.htm>

contributes to a lower level of independence. In this respect, it is worth noticing that the HJC's 2006 Annual Report requested that a higher degree of independence be granted to the judiciary as well as better guarantees of its impartiality.

3. Supervision of the work of judges – The inspection of judges

An important tool for measuring the qualitative and quantitative performance of the judiciary, judicial inspection can be used not only as an instrument to reform and improve the judiciary but also as a weapon against judges who refuse to follow instructions. Accordingly, modern legislation tends to grant powers of inspection to high judicial councils, as understood from the spirit of Articles 2 and 4 of the Basic Principles on the Independence of the Judiciary which respectively stipulate "*The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason*" and "*There shall not be any inappropriate or unwarranted interference with the judicial process (...)*".

In this respect, Jordanian legislation does not abide by international standards. According to Article 41 of the Law on Judicial Independence, the apparatus for judicial inspection is placed under the Ministry of Justice, on the basis of which the latter issued Inspection Regulations for Regular Courts No. 47 of 2005. Furthermore, Article 19 of the Law on Judicial Independence requires that reports be produced and then used as the basis for promotion decision purposes. Such a requirement constitutes an interference by the Minister of Justice in judicial affairs, particularly if the judges tasked with inspection at the Ministry of Justice do not enjoy full autonomy.

Nevertheless, Article 27 of Jordan's Law on Judicial Independence grants the president of the High Judicial Council administrative oversight over all judges, and the president of each court oversight of judges in their respective courts.⁹⁵

The full independence of the judicial system requires that all supervisory powers of judges and court administrative staff (clerks, subpoena servers, reporters, ushers) be trusted to the High Judicial Council. As for powers of inspection, the independence of the judiciary also requires that this power rest in the hands of the High Judicial Council, given its significance as a tool in the improvement of the judiciary, and to prevent the government's executive branch from using such powers negatively.

In its 2006 Annual Report, the High Judicial Council reiterated the necessity of returning judicial inspection powers to the High Judicial Council in order to allow it to remain fully independent from any other authority.

4. Appointment, disqualification and dismissal of judges

Article 10 of the Basic Principles on the Independence of the Judiciary, which addresses qualifications, selection and training of judges, states that: "*Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for*

⁹⁵ Jordanian law creates some confusion on this issue by not specifying which court administrative functions fall under the control of the Ministry of Justice or the HJC.

improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory".

A distinction should be made between the President of the Court of Cassation and other Jordanian judges. The President of the Court of Cassation, who is also President of the High Judicial Council and therefore the head of the whole judicial system, is appointed and dismissed directly by the King by way of royal decree.⁹⁶ All other judges are appointed according to Article 14/A of the Law on Judicial Independence, i.e. by the High Judicial Council, upon recommendation of the Minister of Justice, after which a royal decree is issued endorsing the appointment. It should be noted that granting the power of recommending appointments to the executive branch of the government, in the form of the Minister of Justice, may lead to recommendations being made - or not made - for reasons other than the person's qualifications for the post.

According to Article 6 of the High Court of Justice Law, the president of the court is appointed by royal decree in accordance with the decision of the High Judicial Council. Decisions concerning the president's retirement are made by the High Judicial Council upon the recommendation of its president in accordance with Article 16/A of the Law on Judicial Independence.

The law does not set a specific retirement age for presidents of the Court of Cassation and the High Court of Justice.⁹⁷ In practice, judges of the highest career rank continue working until the age of 74, while other judges retire at the age of 68. Since there is no law regulating judicial service, such matters are governed in accordance with government-issued regulations, a practice which constitutes a violation of international standards in relation to judicial immunity.

Traditionally, the High Judicial Council meets periodically in order to issue a list of judges who have been dismissed, retired or sent to serve in other courts.

Articles 132-140 of the Civil Procedure Law outline the criteria by which judges may be disqualified, dismissed or deemed incompetent.⁹⁸ In addition, Article 39/1 of the Judicial Independence Law stipulates that courts can not employ judges who are in-laws or blood-related up to the fourth degree of kinship.

5. Judges' right of association

Judges should enjoy the freedom to establish or join associations or clubs in order protect their interests and independence, as expressly stated in Principle 8 of the UN Basic Principles on the Independence of the Judiciary: "*In accordance with the Universal Declaration of Human Rights, members of the judiciary are, like other citizens, entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary*" and Principle 9: "*Judges shall be free to form and join associations of judges or other organizations to*

⁹⁶ Article 13/B of the Law on Judicial Independence.

⁹⁷ Article 42/A of Law on the Judicial Independence.

⁹⁸ Civil Procedure Law No. 24 of 1988 as amended.

represent their interests, to promote their professional training and to protect their judicial independence'.

Jordanian law explicitly prohibits judges from joining political parties⁹⁹, but does not mention the issue of judges' associations or clubs. Although there is no information showing that a judge or a group of judges has ever sought to officially form a club or an association, it seems that, in practice, judges would not be allowed to either establish or join an association that had the aim of defending their interests and those of their profession.

B. Status of the public prosecution office

According to the provisions of Criminal Procedure Law No. 9 of 1961, the Public Prosecution Office reports to the Minister of Justice. Article 11 stipulates that:

- "1. Public prosecution is undertaken by judges exercising the powers vested in them under the law. Those judges are part of the chain of command, and report to the Minister of Justice.*
- 2. Public prosecution staff are required to follow the written orders, issued to them by their superiors or the Minister of Justice in their written dealings and requests".*

There is no doubt that the Public Prosecution Office in Jordan is not independent from the judiciary or the executive authority. The Minister of Justice is, administratively, the head of the Public Prosecution Office and therefore has the right to exercise administrative supervision over all members of the service and to supervise the performance of the Attorney General and his assistants. The minister does not have jurisdiction to file a public action, but does have jurisdiction to act in exceptional circumstances in order to remedy errors that may have occurred in judicial proceedings. The minister may request in writing for the Public Prosecutor to submit, to the Court of Cassation, a case in which a violation of the law has taken place.¹⁰⁰

Legally, the general principles governing criminal justice give the Attorney General the right to ignore the Minister of Justice's orders if they violate the law and are inconsistent with justice.¹⁰¹ However, there has never been a case in which the Attorney General or his assistants have challenged an order from the Minister of Justice.

The Public Prosecution Office must be fully independent from the executive authority and the judiciary. Such independence would be in compliance with international standards on the independence of the judiciary, particularly Article 10 of the Guidelines on the Role of Prosecutors: *"The office of prosecutors shall be strictly separated from judicial functions"*. In Jordan, however, the Public Prosecutor reports to the High Judicial Council on judicial matters and to the Minister of Justice on administrative matters, a situation which does not comply with the above-mentioned international standards on the independence of the Public Prosecution Office.

In addition, as Public Prosecutors are officially judges, they may take on the role of a regular judge at any point. However, in order to ensure impartiality, a judge may not consider a case in which he previously acted as Public Prosecutor. Nonetheless, a Magistrate Court's judge

⁹⁹ According to Article 5/8 of political party law No. 19 of 2007.

¹⁰⁰ Article 291/1 of Criminal Procedure Law No. 9 of 1961 as amended.

¹⁰¹ See for example the Lebanese Legislative Decree No. 8 dated 15/12/1954. For more information see Dr. Kamel Al-Saeed; An Overview of the Criminal Procedure, the Public Prosecution.

may still consider a case in which he was involved as Public Prosecutor but did not issue charges.¹⁰² This, again, violates the principle of independence.

1. Appointment, disqualification and dismissal of public prosecutors

Since Public Prosecutors are judges, in accordance with Article 1/11 of the Criminal Procedure Law, provisions regarding the appointment, disqualification and dismissal of judges also apply to Public Prosecutors. The Minister of Justice recommends the appointment of judges as Public Prosecutors to the High Judicial Council, which then confirms the appointment. Likewise, the High Judicial Council also has responsibility over the dismissal of Public Prosecutors.

2. Role of public prosecutors and police in preliminary and primary investigations

In accordance with criminal procedure law, the Public Prosecution Office has the responsibility of performing primary investigations. In order to do so, it examines the facts and evidence associated with a case before reaching a conclusion on whether it should be referred to the court. While the primary investigation is the responsibility of the Public Prosecution Office, the preliminary investigation falls under the responsibility of the judicial police. The preliminary investigation involves collecting evidence, hearing statements and witnesses, and conducting investigations and house searches. This authority is granted by law to the judicial police either under normal circumstances¹⁰³ or in cases of *flagrente delicto*¹⁰⁴. The Public Prosecutor may also entrust the judicial police with any matter under his jurisdiction with the exception of interrogation of defendants.¹⁰⁵

The investigation process starts with the preliminary investigation carried out by the judicial police. According to Article 9 of the Criminal Procedure Law, police station chiefs and police officers are considered to be judicial police officers. The judicial police, who are usually not well versed in legal matters, carry out their investigation in the absence of the attorney of the detained, since Jordanian law does not grant lawyers the right to attend these early stages of the investigation. Under these circumstances, the suspects' rights are often violated, with police officers often using force to extract confessions.¹⁰⁶

The absence of a lawyer during the preliminary investigation violates several international standards, in particular the UN Basic Principles on the Role of Lawyers, of which Article 1 states that: "*All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings*".¹⁰⁷ In addition, Article 17.1 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,¹⁰⁸ and the Standard Minimum Rules for the

¹⁰² Article 24 of Criminal Procedure Law No. 9 of 1961 as amended.

¹⁰³ *Ibid.* Article 8.

¹⁰⁴ *Ibid.* Article 46.

¹⁰⁵ *Ibid.* Article 1/48.

¹⁰⁶ Many lawyers and suspects confirm that the practice in police stations is often to divide tasks between the police officers who resort to using force, sometimes torture, against the suspects, and other officers who are called in at the end of the process in order to record confessions in writing. By doing so, the latter will be able to testify under oath, if required, that they did not use force or torture to extract the confession.

¹⁰⁷ Article 1 of the Basic Principles on the Role of Lawyers.

¹⁰⁸ Adopted by United Nations General Assembly resolution 43/173 of 9 December 1988.

Treatment of Prisoners¹⁰⁹ stipulates that: "A *detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.*"

"2. *If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.*"

With primary investigations, the Public Prosecutor establishes the identity of the defendant, reads the charges against him, questions the defendant whilst making him aware that he has the right to abstain from answering when not in the presence of his lawyer, and records these proceedings. If the defendant refuses his right to a lawyer or if his lawyer does not appear within twenty-four hours, the investigation proceeds without one. It is also admissible to interrogate the defendant without his lawyer if there are urgent circumstances in which it is feared that evidence could be lost. In such a case, however, the lawyer may review his client's statement.¹¹⁰ The lawyer has the right to speak during the investigation with the permission of the investigator. If the lawyer is denied permission, a written reference to this denial is made in the record of the investigation, and the lawyer retains the right to submit a memorandum with his own observations.¹¹¹

Jordanian law is criticised for its non-compliance with international standards related to the right to a fair trial which stipulate that the presence of a lawyer is essential to ensure the achievement of justice. The lawyer must be present and be allowed to speak, defend his client and voice any objections. In addition, in accordance with Principle 3 of the *Basic Principles on the Role of Lawyers*, a lawyer must be provided free of charge if the defendant lacks the financial means to engage one himself: "*Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, when necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.*"

3. Supervision of the public prosecution office

In accordance with, the above-mentioned, Article 11 of the Criminal Procedure Law, all public prosecutors are part of a chain of command that grants superiors with supervisory powers over their subordinates. Consequently, public prosecutors are required to carry out the written instructions they receive from their superiors or from the Minister of Justice. However, such instructions may only concern administrative, not judicial, operations, since public prosecutors are considered as judges when carrying out investigations and must therefore be free from the influence of any party. In judicial matters, public prosecutors derive their jurisdiction from the law and not from the Attorney General or any other superior. However, their decisions are subject to the review of the Attorney General, who either approves or revokes them or decides to pursue further investigations. Public prosecutors must follow the decisions made by the Attorney General.¹¹² As the highest administrative authority, the Minister of Justice has supervisory powers over the

¹⁰⁹ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

¹¹⁰ Articles 63/1 and 2 of Criminal Procedure Law No. 9 of 1961.

¹¹¹ *Ibid.* Article 65.

¹¹² *Ibid.* Articles 130-133.

performance of the Public Prosecutor, however his authority in this respect is purely administrative and not judicial. As a result, the Minister of Justice is not entitled to initiate public action.

Supervision of the judicial police falls under the responsibilities of the Public Prosecutor, who is the head of the judicial police in his geographical jurisdiction. Public prosecutors are only concerned with the judicial police when the latter act in their judicial, and not administrative, capacity.¹¹³ However, the distinction between the two capacities is somewhat blurred.¹¹⁴

Currently, the Jordanian Public Prosecution Office is far from being independent, from either judicial or executive powers, and is therefore vulnerable to interference from both these authorities. There are currently discussions in Jordan concerning the establishment of an entirely independent Public Prosecution Office, free from any interference from the judiciary and executive authorities. At the time of writing, however, no concrete steps had yet been made towards achieving this objective.

4. Arrest and detention powers

Arrest and detention are custodial measures, taking place during investigative procedures. The judicial police, in certain circumstances stipulated by law, may make arrests, while the power to detain is vested in the Public Prosecution Office - the only body that is entitled to order detention beyond the initial arrest period.

a. Arrests

The power of the judicial police to carry out arrests is limited by law to two cases: cases of *flagrante delicto* and cases in which the intervention of the police has been requested by the landlord of a house.¹¹⁵ However, it also extends to situations in which evidence is at hand that supports:

- Cases of felony and misdemeanour whose penalty exceeds six months.
- Cases of misdemeanour carrying a penalty of imprisonment when the defendant is under police surveillance or has no known permanent place of residence in Jordan.
- Cases of misdemeanours of assault and battery, resisting arrest by force, obscenity and violating public decency.¹¹⁶

Jordanian legislation is currently somewhat ambiguous with regard to defining powers of arrest. For example a law officer is granted power of arrest for misdemeanours or acts of *flagrante delicto*, no matter the penalty, while in other cases it is required that the misdemeanour carries a penalty of imprisonment.¹¹⁷

In practice, the police tend to apply these provisions in an excessive manner as they are

¹¹³ *Ibid.* Article 15.

¹¹⁴ When carrying out tasks as part of a preliminary investigation related to a criminal offence, the police act as judicial police and are under the supervision of the prosecutor. Other police tasks such as controlling traffic, watching borders, etc., are administrative and not judicial and therefore do not fall under the jurisdiction of the prosecutor. See Yasin Al-Rakizli, *The Inquiry Judge*, p. 28 and Dr. Amjad Al-Kurdi, *Practical Challenges to the Public Prosecution*, p. 35.

¹¹⁵ Article 46 of Criminal Procedure Law No. 9 of 1961. The second point refers to situations where a landlord requests the police to intervene and investigate in relation to a crime that has occurred on his property.

¹¹⁶ *Ibid.* Article 99.

¹¹⁷ For further information see Kamel Al-Saeed, *ibid.* p. 389.

aware that the arrested persons rarely have the means to take legal action and demand compensation for arbitrary use of authority or for undue application of the law. Furthermore, Crime Prevention Law No. 7 of 1954 grants the police sweeping powers of arrest under the Crime Prevention Law. This law constitutes a major interference in the affairs of the judiciary, as it stipulates that all suspects should be referred to administrative governors, who in-turn report directly to the Minister of the Interior. In addition, under the provisions of the Crime Prevention Law, the Minister of the Interior has the authority to restrict fundamental freedoms and imprison suspects.

Even though administrative detention does not *per se* constitute a violation of the International Covenant on Civil and Political Rights, such detention measures must be based on laws which; limit the allowed period of detention, restrict such action to cases where an individual poses a clear and dangerous threat to society and cannot be contained in any other way, and allows for the right to object to such detention before a judge. There should also be compensation in cases violating these laws and procedures.¹¹⁸

b. Preventive detention

The Public Prosecutor may detain suspects in cases of felonies and misdemeanours that carry penalties of imprisonment for more than two years. The Public Prosecutor can exercise temporary detention for a period not exceeding fifteen days from the commencement of the defendant's interrogation. This initial period can be renewed if required for investigative purposes, but may not exceed six months in the case of a felony and two months in the case of a misdemeanour. However, an additional extension in the duration of the temporary detention period, up to one year for a felony and up to two months for a misdemeanour, is possible. Such an extension may only be granted by the court to which the case has been referred after examination of submissions from the Public Prosecutor, statements from the defendant and a review of the investigation record.¹¹⁹

According to Jordanian legislation, defendants must be interrogated in order to assess the legality of any detention order. In addition; investigation measures must be initiated within twenty-four hours of the defendant's arrest (even if the defendant's attorney does not appear¹²⁰), the defendant's identity must be established, and he must be consulted on the charges raised against him and whether he wishes to appoint an attorney. In a previous case the Jordanian Court of Cassation ruled that the "*lack of adherence to these procedures by the security services and the Public Prosecutor (who issued a decision to detain the defendant for a month - a measure that is not contained in any provision of the Criminal Procedure Law) renders this procedure illegal.*"¹²¹

Jordanian law entitles the Public Prosecutor to release a defendant on bail in all cases of misdemeanour. Similarly, courts are also entitled to grant a defendant bail during the course of the trial or if the case was referred to them.¹²² The Public Prosecutor may not grant bail in cases of felony that carry the death penalty, hard labour for life or life imprisonment. In such cases only the court to which the case has been referred may grant bail and only if the

¹¹⁸ General Comment No. 8, The Commission on Human Rights 1982 A.v. Australia (560/1993), 3.04.1997, para. 9,4.

¹¹⁹ Article 1/114 of Criminal Procedure Law No. 9 of 1961.

¹²⁰ *Ibid.* Articles 63 and 100.

¹²¹ Legal and penal appeal principles issued by the Bar Association, volume II, p 248

¹²² Article 121 of Criminal Procedure Law No. 9 of 1961.

release of the defendant will not impact the course of the investigation or jeopardize public security.¹²³

Any individual detained for a misdemeanour may submit a request for release on bail to: the Public Prosecutor (if the investigation is still in progress), the court to which the case has been referred, the court which issued the detention ruling.¹²⁴

Refusals to release from the Public Prosecutor or court can be appealed within three days from the date that the related case documents reach the Attorney General's office for review, or from the date his office informed the defendant of the verdict. Appeals against decisions made by the Public Prosecutor are submitted to the First Instance Court whilst appeals against decisions of the First Instance Court are brought before the Court of Appeal.

In general, Jordanian laws regarding preventive detention are not consistent with international laws and standards related to the right to a fair trial. Generally, defendants are detained and only released on bail in exceptional cases. This situation results from the many restrictions established by the law on the right to release, whether it is exercised by the court *ex officio* or on bail upon the defendant's request. With regard to the right to appeal to a higher judicial body, Jordanian laws abide, in principle, to international standards.¹²⁵ However, the Court of Appeal's usual practice is to dismiss appeals regarding the continuation or extension of a detention measure on formal grounds, i.e. without looking at the merits of the case,¹²⁶ a practice which is in contradiction with international laws and standards related to the right to a fair trial.

C. State Security Court

The State Security Court (SSC) was established by State Security Court Law No. 17 of 1959 as a special court of law according to the provisions of Articles 99 and 100 of the Jordanian Constitution. Jordan's sole State Security Court is based in Amman.

1. Appointment of judges to the SSC and their backgrounds

The SSC comprises three civil and/or military judges. Judges are appointed by the Prime Minister upon recommendation of the Minister of Justice (in the case of civil judges), and of the Chairman of the Joint Chiefs of Staff (in the case of military judges). These appointments are published in the official gazette.¹²⁷ Judges at the SSC can be replaced at any moment by an administrative decision of the Prime Minister.¹²⁸

Although not stipulated by law, the SSC usually comprises one civil judge and two military judges, one of whom serves as president.

State Security Court Law is not in compliance with international standards related to the

¹²³ *Ibid.* Article 123.

¹²⁴ *Ibid.* Article 122.

¹²⁵ Article 4/9 of the International Covenant on Civil and Political Rights: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

¹²⁶ Appeal decision No. 434, dated 8/9/2003.

¹²⁷ Article 2 of State Security Court law No. 17 of 1959. In accordance with this provision, ten judges, three of whom were civil, were appointed on May 17, 2006 by a decision of the Prime Minister.

¹²⁸ See Official Gazette p. 2015 for the year 2006.

independence of the judiciary. Indeed its formation relies directly upon the Prime Minister, head of the government, who also has control over appointing, and dismissing, the court's judges.

2. Jurisdiction of the State Security Court¹²⁹

The SSC has jurisdiction to review certain criminal cases defined by State Security Court Law, including crimes relating to:

1. Domestic or external state security.
2. Counterfeit bank notes and coins.
3. Protection of state secrets.
4. Narcotics and mind-altering substances.
5. The purchase, transport, sale and use of explosives without a license.¹³⁰
6. Illegal manufacture, sale, transport, brokering, import or export of automatic weapons, ammunitions or firearms.¹³¹
7. Economic security that the Prime Minister decides to refer to the Court.
8. Slandering or harming the dignity of the King in speech or written materials, in hardcopy or online, or spreading rumours or falsehoods about the King.¹³²
9. Malicious and unlawful associations, public gatherings, and crimes against public security.¹³³
10. Actions committed against the safety of civil aviation, unlawful seizure of aircraft, aviation in Jordan's airspace without a license, and transport of weapons and ammunition via Jordan's airspace with the intent of smuggling.¹³⁴
11. Concealing misdemeanours and felonies related to assaults on the life of the king, changing the Constitution unlawfully, instigating armed insurrection, usurping the civil or military authority, leaders who keep their soldiers mobilized after the issuance of an order of discharge, instigation of civil war or sectarian violence, heading a group with the aim of invading a city or state property or forming groups for that purpose, and crimes of terrorism.¹³⁵

The SSC was not formed to adjudicate specific groups on the basis of race, religion, colour, creed or specific political orientation. In this respect, it can be said that the court complies with international standards related to the establishment of special courts. However, the Jordanian legislator has expanded its jurisdiction, encroaching on that of Regular Courts.

3. Proceedings before the SSC

The court panel comprises a total of three judges. Usually two of these judges are from the military, one of whom chairs the court.¹³⁶ Hearings are public unless the court decides otherwise for reasons of public interest. It should be noted that the court does not define what is meant by "*public interest*."

¹²⁹ Article 3 of State Security Court Law No. 17 of 1959.

¹³⁰ Article 12 of Explosives Law No. 13 of 1953.

¹³¹ Article 11 of Arms and Ammunition Law No. 34 of 1952.

¹³² Article 195 of Jordanian Penal Code No. 16 of 1960.

¹³³ *Ibid.* Articles 157-168.

¹³⁴ Articles 160,162, 177/B, D, C, E and 179/B, C of Civil Aviation Law No. 50.

¹³⁵ Article 206 of the Penal Code. Anti-Terrorism Law No. 50 of 2006 provides for SSC's jurisdiction over crimes of terrorism.

¹³⁶ Article 8 of State Security Court Law.

The SSC adheres to Criminal Procedure Law No. 9 of 1961 as amended - not the Military Criminal Procedure Law. The court begins reviewing the case within a period not exceeding ten days from the date it was received, and holds its sessions on consecutive days. The case may not be postponed for more than forty-eight hours except when the court deems such a postponement necessary. In such a case the court must outline the reasons behind the postponement. The court appoints state lawyers to represent defendants charged with felonies in the case that the latter cannot afford to appoint their own lawyers. SSC rulings can be made on both a consensus and majority basis.

In theory, SSC law corresponds with international standards on the right to trial without delay according to Article 14.3(c) of the *International Covenant on Civil and Political Rights*: "*In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees: (...) To be tried without undue delay*", while guaranteeing the defendant adequate time to prepare their defence in accordance with Article 14.3(b) "*(...) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing*".

However, in practice, the SSC neither holds its sessions on consecutive days nor complies with its rule of not postponing cases for more than forty-eight hours. Cases before the SSC usually involve postponements of more than ten days between each hearing and proceedings normally last for several months until a verdict is reached. In most cases, especially in felonies, the accused remains in detention, in violation of Article 9 of the *International Covenant on Civil and Political Rights*, which states: "*It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement*".

4. Public prosecution before the SSC

The chairman of the Joint Chiefs of Staff appoints the Director of the Ministry of Defence's Military Justice Department, or one of his assistants, as the SSC's Attorney General. In addition, one or more military judges are appointed to serve as public prosecutors. SSC public prosecution procedures follow Criminal Procedure Law as applied in Regular Courts.

The fact that public prosecutors before the SSC – i.e. the director of the Military Justice Department and his assistants - report directly to the military institution in the person of the Chairman of the Joint Chiefs of Staff, is clearly in violation with international standards related to the independence of public prosecutors. Such an arrangement has a significant negative impact on the independence and impartiality of the SSC.

5. SSC Appeal Process

SSC verdicts in felony cases can be appealed before the Court of Cassation, within thirty days from the time that the verdict was made, by both the defendant and the Attorney General. Cases carrying the death penalty or imprisonment of ten years or more are automatically appealed to the Court of Cassation, even if the initial verdict was one of not guilty.

In spite of the serious reservations regarding the composition, jurisdiction and functioning of the SSC, granting defendants the right to appeal to the Court of Cassation is in agreement

with international standards concerning the right to review judicial decisions before a higher court.¹³⁷

6. The extent of executive authority interference in SSC decisions

The real extent of the government's interference in State Security Court decisions is exemplified in a case concerning Abu Faris and Abu Al-Sukkar, both members of the Jordanian Lower House. These two MPs had attended the funeral of Abu Musab Al Zarqawi, a former Al-Qaida commandant killed in Iraq, to offer their condolences. They then openly described Al Zarqawi as a martyr and a hero, sparking public indignation in Jordan.

Abu Faris and Abu Al-Sukkar were referred to the State Security Court and prosecuted on the basis of Article 150 of Jordan's Penal Code, which bans any writing or speech "*intended to, or resulting in stirring up sectarian or racial tension or strife among different elements of the nation*". The judgement rendered by the SSC, later upheld by the Court of Cassation, led to their dismissal from the Lower House.¹³⁸

The study of this case shows that the State Security Court – and the Court of Cassation - have violated the law in many respects:

- The charge brought against the two defendants is a misdemeanour, which requires the issuance of a subpoena and not an arrest warrant, as was the case;
- The Public Prosecutor interfered in the case, even though it was outside of his jurisdiction, after it was referred to the court. Following a decision of the Military Attorney General, the defence team was denied the right to meet with their clients;
- Once asked to review the verdict of the SSC, the Court of Cassation upheld the judgement within forty-eight hours of receiving the appeal - i.e. without respecting designated legal time periods. This speedy process has to be seen in the context of a huge backlog of pending cases before the Court of Cassation, usually resulting in lengthy processing times.

Based on these facts, one concludes that the SSC and Court of Cassation's verdicts would not have been issued in this manner had it not been for the interference of the executive authority, whether for political reasons or in order to appease public indignation.

¹³⁷ In particular Article 14.5 of the International Covenant on Civil and Political Rights. See also Article 8/2/E American Convention on Human Rights.

¹³⁸ State Security Court's verdict of 6 August 2006, upheld by Court of Cassation's judgement n° 1034/2006 of 16 August 2006

3. FAIRNESS OF THE PROCEEDINGS IN REGULAR COURTS

The Jordanian Constitution guarantees the right of access to the courts to all and establishes principles of fairness and equality by explicitly stating that all Jordanians are equal before the law.¹³⁹ However, this is not considered sufficient to ensure the fairness of proceedings if it is not reflected in legislation and practical application. Assessment of fairness can be achieved by comparing the proceedings with international standards relating to:

- Equality before the law.¹⁴⁰
- Access to legal assistance.¹⁴¹
- Speedy settling of disputes without undue delay.¹⁴²
- The right to appeal court rulings before a higher court.¹⁴³

A. Ability to access the courts

The state must work to remove all obstacles that may impede an individual's ability to have easy access to the court system. For example there should be a fair geographic distribution of courts and the financial means of litigants should be considered. Litigation fees are considered as one obstacle that could impede smooth recourse to the judiciary given the varying financial capabilities of those seeking judicial services. Jordanian law outlined litigation fees under Court Fees Regulations No. 4 of 1952. These fees are divided into three types:

- Fees to file a lawsuit, which are paid when the case is presented to the court.
- Fees for pronouncement of the ruling, which are paid when a final ruling is issued.
- Enforcement fees, which are paid when the ruling is referred for enforcement.

With regard to civil lawsuits, the overall amount of requested fees represents approximately 7% of the amount claimed in the case. Before the Customs Courts, a fee of 25% of the requested amount is added to the 7% mentioned above. Criminal procedures are normally not subject to fees unless they are coupled with a personal rights claim. Labour disputes are exempted from fees.

Court Fees Regulations No. 4 of 1952 includes detailed provisions on how to calculate court fees as well as setting a ceiling limit for these fees.

Litigation costs, although low, may not be affordable for some people due to their financial means. Jordanian law addresses this situation by granting court presidents the authority to postpone payment of these fees until the trial has ended and a final ruling has been made. However, when the litigant then wishes to enforce the decision, s/he will have to pay the postponed litigation fees in addition to the normal enforcement fees. Such an arrangement may, in some cases, hamper the enforcement of judgements made by the courts.¹⁴⁴

¹³⁹ Articles 6 and 101 of the Jordanian Constitution.

¹⁴⁰ Articles 14/1, 2/1 and 26 of the International Covenant on Civil and Political Rights; Article 7 of the Universal Declaration on Human Rights.

¹⁴¹ Article 8-2-E of the American Convention on Human Rights, Article 14-3-D of the International Covenant on Civil and Political Rights and Principle 6 of the Basic Principles on the Role of Lawyers.

¹⁴² Article 14-3-C of the International Covenant on Civil and Political Rights.

¹⁴³ *Ibid.* Article 14-5.

¹⁴⁴ Article 15/A of the Court Fees Regulations No 4 of 1952 as amended.

B. Legal counselling and representation

Jordanian legislation does not include provisions which oblige judicial institutions or any administrative body to extend the offering of legal counselling or assistance services. Currently, the provision of legal assistance is limited by Jordanian legislation to trials which could potentially result in penalties of hard labour for life or capital punishment.

Article No. 11 of the Jordanian Bar Association Law of 1972 includes a provision allowing those who cannot bear the cost of retaining an attorney to apply to the President of the Bar Association for legal assistance, who in turn assigns a lawyer to defend the applicant before the court. However, this legal aid mechanism has so far only been applied in High Criminal Court and State Security Court cases.

C. Processing times

With the exception of cases reviewed before the High Criminal Court and labour disputes, for which the law makes a speedy settlement compulsory, the remaining civil and criminal lawsuits involve notable delays, even though Civil Procedure Law explicitly stipulates that hearings should not be postponed for more than fifteen days. The establishment of a new Mediation and Action Departments in Jordanian courts has not yet helped to reduce the backlogs and delays inherent in the system.¹⁴⁵

The main reasons for the long processing times within Jordanian Courts include:

- The lack of cooperation of security personnel in penal actions once summoned to testify;
- Inconsistency in punishing subpoena servers for delayed summons delivery;
- Granting to parties of more than one respite for the same purpose;
- Government and public institutions enjoying a respite to respond to lawsuits filed against them that is double the length of that given to regular plaintiffs;
- Lawyers playing a role that prolongs the duration of trials;
- Insufficient judicial and administrative staff to meet the volume of registered lawsuits.

D. Appealing regular court decisions

Under Jordanian Law, opponents and defendants are entitled to appeal judicial decisions issued by the courts. There are up to three levels of appeal within the Jordanian judicial system. Thus, in principle, criminal and civil rulings made by Magistrate Courts and First Instance Courts can be contested at two levels – appeal and cassation. However, in order to reduce the backlog in the Court of Cassation, the possibility of appealing decisions involving amounts of less than 5,000 JOD (4,817 €) has been abolished. Even if the law, in such cases, provides for the right to request an appeal before the court from the President of the Court of Cassation, such a limitation appears to violate the principle of equality stipulated in the Jordanian Constitution.

It should be noted that preliminary and accessory decisions issued by the courts, are open to review before the Courts of Appeal and the Court of Cassation, either independently from, or together with, the main ruling on the case.

¹⁴⁵ This new section, intended to be established in all courts, has so far only been experimented within the Amman First Court of Instance.

E. The extent of executive authority interference in court proceedings and rulings

The judiciary must function without any outside interference. It can be said that the Jordanian Government, in principle, does not interfere in civil and criminal cases as long as they are not related to politics or state sovereignty. However, it is difficult to enforce this principle due to the dominance of the executive power over the judiciary through administrative and financial supervision and its power of appointment and recommendation. In addition, administrative governors have been granted power to investigate, detain and inflict punishment under the Crime Prevention Law.¹⁴⁶ These powers have been employed on several occasions, even after innocent verdicts or the release of the accused. In these cases, defendants were detained, based on the provisions of the Crime Prevention Law, following an administrative decision by the governor - sometimes for a longer period than could have resulted from the original penalty.

¹⁴⁶ Crime Prevention Law No. 7 of 1954.

4. APPOINTMENT AND IMMUNITY OF LAWYERS

The legal profession in Jordan is divided between regular and Shari'a lawyers, each of whom are regulated by separate laws.

A. Regular lawyers

The regular legal profession is regulated by Law No. 15 of 1985, which guarantees a partial protection of lawyers in Articles 38, 39 and 40. Under these provisions, lawyers cannot be held responsible, detained or prosecuted for their statements. The law also stipulates that lawyers must receive fair treatment in courts and all official departments as well as in police stations and that their requests cannot be ignored without legal justification. In terms of physical protection, lawyers enjoy the same status as judges. As a result, whoever assaults a lawyer is punished according to the same provisions as those for judges.

However, according to Article 40/3 of Law No. 15 of 1985, body searching lawyers is only prohibited during trials. Therefore, the searching of lawyers is permitted in courts (outside the courtroom), government departments, police stations or even in their own offices - a situation which contradicts a number of provisions in Jordanian law, in particular Article 40.1-5. Moreover, Article 107 of the Jordanian Bar Association Law No. 11 of 1972 lowers the protection, immunity and independence of lawyers by granting the Minister of Justice the power, for reasons of "*public security and safety*", to dissolve the association's council and to appoint a council comprising at least seven members and headed by himself. The law does not provide a clear and precise definition of the "*public security and safety*" reasons that may lead to such a measure. In addition, none of these appointed members of the council are required to be lawyers. The minister's decision to dissolve the council of the association cannot be contested in any way.¹⁴⁷

Pursuant to Article 108 of the Jordanian Bar Association Law, lawyers are not allowed to form unions unless they have received permission from the Government's Cabinet Office, its approval of the union's by-laws and a recommendation from the relevant minister.

In addition to the law on the Jordanian Bar Association itself, the fifth chapter of the Bar Association's by-laws, entitled Rights and Duties of Lawyers, includes a list of duties without even mentioning lawyers' rights or the guarantees they should enjoy.

In reality, despite the provisions of Law No. 15 of 1985, Jordanian lawyers still face numerous obstacles when exercising their profession, particularly when meeting in government departments and not least in police stations. For example, in 2001, lawyer Samer Qatan was severely beaten by a police officer at the entrance of the Amman Palace of Justice after insisting on entering the building in order to perform his duty for his client. The Palace of Justice had been closed to the public that day because of an official visit by His Majesty the King, although no announcement had been made that the court hearings would be adjourned. In 2001 two lawyers were accused by court guards of committing libel and slander as they were passing from one section to another of the Irbid First Instance Court. They were later convicted although the testimony of the plaintiff, the policeman who prevented them from entering the Criminal Court, was not even heard. Several lawyers

¹⁴⁷ Such provision has not yet been applied.

interviewed for the purpose of this report confirmed that they are subject to police harassment in police stations, detention centres and rehabilitation centres. They said they usually rely on personal acquaintances rather than on their capacity as lawyers to overcome these obstacles.

B. Shari'a lawyers

The Shari'a legal practice is regulated under the Shari'a Lawyers Law of 1952 and the Shari'a Lawyers Regulations of 1987, issued under Article 21/A of this law, and the Shari'a Procedure Law of 1959 as amended.

Articles 15, 16 and 17 of the Shari'a Procedure Law guarantee litigants the right to retain an attorney. However, the law does not take into consideration the jurisdiction of Shari'a courts over cases of apostasy. As a result the law does not state that legal representation of the defendant is obligatory in such matters, even though a defendant found guilty of apostasy can be stripped of all civil and political rights and may even be condemned to death.

Shari'a Lawyer Law does not include any provision on Shari'a lawyers' protection and immunity. These rights and guarantees are briefly outlined in Articles 2 and 4 of Shari'a Lawyer Regulations, but are not backed by specific penalties.

C. The role and powers of lawyers in the investigation stage

According to Article 63/1 of Criminal Procedure Law, litigants and parties to criminal actions have the right to a lawyer when dealing with the Public Prosecution Office. However, Article 63/2 allows the Public Prosecutor to start the investigation before the lawyer is summoned in urgent circumstances - i.e. if there is a risk that the evidence might be lost - provided that the lawyer reviews their clients' statements upon his arrival. If these provisions are not respected, the defendant's statement may be considered null and void.

Nevertheless, Article 64/3 of the same law grants public prosecutors exceptional powers to initiate the investigation without the presence of the defendant's representative or even the defendant when necessary. Moreover, the conditions rendering such measures admissible are left to the Public Prosecutor to determine, without any supervision.

Additionally, Jordanian legislation restricts the powers of lawyers during the investigation phase by prohibiting them from speaking, except with the permission of the Public Prosecutor. The law only grants them the right to submit a memorandum, which however does not guarantee any rights.

In principle, Article 66 allows lawyers to meet with their clients any time, i.e. also during the investigation stage. In reality, lawyers cannot visit their clients in court jails except for the purpose of signing the power of attorney. As a result, lawyers do not usually have enough time to review the charges that have been made with their clients. When the defendants are transferred to a correction and rehabilitation centre, lawyers can only meet with them on the days set by the prison administration, normally three days per week. Prison visits occur mostly during workday hours when lawyers are busy attending court sessions. Due to these limitations, which are not only limited to the investigation stage but last for the whole duration of the trial, lawyers are often not able to meet their clients.

D. The role and powers of lawyers during trials

It is only for crimes carrying the penalties of capital punishment, hard labour for life or life imprisonment that Jordanian legislation, through Article 208 of the Criminal Procedure Law, requires that a lawyer be appointed to represent the defendant. The law, however, does not stipulate that defendants must be informed of their right to a lawyer in cases involving misdemeanours. In addition, Article 215/1 of the same law limits the rights of the defence by stating that lawyers must defend their clients in a manner that does not violate the "*sanctity of the law*". The purpose of this provision remains unclear, as is the concept of "*sanctity of the law*".

As for the State Security Court, legislation only stipulates the possibility of appointing a lawyer before the SSC, without extending this right to the investigation phase led by the Public Prosecutor. Under these circumstances, even if a lawyer is permitted to represent a defendant under investigation, this will be seen as a privilege and not a right, which contradicts court procedures and the right to a fair trial.

7. ADMINISTRATIVE AND PROCEDURAL PROBLEMS AND ATTEMPT TO REFORM THE SYSTEM

A. Main administrative and procedural problems

The Jordanian judiciary suffers from a number of administrative and procedural problems, the most important of which include:

1. Litigation costs

Despite the power granted to court presidents to postpone the payment of fees in personal lawsuits, litigation costs constitute an obstacle for individuals wishing to take court action. According to Jordanian law, litigation costs also apply before the Courts of Appeal and the Court of Cassation. A genuine review of all court fees including stamp fees, for which there is no fixed ceiling, would be necessary as these fees often exceed the amount demanded in the lawsuit.

2. Service of papers and limited number of subpoena servers

The judiciary still has difficulties in delivering case documents to litigants, which often leads to longer processing times. Despite amendments to Civil Procedure Law, including the possibility of resorting to private companies to deliver documents (further adding to the financial burden of litigants) there is still a lack of efficient administration of these delivery processes, rendering lawyers and litigants prone to the whims of subpoena servers.

3. Enforcement of rulings

The Enforcement Division faces a huge backlog of non-enforced civil judgements due to a shortage of employees, limited computerisation, and the complexity of the procedures involved.

Before being enforced, criminal court rulings have first to be reviewed by the Attorney General. In many cases, it takes years before first instance decisions, especially those made *in absentia*, are transmitted to defendants. Following notification, the sentenced has the right to appeal which can again involve a number of years before a final decision can finally be enforced. This situation weakens confidence in the judiciary and infringes upon defendants' rights.

4. Shortage in the number of administrative employees and messengers

The severe lack of sufficient court administrative staff, and their poor distribution amongst courts throughout the country, slows the course of justice. In addition to burdensome work loads, court employees are poorly paid. This situation affects all levels of the judicial system and impacts negatively on case processing times.

5. Lengthy processing times

Many reasons have already been mentioned in this report to explain why the length of cases

is often increased significantly, be it the lack of judges and administration staff, servicing of bureaucratic procedures, poor court administration or the lack of legal provisions setting timeframes for the settlement of cases. All of these and other problems require genuine and serious study in order to devise appropriate solutions.

B. Attempt to reform the judicial system

1. The Judicial Upgrading Strategy (JUST)

Since 2000, the Jordanian Government has moved towards devising a strategy for the development of the judiciary. To this end, a royal committee was formed, headed by the Prime Minister and including HE Professor Ahmad Obeidat, HE President of the Judicial Council and the Court of Cassation Ahmad Al-Tarawneh, and HE Minister of Justice Professor Faris Al-Nabulsi. In 2003, the committee concluded its review and introduced a plan for the development of the judiciary. One of its most prominent points was the increase in the number of judges to 800. The ministry adopted a comprehensive strategy for the development of the judiciary to be implemented over two years. This plan was termed the Judicial Upgrading Strategy (JUST) for 2004-2006. JUST incorporates 11 components and a supplementary plan for 2007-2009 containing 32 items.

Eleven Components for 2004-2006:

1. Enhancing the impartiality and independence of the judiciary.
It is worth noting that the first objective of the judiciary upgrade project is to enhance the impartiality and independence of the judiciary. The Ministry of Justice is entrusted with supervising this process even though greater "independence of the judiciary" would mean abolishing the Ministry of Justice's financial and administrative powers over the judicial authority. As a result significant doubt exists as to the true importance that will be attached to this component of the overall project to upgrade the judiciary. As for judicial impartiality, a code of judicial conduct has been prepared, published and distributed to all judges. In addition, suggestion and complaint boxes were installed in courts for the use of all court visitors.
2. Boosting the efficiency of the judicial system and developing regulations and procedures.
3. Reducing the demand on courts.
In order to encourage alternative means for dispute resolution, the Ministry of Justice created the Mediation and Action Department and initiated a pilot phase in the Amman Palace of Justice. It is expected that this will be replicated in the Irbid and Zarqa courts.
4. Strengthening judicial monitoring and inspection.
5. Enhancing and developing the infrastructure of the courts.
A Palace of Justice was established in the Irbid governorate and inaugurated in the middle of 2007 and is expected to be opened to the public soon. The same applies to the Karak and Salt governorates.
6. Strengthening the institutional capacity of the Ministry of Justice.
7. Automating and computerizing the tasks of the Ministry of Justice and the courts.
8. Developing human resources capacities for judges and their assistants.
9. Enhancing the efficiency of the judicial system services.
10. Relations with faculties of law and the Bar Association.

11. Ongoing review of the law and its applications¹⁴⁸.

2. The limits of the Judicial Upgrading Strategy

Even though it is still in its early implementation phase, the JUST Plan has already received the following points of criticism:

- The plan is supervised by the Ministry of Justice and not the High Judicial Council.
- Judiciary development efforts will not yield the desired results if they are not coupled with constitutional amendments at the outset.
- The plan requires review and modification since the circumstances under which it was endorsed have changed. For example, the plan to raise the number of judges to 800 needs to be reconsidered as it did not consider population and economic growth as well as the number of judges that will be required by the Mediation and Action Departments.
- The Bar Association has no role, not even advisory, in the plan to upgrade the judiciary.
- Civil society organizations have no role, not even advisory, in the plan.
- The sluggish implementation of the plan. Since 2000, development has been limited to Amman courts, specifically the Palace of Justice. Although some other projects are underway, such as the palaces of justice in the Irbid governorate¹⁴⁹ and in other governorates, they remain unfinished.
- Despite the plan's concern with improving the professional competency of court employees, it does not show an interest in improving the economic situation of those employees whose salaries are incommensurate with the rise in the cost of living - the main reason for the increase in the acceptance of bribes among employees, especially subpoena servers and messengers.¹⁵⁰

¹⁴⁸ The EU-Jordan Action Plan under the European Neighborhood Policy includes, as one of its Priorities for Action, to "Continue to develop an independent and impartial judiciary. Further reinforcing administrative and judiciary capacity". The document specifically refers to the following actions "Implement the Judicial Upgrading Strategy 2004-2006, simplify judicial procedures and improve the speed and efficiency of decisions" and "Strengthen the capacity and efficiency of the justice administration, including adequate training of judges".

Via its MEDA programme, the EU is currently funding two projects dealing with Justice related issues, including one, entitled "Institutional strengthening of the Ministry of Justice", specifically designed to support two of the objectives of the Ministry of Justice's Judicial Upgrading Strategy 2004-06, namely Objective 3 "Improving the efficiency of courts in delivering justice and enhancing reliability and independence" and Objective 4 "Providing support and services to courts through enhancing the capacity of the Ministry of Justice in its capacity of driver of reforms and provider for the judiciary". Total budget: 1.1 million € over 18 months. See Survey on the Initiatives in the Field of Judicial Reform in the EuroMed Region by Siân Lewis-Anthony, EMHRN, January 2008, www.euromedrights.net

¹⁴⁹ Although Irbid's new Palace of Justice was formally inaugurated in May 2007, it has not been opened to the public at the time of writing of this report.

¹⁵⁰ This fact was proved after conducting several interviews with employees and lawyers. In addition, this fact is publicly known.

RECOMMENDATIONS

It should be recalled that the independence of the judiciary can only be achieved through substantive constitutional and legislative reforms, together with the political will to ensure that such guarantees are then implemented and respected in practice. The 2004 EMHRN report *Justice in the South and East of the Mediterranean Region*¹⁵¹ includes a series of general recommendations which are still valid and which it would be of benefit to repeat here:

"The independence of the judiciary (vis-à-vis the political system, religious denominations and all other powers) must be expressly stated and recognised in the Constitution. The status of judges must form the object of an organic law to guarantee that it complies with the Constitution.

Above and beyond this institutional recognition, members of the judiciary must enjoy specific guarantees:

- *Judges must be recruited in conditions of equal access to posts through competitive examinations and appointed exclusively on the basis of their competence.*
- *They must be remunerated by the state at a satisfactory level.*
- *Their careers must be managed by an independent body consisting of fellow judges, but also of persons not from the judicial system and without any interference from the legislature or the executive.*
- *Judges must enjoy the benefits of further training and education, and should have the right to form or join trade unions.*
- *Ordinary judges must be irremovable, except in the event of disciplinary measures taken by an independent body.*
- *Judges in the Public Prosecution Office must have the same independent status as ordinary judges. They must be subject to rules which ensure the proper application of criminal procedures launched by the executive power.*

These requirements entail the abolition of all courts with exceptional jurisdiction, either by virtue of their composition or the rules applicable to them.

Since there can be no proper justice without an effective and independent defence, the training of lawyers should at least be identical to that of judges, and the independence of lawyers and of their professional associations should be legally recognised and protected.

Finally, a fair system of justice develops under the scrutiny of society. The role of civil society should therefore be recognised and promoted."

¹⁵¹ EMHRN, 2004, p. 17-19, available at www.euromedrights.net.

Keeping in mind these general recommendations, we make the following specific recommendations to the Jordanian judiciary:

1. RECOMMENDATIONS TOWARDS THE JORDANIAN AUTHORITIES

A. International conventions

1. The process of incorporating all international Human Rights instruments that have been ratified by Jordan into domestic law - resulting in their publication in the Official Gazette - should be finalised as soon as possible. Particular focus should be paid to the incorporation of all agreements relating to the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. Jordan should accept and ratify, as soon as possible, the two optional protocols to the International Covenant on Civil and Political Rights.
3. Jordan should consider lifting the reservations made on several human rights instruments, in particular the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

B. Constitutional reform

The Jordanian Constitution should be amended in order to conform to international standards on the independence of the judiciary. Such an amendment requires:

4. an explicit provision in the Constitution that guarantee the principle of security of tenure for all judges throughout their whole career.
5. an explicit provision in the Constitution for the establishment and composition of the High Judicial Council (HJC), the granting of complete independence to the HJC from the executive authority, and control over the administrative and financial affairs of the judiciary.
6. the stipulation in the Constitution that all special courts shall be set up in accordance with the provisions of the *Law on the Establishment of Regular Courts* and that they shall report to the High Judicial Council.
7. an explicit provision for the establishment of a constitutional court whose judges enjoy immunity and complete independence from any authority in the Kingdom.
8. the amendment of Articles 124 and 125 of the Constitution, which allow for the suspension of laws under a state of emergency and the declaring of martial law, in order to bring them in-line with Article 4 of the International Covenant on Civil and Political Rights.

Such amendments would create a solid constitutional foundation for the independence of the judiciary and the right to a fair trial. These should be accompanied by a series of legislative reforms aimed at implementing these principles.

C. Legislative reform

Judicial Independence Law No. 15 of 2001 should be amended in order to ensure complete independence both for the judiciary as an institution and for individual judges. The following amendments are recommended:

9. To abolish the presence of the Public Prosecution Office, the Judicial Inspection Department and the Ministry of Justice in the composition of the High Judicial Council, since these institutions are currently part, or under control, of the executive power and influence the independence of the judiciary.
10. To modify the HJC's composition in order to include amongst its members several judges elected by the judges themselves following a fair and transparent election process organised by and under the supervision of the HJC itself.
11. To make the meetings of the High Judicial Council public, with closed meetings being held only in exceptional cases.
12. To abolish the Minister of Justice's role in recommending appointments and suspensions of judges.
13. To abolish the powers granted under current legislation to the president of the High Judicial Council and to transfer them to the High Judicial Council.
14. To repeal Article 42 of the Law on Judicial Independence, which entrusts the Ministry of Justice with the task of judicial inspection, and to grant the High Judicial Council exclusive power to undertake administrative and financial supervision and inspection over the judiciary and the courts without interference from any other authority.
15. To allocate to the High Judicial Council an independent budget for all of the expenses related to the judicial system.
16. To abrogate Judicial Inspection Regulation No. 47 of 2005 for contradicting judicial independence and the JUST project.
17. To place all court administrative staff under the administrative supervision of the judicial authority as opposed to that of the Ministry of Justice.
18. To increase the salaries of judges and court administrative staff in order to at least follow rises in living costs.
19. To define by law a retirement age for judges.
20. To state in Law on Judicial Independence that judges are free to form and join associations aimed at promoting and protecting their interests and those of their profession, in accordance with Article 9 of the United Nations Basic Principles for the Independence of the Judiciary.
21. Similarly, to state in this law that judges are entitled to freedom of expression, belief, association and assembly, in accordance with the Universal Declaration of Human Rights and Article 8 of the United Nations Basic Principles for the Independence of the Judiciary.
22. To strictly separate the Public Prosecution Office from both the judicial and executive authorities and to assign it to an independent authority defined under an independent law.

23. To consequently amend Article 11 of the Civil Procedure Law, which grants the Minister of Justice jurisdiction over the Public Prosecution Office.
24. To abolish the authority vested in police station chiefs, police officers and intelligence agents to conduct investigations as such authority infringes on the jurisdiction of the Public Prosecutor.
25. To amend the Court Fees Regulations in order to cancel litigation fees or to reduce them to a symbolic amount.
26. To abolish the State Security Court and all other special courts and to transfer their responsibilities to the Regular Courts; in that respect simultaneously increase the specialisation of courts and judges under the Regular Court system.
27. To provide all persons arrested or under investigation with the right to retain a lawyer to represent them in police stations and from the commencement of the investigation process as well as the right to remain silent except when in the presence of a lawyer.
28. To expand the protection granted to lawyers beyond that currently only provided during trials.
29. To revoke the power granted to the Prime Minister to dissolve, for security reasons, the executive bodies of the Bar Association.
30. To allow lawyers to freely form and join associations aimed at promoting and protecting their interests and those of their profession and simplifying the procedures to do so.
31. To establish a joint advisory council for the development of the judiciary comprising representatives of the judicial, executive and legislative authorities, the Bar Association and civil society organisations.
32. To set up an administration for penalty enforcement, under the Ministry of Justice, that will have the task of supervising the enforcement of penalties as well as correction and rehabilitation centres (prisons) and to consider obstacles to rapid enforcement.
33. To adopt alternative penalty procedures, especially for cases relating to juveniles as well as to family and neighbourhood disputes.

D. Relations to civil society

In their relations with civil society, the Jordanian authorities should:

34. Regularly inform and consult civil society organisations, in particular those involved in human rights and justice-related issues, about any ongoing or foreseen developments in the field of judicial reform and, as much as possible, take into consideration their recommendations and suggestions.
35. Work in close cooperation with the Bar Association and other lawyer associations when preparing legislative reform in the field of justice.

2. RECOMMENDATIONS TOWARDS THE EUROPEAN UNION

The EU-Jordan Action Plan, under the European Neighbourhood Policy, commits, as one of its priorities for action, to "*Continue to develop an independent and impartial judiciary.*"

Further reinforcing administrative and judiciary capacity". In terms of actions, the document calls for the:

- *Implementation of the Judicial Upgrading Strategy 2004-2006, simplification of judicial procedures and improvement in the speed and efficiency of decisions;*
- *Strengthening in the capacity and efficiency of the justice administration, including adequate training of judges.*

The EU is currently implementing an assistance programme entitled "Institutional strengthening of the Ministry of Justice", which is designed to support two of the objectives of the Ministry of Justice's Judicial Upgrading Strategy (JUST) 2004-06, namely "*Improving the efficiency of courts in delivering justice and enhancing reliability and independence*" and "*Providing support and services to courts through enhancing the capacity of the Ministry of Justice in its capacity of driver of reforms and provider for the judiciary*". In addition, another EU programme, entitled "Human Rights and Good Governance", focuses on two Jordanian institutions, namely the Judicial Institute of Jordan (JIJ) and the National Centre for Human Rights, and also includes justice-related components.

Within the framework of existing agreements and assistance programmes, and its general relations with Jordan, the European Union should:

A- Strengthen respect towards international standards

36. Promote a common reference for universal human rights standards, and insist on the need for the Jordanian authorities to fully incorporate ratified treaties into domestic legislation, including; the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
37. Encourage Jordan to ratify additional human rights instruments, including the two optional protocols to the International Covenant on Civil and Political Rights, and lift reservations made on several ratified human rights instruments, in particular the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.
38. Encourage Jordan to amend its Constitution in order to strengthen the status of the judiciary and to increase the level of independence both of the judicial institution and of individual judges.

B. Encourage Jordanian authorities to create the environment and the conditions for a global and integrated reform of the judiciary

The European Union should also encourage the Jordanian authorities to:

39. Organise a comprehensive national debate concerning the necessary reform of the judiciary and to make sure that actors within the judiciary, such as judges, lawyers and their associations, as well as civil society at large, are included in these consultations.
40. Implement the Judicial Upgrading Strategy (JUST) and its future developments in a manner that reflects the conclusions and outcomes of this national consultation.

41. Reform the institutional framework, both in the Constitution and legislation, in order to strengthen the independence of the judiciary and to ensure equal access to justice, equality before the law and the right to a fair trial.
42. In particular, reform the High Judicial Council by modifying its composition, increasing its prerogatives, strengthening its budgetary autonomy and guaranteeing real independence from any interference by other powers.
43. Recognise and respect the judges' right to freely form and join associations aimed at promoting and protecting their interests and those of their profession, in accordance with Article 9 of the *United Nation's Basic Principles for the Independence of the Judiciary*.
44. Similarly, recognise and respect judges' freedoms of expression, belief, association and assembly, in accordance with the *Universal Declaration of Human Rights* and Article 9 of the *United Nations Basic Principles for the Independence of the Judiciary*.
45. Fight, without discrimination, all forms of corruption within the judiciary.

C. Support to Jordanian civil society

The European Union should support Jordanian civil society through:

46. Regular consultations and dialogue with Jordanian organisations that are involved in human rights issues, in particular those working on justice related issues or promoting judicial reform.
47. Financial support to justice-related projects carried out by local NGOs with the aim of increasing their professional, networking and lobbying capacities and assisting them in becoming influential independent actors in the field of judicial reform.

3. RECOMMENDATIONS TOWARDS CIVIL SOCIETY

It is recommended that Jordanian civil society organizations:

48. Consult with each other and coordinate their positions in accordance with the international standards related to the judiciary and agree on common objectives.
49. Establish a NGO committee comprising lawyers and NGO representatives with the task of drafting a common plan of action, which would include proposals for lobbying actions to be undertaken towards the Jordanian authorities and international donors (or other actors) as well as for actions aimed at sensitizing politicians and policy-makers about the need for judicial reform.
50. Elaborate and implement joint actions and programs aimed at raising awareness amongst the general population about the issue of the independence and impartiality of the judiciary and at promoting the independence of the judiciary as an essential tool to protect the rights and freedoms of all individuals.

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8. "The Right to a Fair Trial in Jordan, the Law and the Practice", working paper presented by judge Dr. Mohammad Al-Tarawan to the programme on the rule of law and the independence of the judiciary and lawyers organized by the Arab Institute for Human Rights as part of the Institute's 2000-2003 strategy.
<http://www.amanjordan.org/downloads/files/2007/jordan-55.doc>

International and Regional Conventions and Documents

1. Universal Declaration of Human Rights
2. International Covenant on Civil and Political Rights
3. International Covenant on Economic, Social and Cultural Rights
4. Convention on the Rights of the Child
5. Convention on the Elimination of All Forms of Discrimination Against Women
6. Convention on the Elimination of All Forms of Racial Discrimination

7. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
8. United Nations' Basic Principles on the Independence of the Judiciary
9. United Nations' Basic Principles on the Role of Lawyers, 1990
10. Guidelines on the Role of Prosecutors, 1990
11. Code of Conduct for Law Enforcement Officials, 1990
12. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985
13. European Convention for the Protection of Rights and Fundamental Freedoms, 1950
14. African Charter on Human and Peoples' Rights, 1980
15. Arab Charter on Human Rights, 2004 (has not yet been enforced)
16. American Convention on Human Rights, 1969
17. Beirut Declaration: Recommendations of the First Arab Conference on Justice, June 1999
18. Cairo Declaration on Judicial Independence, Issued by the Second Arab Conference on Justice, February 2003
19. The Arab Charter on Human Rights

Jordanian Laws

1. Jordanian Constitution
2. Law on Judicial Independence
3. Law on the Establishment of the Regular Courts
4. Judicial Service Regulations
5. Civil Procedure Law
6. Criminal Procedure Law
7. Law on the Magistrate Courts
8. Judicial Inspection Law
9. Shari'a Procedure Law
10. Bar Association Law
11. Shari'a Lawyers Law
12. State Security Court Law
13. Anti-Terrorism Law
14. Crime Prevention Law