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JORDAN RULE OF LAW PROGRAM

12TH QUARTERLY REPORT
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ACRONYMS

ACJLS	Arab Center for Judicial and Legal Studies
AU	Administrative Units
CAP	Court Administrators Program
CBO	Community Based Organization
CSP	Civil Society Program
CSS	Client Support Specialist
DMS	Document Management System
FI	First Instance Court
FJP	Future Judges Program
FTS	File Tracking System
ITD	Information Technology Development
JC	Judicial Council
JIJ	Judicial Institute of Jordan
JOB	Jordanian Ombudsman Bureau
MIZAN	Automated case file management system tailor-made for Jordan courts and supporting departments. MIZAN V2 is the enhanced automated version of MIZAN V1; it will replace MIZAN V1 in all national courts of Jordan.
MOJ	Ministry of Justice
ROLP	Rule of Law Project
TO	Cassation Court Technical Office
VPN	Virtual Private Network

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EXECUTIVE SUMMARY

As the base period of the ROLP project is coming to an end, this quarter witnessed significant strides in ROLP project accomplishments even though some projects and initiatives experienced delays due to judges' vacations in August, a decreased work week in the Holy Month of Ramadan, and the holiday celebration of Eid Al-Fitr.

Ambassador James Michel was contracted to provide technical assistance to explore prospects of reform of Jordan's justice system, particularly in light of the Constitutional reforms recently drafted enacted. Given the present environment of political activism in the Middle East and North Africa, there is a window of opportunity to potentially accelerate various key justice sector reforms in Jordan, including improved judicial independence. The findings of Mr. Michel's reports solidified ROLP's ability and positioning to help make an important and meaningful contribution to Jordan's efforts of Constitutional and justice sector reform.

In September, His Excellency Mohammed Salameh al Mahameed was appointed by His Majesty King Abdullah II as the new Chief Justice and therefore assumed the post as new head of the Judicial Council. He has asked for Judge Ahmed Jamalyah, the liaison between the JC and ROLP for the Administrative Units Bylaw project, to begin preparations for JC workshops. ROLP is working with the Administrative Units to create a new 3 year strategic plan for the JC.

ROLP's technical team has continued to work towards closing out technical projects and transitioning data knowledge to the MOJ ITD staff. Significant training to the MOJ staff has been given by ROLP as well as supervision in rollout and testing activities. The web portal of the MOJ website, which provides access to case information and court hearing schedules pulled from the MIZAN system, continues to have a high-volume usage, and is improving access to the court system.

In line with its efforts of assisting the Ministry of Justice to reduce administrative complexity within the courts and simplify workflow, ROLP began the pilot stage of the File Tracking System in the North Amman Court, allowing one to identify the precise location of court files at any given time. If a file is in the warehouse, the system is equipped to show in which row and column the file is located in the storage warehouse.

ROLP provided the JC with significant work this quarter related to the implementation of the JC Administrative Units Regulation of 5-2010, including: delivering a proposed organizational structure for the Administrative Units, preparing a Courts' Needs Assessment Workshop to aid in the development of the JC annual plan, and assisting the media sector of the JC to develop a periodical publication. ROLP is working with the Development and Planning Unit of the JC to design a proposed annual report, develop a 2012 action plan, and establish Key Performance Indicators of the Administrative Units.

OBJECTIVE 1: ENHANCE JUDICIAL PERFORMANCE TO REDUCE DELAYS AND INCREASE PUBLIC CONFIDENCE

Develop Capacity in the Court of Cassation Technical Office

ROLP continues supporting the Cassation Court Technical Office (TO) by providing needed logistical support and assuring the MOJ provides adequate staffing to fulfill the TO's needs. The TO expanded its work and services to include all panels of the Cassation Court. The TO judges and researchers offer legal opinion, research, and studies to court panels. Additionally, they review all General Assembly court judgments to make sure that the judgments do not contradict past General Assembly judgments. The TO's research plays an important role in conserving Jordanian jurisprudence, essential in

unifying judgments and assuring that the quality of judgments meet the highest standards. This quarter, ROLP provided the TO with AL QUSTAS, a comprehensive Jordanian/Arab legal database for all TO Judges and researchers.

Court Administration

Court Administrator Program

The training provided through the Court Administrator Program (CAP) has been very successful in equipping court administrators with the knowledge and skill of court administration best practices. On 20 September, ROLP completed the remaining and final CAP intermediate module courses for 21 participants at the JIJ. Courses offered in the intermediate curriculum included: Introduction to Leadership, Effective Management, Human Resources Management, Building Effective Teams, Budgeting and Planning, Court Operation, and Business Process Reengineering.



Court Administrator Program participants



Court Administrator Program training session

North Amman Court Renovation

ROLP worked with a local architect and the North Amman First Instance court to renovate the existing facility. The new layout combines all administrative departments on one floor and expands storage warehouses. In August, ROLP procured office equipment for the newly-renovated North Amman Court Criminal Evidence Warehouse, situated in the basement of the NA Courthouse. This facility holds criminal evidence and confiscated items. The renovations have reduced file movement and eased procedural burdens



North Amman Court renovation: before and after



North Amman Criminal Warehouse- before renovation



North Amman Criminal Warehouse- after renovation

Computerization

ROLP has been closing out facets of the computerization component of the project, such as: software deliverables, court transition support, development cycle, and inventory. By the end of October, a full transition is anticipated to be completed for the following: court support (for all new software and applications), knowledge transfer from ROLP's technical team to the MOJ-IT department, and inventory turnover.

During the reporting period, ROLP's technical team worked on the following closeout activities:

MOJ IT staff support for courts

In July, ROLP conducted a 5 day intensive group training on testing procedures for MIZAN V2 and on rollout procedures and checklists for 12 MOJ IT staff that will be responsible for applications testing and rollout.

MOJ IT staff at Data Center

Specific training of advanced IT topics related to data center technology, for five MOJ IT Department staff, will qualify individuals to manage the daily operations of the data center and provide disaster recovery. The training sessions began in early August and should be completed by November.

MASAQ project inventory

An inventory list was prepared, approved by DPK's home office, and sent for signature to the MOJ. ROLP's IT department has been charged to reconcile a 2008 inventory list from the MASAQ project. Of the 50 courts, 40 have been completely reconciled. For the remaining 10 courts, ROLP is working with the MOJ to locate and track all product inventory. The inventory sheet contains the following:

- Computers, printers, network cables and Kiosk machines which were sent to courts to run the MIZAN application
- Servers and related equipment for the Data Center at the New Palace of Justice
- Furniture that has been sent to courts for renovated departments, including Case Management

Departments, Mediation Departments, and the Notary Public.

ROLP/MOJ Knowledge transfer

In August, four MOJ IT employees completed 25 training hours on Oracle Administration workshop one, provided by ROLP technology staff. This is the first of seven training courses that aim towards the knowledge transfer from ROLP to MOJ staff. In September, these same employees completed 50 hours of training on Oracle Administration workshop two and Oracle performance tuning, the second and third training courses, respectively. Those courses aim to transfer knowledge to MOJ staff which will enable MOJ IT staff to support MOJ IT and its applications infrastructure.

MOJ Rollout Team

Six of the MOJ IT Rollout team who received training in July began launching the Civil Execution application at the East Amman court under ROLP supervision. This team should be mobile and move between courts to complete the rollout. The MOJ, however, does not provide a transportation allowance. Since costs associated with travel are not paid, delays have occurred as the MOJ Rollout team is not committed to move from court to court. ROLP is working with the MOJ to address this issue.

MOJ Testing Team

Under ROLP supervision, five MOJ IT testing team members who received training in July began testing a full version of MIZAN V2, which was installed by the vendor (Optimiza).

In order to fulfill ROLP's commitment to the MOJ to help alleviate approximately 70 percent of user mistakes, admin screens were developed which allow the editing of incorrectly entered data. These admin screens will help the service desk fix user entry errors without the need for a developer to become involved in correcting data entry errors. ROLP completed the design for the last two admin screens. An Optional Task Order (OTO) was signed in September with the vendor (Optimiza), who was responsible for MIZAN V2 development, to begin enhancing the application.

A new release of MIZAN was installed by Optimiza; the ROLP and MOJ testing teams began testing this release to promote the MOJ testing team and assure its smooth transition in taking on all technical responsibilities at the end of October. A complete release testing involves installing MIZAN V2 applications (Case Management Computerized System) on testing servers to assure the application is technically running according to plan.

Civil Execution

ROLP continued supporting the Ministry in the pilot stage of the civil execution rollout in the West Amman Courthouse until July, at which time the needed computers for national release were scheduled to be delivered. In August, PCs and a printer were delivered to South Amman after the West Amman pilot was completed. A detailed plan was implemented with the MOJ to assure that IT staff is trained on how to properly rollout the civil execution application.

In September, over 65 employees were trained on the civil execution system. The civil execution system was launched in the following locations with the support of the MOJ IT Rollout Team:

- New Palace of Justice (70 percent completed)
- East Amman Court (100 percent completed)
- Maan Court (100 percent completed)
- Tafila Court (100 percent completed)

File Tracking System (FTS) Pilot

ROLP and Optimiza held several design sessions for file tracking functions which will be included in MIZAN to specify the precise location of physical case files. With this system, at any given time, one can identify the location of files, either at court departments or, if located in the warehouse, the system will show in which row and column the file is located. Development of this file tracking system began in late February.

The FTS began its pilot stage in August at the North Amman Court, with 97 court employees and five IT staff having been trained on how to use the system. In September, ROLP trained additional MOJ IT staff on how to follow up on the system and begin rolling out the system in other courts. The system was set to have been installed as a pilot in the North Amman Court in late June, but the date was pushed back to mid-August because of renovations taking place at the North Amman Courthouse.

Client Support Specialist (CSS) Team

The ROLP CSS team worked to:

- Provide intensive 5 day training to the MOJ Quality team to teach how to update MIZAN test cases and how MOJ can manage them.
- Continue preparing for the Civil Execution rollout with the MOJ staff.
- Support the FTS until it was ready to be piloted in the North Amman Court.

Notary Public

ROLP finished the integration with the Land Department and Notary Public. This integration assures the integrity of land transactions and provides efficient verification that land belongs to their rightful owners. The application has been working in all courts of the Kingdom without issue since July.

Application Development and Maintenance Activities

ROLP finished the plan to close out with Optimiza and turn over all software-related documents and activities to the MOJ. MIZAN enhancements have been halted, except for only the highest priority requests and to support the Civil Execution and FTS.

Judges' Affairs System (JAUA) Application

The JAUA was developed at the request of MOJ, by eSence, adding two functionalities for the Judge's Affairs System: 1) an application for the Judges Affairs Unit at the JC to be integrated with the JIJ Diploma & Registration application to track and record administrative data for all judges as well as their training courses and workshops, and 2) integration of the Judges' Affairs System with their already-existing MOJ payroll system

This application will be implemented at the JC and will provide great help to the Administrative Units that have been recently developed. The provider finished the development and delivered three releases for ROLP testing; two major functions were missing in the application, including some major enhancements requested by the Administrative Units for Judges' training and the integration with the payroll system. ROLP asked USAID for an extension of this contract to assure that these main functions are included in the application; approval is pending. The pilot stage scheduled to begin in mid-September at the JC will be delayed until the beginning of October, due to additional requirements that had been requested.

Web Portal

A web portal on the MOJ website was created and published on the internet by eStarta, a software solutions development company and subcontractor to ROLP. This allows the public to access information about cases and court hearing schedules from the MIZAN system, similar to that available on the in-court kiosks, from the MOJ web portal. As a result of awareness building efforts, the MOJ web portal now receives thousands of information requests weekly from the MOJ website. Since its launch to the public in October 2010, high-volume portal usage has consistently shown well over ten thousand requests per week, with a high of nearly 28,500 requests in a one week period in July. This heavy usage emphasizes the importance of accurate and timely data entry by court staff into the MIZAN system.

The web portal provides secure access to court information from the internet and contains two main features:

- **Public site** - This site can be accessed by the public through the MOJ website to inquire about case status, the date for scheduled hearings, minutes and judgment summary. This inquiry is made possible by entering in the case number and court name.
- **Attorney site** - This site can be accessed by the public through the MOJ website to inquire about case status, the date for scheduled hearings, minutes and judgment summary. This inquiry is made possible by entering in the case number and court name.

The MOJ application for attorneys, available from the MOJ website, has continued to show a steady, high frequency of users since it became available in June. This site is limited to attorneys; they can access the site with a secure username and password in order to inquire about their cases at courts either by case number or registration date for cases at courts. This provides attorneys a convenient way to access case status, hearing schedule, and judgment summary. Additionally, attorneys are able to print documentation for their specific cases and weekly court calendars via the internet. Inquiries via the web are now up to three times more frequent than courthouse kiosk inquiries.

Dashboard Reports

eSarta was also chosen by ROLP to develop a statistical reporting solution (Dashboard) to be employed within the MIZAN solution. The goal of this project is to both refine the statistics gathered and develop an improved interface for delivery of the statistics to the user, whether a judge, court administrator, or MOJ staff member. Three dashboards have been developed, implemented and tested:

- Age of pending cases
- Court clearance rate
- Age of disposed cases

eSarta is working to resolve some technical issues they have encountered in the Dashboard's installation.

Document Management System (DMS)

The Ministry of Justice contracted with a local company, ITEC, to provide an archival system in order to electronically store all court case files. The MOJ also requested the ROLP IT department to integrate this document management system with the MIZAN application, in order to efficiently access case hearing minutes and final decisions. All hearing minutes and notices have been migrated automatically from MIZAN to the MOJ's Document Management System (DMSA) as a step toward integrating MIZAN

with DMS.

OBJECTIVE 2: PROMOTE AN INDEPENDENT AND EMPOWERED JUDICIARY WHILE INCREASING ITS TRANSPARENCY AND ACCOUNTABILITY

Develop Capacity in Judicial Council

During this quarter, a new Chief Justice was appointed and constitutional amendments were approved. His Majesty King Abdullah II addressed the judiciary via a letter, dated September 29th, to the new Chief Justice which contained the vision of promoting independence of judicial authority¹. His Majesty emphasized building upon the previous developments and promoting the role of the judicial authority in the Kingdom's reform process. This encouraged ROLP to accelerate the implementation of the Judicial Council Administrative Units Regulation of 5-2010 which details the scope of all Administrative Units and creates an organizational structure for the Administrative Units of the JC. ROLP began the process of developing the first Judicial Authority Strategy. With the cooperation of the Strategic Planning unit, a needs assessment workshop was conducted at the Dead Sea on September 24th and 25th with pertinent judicial stakeholders, including the Chief Justice, Minister of Justice, Chief Judges, and the JC Administrative Units.

Continuing with last quarter's efforts, ROLP focused on the establishment and mobilization of three administrative units: (1) Judges Affairs; (2) Training and Specialization; and (3) Strategic Planning units. A JC Secretariat post was also created to assist in the coordination and administration of the three administrative units. These efforts come in alignment with his Majesty's vision reflected in the constitutional amendments to enhance and support the JC in promoting and strengthening the independence of the judiciary. The three units are to provide a much-needed administrative structure for the JC and will improve decision making and strategic planning.

Judge Ahmed Jamalyah, the liaison between the the Administrative Units of the JC and ROLP, has worked closely with the ROLP team on the development and implementation of an action plan to establish those administrative units. The action plan was presented to all appointed judges and support staff at a special workshop conducted in May. Over 90 percent of this year's action plan was accomplished this quarter.

The assistance ROLP provided to the Administrative Units included providing renovation to their work space such as upgrading the offices, meeting rooms, and procuring office equipment and computers.

The ROLP team also:

- Delivered a proposed organizational structure for the JC Administrative Units to all judges in charge and job descriptions for each unit and its employees.
- Assisted in developing processes and procedures for the Administrative Units; ROLP developed procedures for new units and an operational manual containing all the processes of the Administrative Units and the Judicial Council.
- Analyzed Judicial Council annual reports from 2006-2010 with a statistical specialist to develop key performance indicators. The final recommendation defined four new KPIs which aim to ultimately help decision makers in planning, assessing needs of the courts, knowing judges case

¹ This letter to the new Chief Justice has not been translated into English.

loads and exploring the bottle necks of the judicial process which will be taken into account for strategic planning.

- Conducted a Courts Needs Assessment workshop between September 24th and 25th which was attended by the new Chief Justice, Minister of Justice representative, USAID representative, Chief Judges and the Judicial Council Administrative Units staff. The workshop served to introduce the AU heads, enhance the concept of a participatory approach to the judiciary stakeholders, and to launch the development of a strategic plan for the JC. A questionnaire focused on six main issues: legislative amendments, execution (department), case delay, training and specialization, media and communication, and judicial inspection. This questionnaire was distributed to the Chief Judges assessing the judges and staff needs. Based on the recommendations from the analysis of these questionnaires, the Administrative Unit Staff will be trained/coached by the ROLP team prior to drafting the 2012 JC Annual Plan.²
- Assisted the Development and Planning Unit of the JC to develop a draft Annual Report of the JC and develop 2012 action plans for each of the Administrative Units.
- Contracted a media expert to work with the JC Media & Communication department, Future Judges, and the ROLP team to produce the first edition of the Judiciary newsletter, ‘Majalit Al Qada’, (English: “Judiciary Magazine”), which is to be published in October. This project falls in line with the JC work plans to enhance the outreach for the JC. The team also finalized the Magazine publishing rules and policies which were set up to highlight the objectives of the Judicial Council newsletter publication, its content management, and its terms of use.
- Assisted the JC Media and Communication department to prepare a strategy to improve the media and communication channels between the JC and other media institutions, enhance transparency in judicial bodies, and to be the primary contact tool with the public. The outline of the strategy was developed and approved by the Administrative Units. A detailed strategy and action plan is expected to be finalized by the end of November. Five main objectives have been set out in the strategy: 1) Developing the institutional capacity for JC in media and communication; 2) Enhancing the internal communication inside JC and communication with main partners (Ministry of Justice and Jordan Judicial Institute); 3) Educating the public on the role of the judiciary in serving the society and informing the public on developments of JC and facilitating public access to the judiciary; 4) Enhancing the relationship between the Judiciary and the media, empowering the media to cover courts and issues related to judiciary and justice; and 5) Strengthening the relationship between JC and civil society organizations specialized in issues related to judiciary.
- Continued working on a Human Resources (HR) application and an automated database of information for the Judges Affairs Unit, to improve the efficiency and effectiveness of its work.

The ROLP team and AU Media section staff are working to update and enhance the JC website. The procurement process to recruit a vendor to design and develop the JS website has begun. The new features of this website will include:

- Interactive areas for user surveys and polling, Judges’ login area, Law corner, and Courts location
- Online interactive forms for sections such as feedback and testimonials in the Judiciary newsletter “Majalit Al Qada” to which users of the website can subscribe to stay up-to-date with judiciary news and events.

²A full report of meeting outcomes and recommendations has been prepared and is currently being translated into English, to be attached with next month’s ROLP reporting.

The ROLP team, in cooperation with the Training and Specialization Unit staff:

- Began building a judges database
- Developed an English language course in order for judges to improve their language skills; this course was conducted in Amman's First Instance court
- Began workshop preparations for 90 new appointed judges to raise their capacity to control courtroom procedures with proper conduct. (Court room control and code of conduct)



The Chief Justice, Minister of Justice, Chief Judges and the Judicial Council Administrative Units participated in ROLP's Needs Assessment Workshop of Chief Judges in the FI Court at the Dead Sea on September 25th, 2011.

Judicial Studies Diploma Program

Assisting the MOJ to encourage the best and brightest students to study law and select a career path to become judges, ROLP has provided significant logistical and administrative support to the Judicial Institute Judicial Studies Diploma Program. This quarter, ROLP:

- Assisted the JIJ in the revision and updating of the Program's Curricula, emphasizing skill development and practical training.
- Provided all Judicial Studies Diploma Program students with English language training, in cooperation with the American language center.
- Gave all Judicial Studies Diploma Program students access to the newly developed Jordan/Arab legal database AL QUSTAS, a resource now available for their use in the JIJ library.
- Hosted extracurricular activities, in cooperation with the JIJ, for students to attend lectures and presentations by subject-matter experts in many subjects such as the Media and Law and Securities.
- Provided technical support to continuing education programs targeting sitting judges; these programs, held in central, north, and south Jordan, were attended by judges, prosecutors, and courts' administrative staff.
- Updated the registration system for JIJ's Registration Unit by adding more functions. ROLP conducted a quality control check with regards to the training data saved in the system. The registration system is an automated system that ROLP developed for JIJ in order to administer all student and academic affairs; it also provides a database to track the training of sitting judges. Before the development and installation of this system, there were no records of any training activities. ROLP is planning to connect this system with the Training Unit at the JC.

In September, 71 Diploma Program students in the 2010/2011 class graduated from the JIJ; 41 were female and 10 were Palestinian students who will return to the West Bank and serve as judges. ROLP helped the JIJ and the courts assign the graduates to the many courts and judicial departments in order for the graduates to obtain practical training while awaiting their appointment as judges.

Future Judges Program (FJP)

The FJP Unit helps to select and train future judges who embrace the ideals of judicial integrity, independence, and accountability.

This past quarter, the FJP Unit continued to manage and administer the affairs of the program students and provide them with all needed assistance through ROLP academic advisors and support staff. All FJP students are enrolled in either English or French language classes and participate in field visits to ministries, civil society organizations, the stock market, banks, and hospitals, in order to understand how such institutions operate. The total number of FJP students reached 188; 107 are female and 18 were enrolled in the Judicial Studies Diploma Program at JIJ and completed their Masters degrees in the US or UK.

In His Majesty King Abdullah II's letter to the newly appointed Chief Justice on 29 September, published in all media outlets, he stressed the importance of the FJP and its vital role of providing the Judiciary with well-trained and competent judges.

OBJECTIVE 3: EXPAND ACCESS TO JUSTICE, RULE OF LAW AND PUBLIC AWARENESS OF THE RULE OF LAW

Grants

In line with ROLP's objective of expanding access to justice and public awareness of the rule of law, ROLP offered small grants to civil society organizations whose programs increase public awareness of the rule of law, provide legal services to citizens, or target human rights issues related to youth and women. The following grant recipients completed their grant requirements: the King Hussein Foundation: To be a Girl in Jordan, a Legal and Cultural Bias; The Thoria Center for Studies: Educating the Badia on children's rights; and NCHR: Protection of Children.³

The ACJLS grant, charged to establish indicators to monitor the performance of the judiciary in Jordan, is ongoing, scheduled to end in November 2011.

Arab Council for Judicial and Legal Studies

In their efforts to establish indicators (KPIs) to monitor the performance of the judiciary in Jordan, the ACJLS continued holding meetings with judges in and around Amman. They observed that no court has set rules or methodology for management in place; each chief of court is responsible for developing their own methodology to manage the court.

The team met with pertinent stakeholders to identify quantitative baseline measurements. To date, the ACJLS team has identified four indicators to guide their work: 1) Disposition rate; 2) Case Age; 3) Caseload per judge; and 4) Quality of judge's decision. However, in order to reach a standard with regard to the identified indicators, chiefs of courts agreed that a consensus on a methodology to calculate the identified indicators should be reached and then standards will be set based on "caseload per judge" and "timely disposition".

The ACJLS statistician is exploring historical data provided by MIZAN as well as analyzing results from an ACJLS survey conducted in four selected courts (North Amman, West Amman, Ajloun and Aqaba). This material will be used to develop a method to reach standards for the identified indicator "time to disposition" and "caseload per judge" in preparation for suggesting quantitative standards to

³ Reported on in the ROLP 11th Quarterly Report (April-June 2011).

be approved and adopted by the Judiciary. Reports pulled from MIZAN which study these two identified indicators are: New Registered Cases, Disposed Cases per Month, and Pending Cases.

Several observations of the ACJLS are as follows:

- Courts are not using the MIZAN program for managerial purposes; Chiefs generally depend on manually-produced reports prepared by the administrative unit. These reports present data on pending case, disposed cases, and newly-registered cases monthly, quarterly, and annually. This report is time-consuming and filed manually.
- The case management department at courts is controversial. Supporters recommend its empowerment through legislation; opponents see it as time consuming and a hindrance of procedures.
- In order for each court to develop its management methodologies, well-trained legal staff should review/screen cases prior to registration to assure completion of all required relevant documentation. This minimal up-front effort will help to avoid delays currently resulting from errors in the registration process. There should also be a joint and collective management strategy for all courts that is approved by the JC.
- The ACJLS team is working closely with their statistician and international expert on identifying reports to be reviewed and analyzed in light of project documents and feedback received from field visits. A workshop is scheduled for early November with an international expert. A presentation will be delivered on the outcomes of the first phase of this project.
- The approach of using a local organization to lead the participatory process to develop KPIs and improve case and court management is proving an effective way to build local capacity and gain buy-in for recommendations.

OBJECTIVE 4: WINDOWS OF OPPORTUNITY

Assessment of Justice Sector

In close coordination with USAID, ROLP worked during the quarter to plan specific activities and technical approaches to implement new activities to maximize current windows of opportunity and accelerate justice sector reform.

ROLP welcomed Ambassador James Michel in July to explore the reform prospects of Jordan's justice system, particularly in light of the Constitutional reforms recently prepared. His reports solidified ROLP's positioning and capacity to help make an important and meaningful contribution to Jordan's efforts of Constitutional Reform for the scope of proposed project work to begin in December. He reported that, although significant progress has been made in the modernization of the courts, there remains a recognized need for fundamental policy and structural reforms to institutionalize the independence, accountability, integrity, competence, and fairness of the judicial system. The issues of greatest concern in Jordan's legal system include: the lack of institutional independence and accountability; inadequate institutional capacity and competence; and insufficient access to timely and nondiscriminatory justice, including a lack of affordable legal representation. Mr. Michel made various specific strategic recommendations for ROLP going forward.

As an initial step towards reform, the Judicial Council received a letter from the Minister of Justice in September requesting that the JC propose legislative amendments to enhance and strengthen the independence of the judiciary in the light of Constitutional amendments. The Minister suggested shifting:

1. the Minister's power of nominating candidates for judicial appointment to the JC
2. Judicial Inspection to fall under the sole authority of the JC
3. Public Prosecution to fall under the full authority of the JC
4. Civil Public Attorney to fall under the full authority of the JC
5. the JIJ to be under the JC, not the Ministry

Ombudsman Capacity Building

The Ombudsman Bureau investigates complaints from aggrieved persons against public administration entities. ROLP contracted with a contractor, Al-Jidara, who worked with the Bureau to finalize a new strategic plan. This plan provides a revised organizational structure for the JOB and a guide for processing complaints.⁴

Ministry of Social Development/Registry of Societies

ROLP arranges focus group discussions with the USAID Civil Society Program where NGOs identify issues stemming from the applications of the Societies Law and all regulations and directives issued in virtue thereof.

ROLP, in collaboration with the Civil Society Programs (led by AED)⁵ and the International Center for Non-Profit Law, conducted a qualitative research aiming to identify the gaps and priorities related to the practical application of the law in order to design further capacity-building support for NGOs and the Ministry of Social Development staff. Eighteen Jordanian NGOs participated in two focus group discussions held in Amman and Irbid on 25 and 27 July 2011. CSP and ROLP jointly prepared a report summarizing the findings, conclusions and recommendations of the research.⁶

Outcomes revealed that more research is needed to further investigate the NGOs' needs and more efforts need to be made to raise awareness of good governance and board governance best practices, and how the institutionalization of governance best practices serves the NGOs' sustainability. Comprehensive programs, including training workshops and awareness campaigns, to improve the NGOs role in civic participation were suggested to be implemented.

Industry and Trade Law/Ministry of Industry and Trade

New amendments required to be added to the Industry and Trade draft law (March 9, 2011) were sent to the Legislation and Opinion Bureau for revision. The Legislation and Opinion Bureau revised and approved the draft law, incorporating all amendments suggested by ROLP regarding the violations section. The amended draft law has been sent to the Jordanian House of Representatives (Chamber of Deputies).

OBJECTIVE 5: PROJECT PLANNING, MONITORING, AND REPORTING

⁴ A copy of the Report from Al Jidara ("Complaints Receiving and Handling Procedures Reengineering Project") is attached in the Appendix.

⁵ AED is a nonprofit organization working globally to improve education, health, civil society and economic development. In November 2008, AED began working with USAID on the implementation of a comprehensive, four-year Jordan Civil Society Program (CSP). CSP works with civil society, government, and media to contribute to the strengthening and sustainability of Jordan's civil society through consultative research, training, small grants and improved civil society-government communications.

⁶ Report is attached in the appendix of ROLP's 12th Quarterly Report.

ROLP Personnel Changes

In September, Robert Dean joined ROLP as its new Chief of Party. Mr. Dean brings with him valuable legal and international experience. He is a US career prosecutor, having worked as a state prosecutor in Maryland since 1977. He began his international career working with the United Nations Mission in Kosovo (UNMIK) in 2005, as an international prosecutor, investigating and prosecuting war crimes and related cases. In 2007, he became Acting Director of the Department of Justice (UNMIK) until the UN turned over its authority to the EU Rule of Law Mission (EULEX) in 2009. Mr. Dean continued working in Kosovo with the State Department through an INL/EULEX project as Head of the War Crimes Investigation and Prosecution Unit of the Special Prosecution Office of the Republic of Kosovo. In August 2010, he became Chief of Team for the JSAP II project in the West Bank, funded by INL and implemented by Tetra Tech-DPK.

Qais Jabareen became ROLP's Deputy Chief of Party also in September. Mr. Jabareen has been working with ROLP Jordan since 2004, forging close ties with governmental entities such as the MOJ, JIJ, JC, courts, other ministries, and civil society organizations. In his most recent capacity, he was ROLP's Senior Judicial Advisor where he served as the link between official Jordanian legal stakeholders and ROLP staff. His hands-on involvement with the project included, but has not been limited to: enhancing judicial performance to reduce delays and increase public confidence; promoting the administrative capacity of the JC, court administrators, and management practices; developing fair and transparent evaluation for judges; providing judicial education programs with continuing legal education, specialization, and preparatory judge training; improving the knowledge capacity of the MOJ, JC, and courts in relation to planning, coalition building, developing and implementing policy and procedures, organizational development, and project management.

Project Planning

In close coordination with USAID, based on assessment and concept development activities from February through September, 2011, ROLP worked during the quarter to plan specific activities and technical approaches to implement new activities and approaches suited to the current reform environment and needs. These activities and approaches were integrated into an amended Year 3 ROLP work plan for approval by USAID.

APPENDIX

- A. James Michel's Report and Assessments**
- B. Ombudsman Reports**
- C. Exploring the Gaps and Priorities Related to the Practical Application of the Societies Law of 2008**

Appendix

A. James Michel's Reports and Assessments

- 1. Summary Report to Tetra Tech DPK on July 2011 Visit to Jordan to Explore Prospects for Reform of the Justice System**
- 2. Observations of Great Potential in Jordan**
- 3. Report on Prospects for Accelerated Reform of the Justice System of Jordan and a Strategy for USAID Support, August 2011**
- 4. Report on the likely impact on the Administration of Justice of the Constitutional Amendments Recommended by the Royal Committee on Constitutional Review, September 2011**

A. James Michel's Reports and Assessments

**1. Summary Report to Tetra Tech DPK on July 2011 Visit
to Jordan to Explore Prospects for Reform of the
Justice System**

SUMMARY REPORT TO TETRA TECH DPK ON JULY 2011 VISIT TO JORDAN TO EXPLORE PROSPECTS FOR REFORM OF THE JUSTICE SYSTEM

I arrived in Jordan on Saturday, July 9, and departed on Friday, July 29. This three-week visit was very busy and, I believe, productive. With great support and insights from the ROL Project staff, I was able to complete the first of objective of this consultancy. That is, I engaged a large number of Jordanian stakeholders and identified four promising areas for priority USAID support of justice reform. A copy of my schedule of meetings is attached.

The terms of reference for this consultancy contemplated a second objective for this phase of the work. That was to work with stakeholders on a synthesis of their priorities in a broadly shared reform agenda which might be the subject of one or more conferences or other follow-on activity later in 2011. As it soon became apparent, however, there is no single reform agenda around which a consensus might be formed. Rather there are several specific initiatives which seem well worth pursuing with several somewhat different constituencies.

Moreover, it proved impossible during this visit to gauge the views of the Jordanian government or of USAID. USAID was reluctant to arrange a meeting with the new Justice Minister until there had been initial meetings with senior official US representatives; a requested meeting with the Senate leader who heads the National Dialogue Committee did not materialize. Therefore, I was required to rely on secondary sources (such as former senior Jordanian officials) for impressions of government views. As for USAID, the Mission is not yet sure about its own specific preferences. In these uncertain circumstances it would have been unwise for me to try to actively stimulate support from Jordanian stakeholders for one or another of what I thought were the most promising initiatives.

I also want to report that this visit served to confirm how well positioned the DPK Project team is to make an important contribution to the increased emphasis on reform in the justice system. Interim COP Diala Khamra, Qais Jabareen, and Nafis Isifan are all extraordinarily well connected and respected in the legal community. Their perceptive analyses were very helpful to my understanding of the complex and changing situation in Jordan.

While not conclusive, I believe the dialogue during my visit was useful to encourage more specific thinking about the issues. I hope that my full report will be useful to the further discussions Bob Page

will have with the Mission and Project team in August. With guidance from USAID (including reactions to the DPK proposal), it should then be possible to engage stakeholders in depth on shared objectives and possible collaborative measures for achieving them.

I will submit my full report in the next few days. I am missing just a few details about the recommendations of the Royal Commission on Revising the Constitution, which are central to my own recommendations. I am awaiting a promised English translation from the Project Office.

In the meantime, I am attaching as a preview the notes I prepared for the meeting on July 28 that Qais Jabareen and I had with Acting Mission Director Kevin Rushing and George Kara'a. (Kevin is a recalled Foreign Service officer whose last assignment had been as Mission Director in Nepal. He will remain in Jordan until October when the new Mission Director and the new US Ambassador are both expected to arrive.) I thought this meeting at USAID went very well. Kevin was engaged and asked good questions. George was positive, nodding in agreement with my presentation. He remarked that the timing of my visit had been "perfect."

It's clear that trying to organize a conference for Jordanian stakeholders would be premature. After Bob's visit, the submission of the DPK proposal later in August, preliminary reactions from USAID, and initial steps by the Jordanian government with respect to its emerging reform proposals, another round of consultations could help to advance the process. For now, I plan to unpack my bags and stay home for a while as the process unfolds.

A. James Michel's Reports and Assessments

2. Observations of Great Potential in Jordan

OBSERVATIONS OF GREAT POTENTIAL IN JORDAN

Recent events appear to indicate the government's acceptance of important structural reforms consistent with the proposed constitutional amendments. In particular, the invitation by the Minister of Justice to the Judicial Council to propose new legislation is encouraging. At the same time, the formulation of sound legislation and the strengthening of needed capacity within the Judicial Council to carry out increased responsibilities will be formidable undertakings.

It is important to assure that the legislation includes the essential authorities and the needed assurances that independence will be advanced and will be balanced with transparency and accountability. There is not likely to be an early second chance to get the legal framework right. Equally important, the proposed changes will require the Judicial Council to carry out major new responsibilities that will test its competence. The credibility of judicial self-governance is at stake. There follow some thoughts about the process, the content of the reforms, and the possible role for support and assistance to help assure the success of this reform of the administration of justice.

Background knowledge will be needed. The Judicial Council will require broad knowledge of the needs of the judiciary and the need for new legislative authority to meet those needs. It might be helpful to accelerate a self-evaluation by the judiciary to help identify needs for which provision should be made in the law. In addition, an international expert with experience in the functioning of judicial councils might be useful at this early stage to help frame the legislative text.

Legislative content should take into account not only the basic issues of transferring responsibility for certain functions from the Ministry to the Judicial Council. Consideration should also be given to the composition and manner of selection of members of the Judicial Council, broad authority for the Council to prescribe rules for the efficiency of the courts and the streamlining of procedures. Consideration could also be given to issues such as providing a charter for a judges' association, judicial security of tenure and protection of salary and benefits, and other issues addressed in the recent DPK reports.

With regard to the subjects addressed in the letter from the Minister of Justice, this may be the best opportunity to provide authorities to help professionalize a nonpolitical prosecution service. In this regard, consideration might be given to how the civil courts will deal with criminal cases previously dealt with by the State Security Court. For example, all those cases could be heard in the High Criminal Court that now hears murder, rape and kidnapping cases, with a concentrated effort to assure a high level of competence for judges, prosecutors, and support staff serving in that court. (The performance of the

High Court was critically reviewed in an article by Sami Hamdan Al-Rawashdeh and Rama Khader Erekat entitled "Criminal Trials Observation: The Jordan Case," Volume 14 European Journal of Social Sciences, Number 2 (2010), page 224.) On the other hand, there would seem to be a question as to whether the Civil Public Attorney (who, I understand, represents the government before the courts) should be under the supervision of the Judicial Council.

Transition arrangements will need to be considered. For example, will the support staff that had performed functions relating to training and inspection be transferred to the Judicial Council? Will the Council have authority to select support staff for the judiciary as a part of its independence? Will it have a distinct personnel system? What control will it have over the budget, including for the transferred functions?

Legislation and capacity building should proceed in parallel. Even as the legislation proceeds through internal reviews and consideration by Parliament, the Judicial Council needs to begin preparing to take on the new responsibilities the legislation will create.

Timely support can help. There is a question as to what USAID is prepared to do before the initiation of activities under the option period on December 1. Relatively modest assistance now that help set the basis for the future evolution of the reform process might have an impact equal to or greater than larger investments later. The question is whether there is a strong desire to adapt current programming to the rapidly evolving situation.

The civil society dimension remains important. In my recent meeting with Bob Page and Rebecca Silva in San Francisco, I found support for the idea of stimulating a civil society initiative to expand access to legal information, services, and representation. This may not have the same urgency as the constitutional amendments, but there does seem to be a window of opportunity for this work as well.

I hope these observations are of some value. Needless to say, I have come to believe there is great potential in the ongoing process in Jordan and hope I can make some useful contribution to the reform. Bob suggested that I might usefully engage in the dialogue related to the annual planning process, perhaps in late October. I look forward to hearing further about that possibility.

Best regards,

Jim

From: Le, Ann [mailto:ALe@dpkconsulting.com]
Sent: Thursday, September 08, 2011 7:01 AM
To: qjabareen@rolpjo.com
Cc: jamesmichel550@gmail.com; rdean@jsaproject.org; Diala Khamra; Nabil Isifan
Subject: FW: meeting with the chief justice

Dear Qais,

Thanks for the update. These developments bode well for the reform tasks of Jordan and also bode well for some of the areas ROLP will be involved in.

Regarding Jim's report, thanks for the comments. I just want to make sure that USAID clears the report before we provide it to any of the counterparts in Arabic. Please let me know when the translation is complete and I will get it cleared by George.

Thanks, Ann

From: QAIS JABAREEN [mailto:QJABAREEN@ROLPJO.COM]
Sent: Thursday, September 08, 2011 1:49 PM
To: Le, Ann
Subject: meeting with the chief justice

Ann,

The Judicial Council received a letter from the Minister of Justice requesting that the Council take actions (propose legislative amendments) to enhance and strengthen the independence of the judiciary on light of the constitutional amendments. The five areas which were stated in the Minister's letter are :

1. Canceling the Minister's power in nominating candidates to be appointed as judges by the JC. This means that the appointment of judges will be the sole authority of the JC.

2. The Judicial Inspection , which shall fall under the sole authority of the JC.
3. The Public Prosecution and place it under the full authority of the JC, which means taking away any powers the Minister have in this regard.
4. The Civil Public Attorney , the same as the public prosecution.
5. The Judicial Institute of Jordan , which has to be under the JC instead of the Ministry..

Today the legal committee of the Parliament , which is reviewing the suggested constitutional amendment proposed the full cancelation of the State Security Court . We have to wait and see if this will take place.

As for Jim's report I went over it (it looks great) and I sent it to the translator so we can have in Arabic and provide it to our counterparts.

A. James Michel's Reports and Assessments

**3. Report on Prospects for Accelerated Reform of the
Justice System of Jordan and a Strategy for USAID
Support, August 2011**

**REPORT ON PROSPECTS FOR ACCELERATED REFORM OF THE
JUSTICE SYSTEM OF JORDAN AND A STRATEGY FOR USAID SUPPORT**

AUGUST 2011

Introduction

This is a report on research conducted in June and July 2011 to explore the prospects for accelerated justice reform in Jordan. The question arises in the context of ongoing popular demands for economic, social, and political reform throughout the Middle East and North Africa, including in Jordan.

Reports by observers have confirmed a major emphasis in the region on justice and concerns about the independence, competence, and integrity of national justice institutions as important element of the widespread demands for reform.¹ The international community has taken note of this prominence being given to rule-of-law issues in what has come to be known as the Arab Awakening.

The European Union announced in March 2011 its “Partnership for Democracy and Shared Prosperity with the Southern Mediterranean,” an initiative intended to support a shared commitment “to democracy, human rights, social justice, good governance, and the rule of law.” The Partnership will be built on, among other elements, “democratic transformation and institution building, with a particular focus on fundamental freedoms, constitutional reforms, reform of the judiciary, and the fight against corruption.”² In his May 19 address on the Middle East and North Africa US President Barack Obama made reference to universal rights, including “equality for men and women under the rule of law,” and

¹ See, e.g., Khouri, Rami, “The Egyptian Citizen Won’t Stay Silent,” *The Daily Star*, Beirut, July 6, 2011, <http://www.dailystar.com.lb/Opinion/Columnist/2011/Jul-06/The-Egyptian-citizen-wont-stay-silent.ashx#axzz1U3v92Sfm>; Dubay, Carolyn, “Morocco’s ‘Arab Spring’ and Judicial Independence,” *International Judicial Monitor*, April 2011, <http://www.judicialmonitor.org/current/sectorassessment.html>; Spencer, Clair, “Domestic Development in North Africa and the Middle East,” *European Movement Annual Seminar*, July 2011, [http://www.sussexineurope.org/events/29\(Jly11\).htm](http://www.sussexineurope.org/events/29(Jly11).htm),

² See Joint Communication, March 10, 2011, http://eeas.europa.eu/euromed/docs/com2011_200_en.pdf.

described United States support for political and economic reform in the region as “a top priority that must be translated into concrete actions, and supported by all the diplomatic, economic and strategic tools at our disposal.”³ While less specific, the G-8 Deauville Partnership Initiative also includes a commitment to support political and economic reform in the region.⁴

A notable nongovernmental response to this strong interest from the region in issues of justice has been the joint initiative by the Hague Institute for the Internationalization of Law and the Arab Center for the Development of the Rule of Law and Integrity. Together they have created a “Rule of Law Spring Group,” with broad regional and international participation. The Group organized a major conference in May 2011 on recent events in the Arab countries that focused on “horizons, challenges and consequences for the rule of law and justice reforms.” It has now developed a work program for the coming year.⁵

Against this regional background, and taking into account its long involvement in the justice sector in Jordan, USAID has commissioned the present examination in order to inform its programming in the evolving national environment.

Over the past decade there has been a substantial Jordanian effort to modernize and improve the performance of the nation’s justice system. In particular, the Ministry of Justice inaugurated a comprehensive judicial upgrading strategy (JUST) in 2004. JUST was updated in 2007 and again in 2010. It remains in operation.⁶ The international community has supported the implementation of JUST and other Jordanian reform efforts. USAID has been, and remains, the leading international partner in the justice sector, acting primarily through a contract with Tetra Tech DPK and a cooperative agreement with the American Bar Association.

³ Remarks by the President, May 19, 2011, <http://www.whitehouse.gov/the-press-office/2011/05/19/remarks-president-middle-east-and-north-africa>.

⁴ See Declaration of the G8 on the Arab Spring, May 27, 2011, <http://www.g8.utoronto.ca/summit/2011deauville/2011-arabsprings-en.html>.

⁵ This initiative is described at <http://www.hiil.org/news/latest-news/2011/06/10/hiil-launches-initiative-to-promote-rule-of-law-in-the-mena-region> and at <http://www.acrli.org/activitiesListing.aspx?postingID=363&categoryID=5&id=227>.

⁶ As approved by the Second Judicial Conference of Jordan in February 2010, the current strategy is based on five pillars: enhance judicial independence and integrity; improve efficiency; increase effectiveness of litigation procedures; upgrade court services and infrastructure; and improve channels of communication with partners and stakeholders. JUST objectives were integrated into the 2006-2015 National Agenda, now undergoing a mid-term review.

Significant progress has been made in modernization of the courts. Yet, there remains a widely recognized need for fundamental policy and structural reforms to institutionalize the independence, accountability, integrity, competence, and fairness of the judicial system.⁷ The current political ferment and public demand for democratic reform in the Middle East and North Africa have had an impact on thinking about these issues in Jordan. Skepticism has begun to give way to expectations of change.

According to the terms of reference, the consultant, James Michel, was asked to conduct research in Jordan, including the collection of documents, interviews, and meetings with representatives of various stakeholder constituencies to address key issues of justice reform. On the basis of this research, the consultant was asked to explore with key stakeholders a suggested synthesis of their highest priorities, possible implementing actions, and interest in one or more participatory conferences or other means to help develop a broadly shared justice reform agenda with civil society collaboration. This report sets forth the consultant's findings and recommendations with respect to these activities.

⁷ Resistance in Jordan to political reform intended to democratize governance and consolidate the rule of law has been the subject of extensive commentary. See, *e.g.*, Muasher, Marwan, "A Decade of Struggling Reform Efforts in Jordan: The Resilience of the Rentier System," Carnegie Endowment for International Peace, May 2011, http://www.carnegieendowment.org/files/jordan_reform.pdf. Judicial reform has not been exempt from the tension between reformers and traditionalists.

Overview of the Justice System

Jordan compares favorably with other countries in the Middle East and North Africa in its adherence to the rule of law as a foundation of democratic governance.⁸ Moreover, Jordanian efforts of the past decade have achieved impressive modernization of court management systems and procedures, automation of case records and statistics, substantially improved recruitment of well qualified judicial candidates on the basis of merit, adoption of a judicial code of ethics, the introduction of court-annexed mediation, and strengthened judicial training.

At the same time, the performance of Jordan's justice system falls far short of the standard set by countries that have the highest scores on international indices of performance.⁹ There is broad agreement within the Jordanian legal community that a number of fundamental policy and structural problems inhibit the justice system's ability to play an optimum role in the distribution of power and rights – to mediate conflict, resolve disputes, sustain order, and advance broadly based economic and social development.

The issues have been analyzed in assessments conducted for USAID in 2008 and 2011 and in many other studies cited in the bibliography annexed to this report. The challenges most often cited by Jordanian and international analysts as being of greatest concern fall generally into the following categories:

Lack of Institutional Independence and Accountability:

- The judiciary is excessively dependent on the executive branch of government, especially the Ministry of Justice, for financial, administrative, and – of particular importance – human resource management, increasing the vulnerability of the judicial institution and individual judges to political influence;

⁸ The 2010 Rule of Law Index ranks Jordan above the regional average on most factors and sub-factors that the Index measures to assess adherence to the rule of law: limited government powers, absence of corruption, order and security fundamental rights, open government, regulatory enforcement, access to civil justice, and effective criminal justice. World Justice Project, "Jordan Country Profile," in *Rule of Law Index*, page 72, June 2011, <http://www.worldjusticeproject.org/rule-of-law-index>. The World Bank's worldwide governance indicators rank Jordan in the upper half of countries in the region. See Worldwide Governance Indicators, http://info.worldbank.org/governance/wgi/mc_countries.asp.

⁹ For example, the World Bank's *Doing Business* report ranks Jordan 129th in the time, cost, and number of procedures required to enforce a civil contract claim. World Bank, *Doing Business 2011*, November 2010, page 172, <http://www.doingbusiness.org/reports/global-reports/doing-business-2011>.

- Judges do not enjoy a guaranteed security of tenure and can be dismissed from judicial service without cause or through nontransparent disciplinary action or involuntary early retirement; some judges are believed to avoid responsibility for wrongdoing while others appear to be punished for asserting their independence.
- Support staff in the judiciary is made up of employees of the Ministry of Justice, inhibiting the development of a cadre of career judicial management professionals.
- The judiciary does not have express authority to nullify executive and legislative branch measures on grounds of their inconsistency with the constitution; this limitation is compounded by the unilateral adoption of temporary laws by the executive when Parliament is not in session.
- Special courts outside the judiciary provide alternative forums sanctioned by law; the executive has broad discretion to remove cases from the jurisdiction of the regular courts and refer them to the State Security Court where the majority of judges are military officers.
- The judicial code of ethics has not been fully integrated into the processes of selection, training, career development, inspection, and discipline of judges.
- The accountability of judges is diminished by limited capacity for systematic inspection of their performance and for responding to complaints of misconduct or poor performance through transparent standards for promotion and disciplinary processes.
- There is little public monitoring of justice system performance.

Inadequate Institutional Capacity and Competence

- The principal justice institutions are hampered by a lack of continuity in leadership, impeding the consistent implementation of long-term reform efforts.
- The judiciary has not developed the management skills needed for internal planning, participation in management of financial and human resources, and systems development (the Judicial Council has recently initiated efforts to overcome this weakness).
- There is no association of judges (the law discourages one) to stimulate sharing of experience and broadening the base of participation in efforts to encourage improved performance.
- Legal education has relied primarily on lectures and learning the law rather than on learning how to solve problems and serve the public; continuing legal education is not well developed.
- Judges serve as prosecutors during relatively brief assignments, inhibiting the development of needed specialized knowledge and professional skills to expedite cases, assure their effective presentation, and manage complex investigations and prosecutions.
- The distinct roles of the several organizations responsible for the administration of criminal justice are not well coordinated.

Insufficient Access to Timely and Nondiscriminatory Justice

- The public lacks adequate access to knowledge about the law and its application.
- Discrimination based on gender, religion, economic status, origin, and tribal identity is found in the law and in its application.
- Legal aid services to inform and assist the poor and disadvantaged are insufficient to meet demand.

- The legal structure for effective alternatives to litigation leaves those alternatives as entirely discretionary options which are seldom chosen by litigants.
- Judges tolerate adjournments and delays in cases before them, thereby diminishing incentives for settlement and increasing backlogs of pending cases.
- The law denies the appellate courts the discretion to decline to accept appeals, thereby further increasing backlogs and delaying the final disposition of litigation.
- Once a final decision is reached in the courts, implementation of the decision is often frustrated by a cumbersome process for the execution of judgments.
- Defendants in criminal proceedings often spend extended periods in pre-trial confinement because the courts are not able to expedite their cases and bring them to conclusion; individuals subjected to administrative detention in the name of crime prevention add to the population of those incarcerated without a determination of their guilt (those not convicted are estimated to be about 75 percent of the prison population).
- Implementation of reforms in juvenile justice has been slow and inconsistent.

Obviously, these three major categories of principal challenges overlap and are interconnected. Judicial dependence on the executive compounds, and is compounded by, inadequate institutional capacity. Institutional limitations, in turn, play an important role in the ability of the system to provide access to justice. The challenge is to decide which of the various manifestations of these concerns warrant priority attention in a systematic effort to increase independence and accountability, improve competent performance with commitment to high standards, and provide excellent service to the public. Meeting that challenge will require careful research, thoughtful cost-benefit analysis, and nuanced political judgments about what are the most important and most urgent problems and which of these are most susceptible to reform efforts.

Priorities for Reform

From extensive research and wide ranging consultations with a variety of stakeholders, it seems evident that the current environment in Jordan is not conducive to an all-encompassing justice-sector-wide reform initiative. Jordan faces many economic, social, and political challenges that compete for attention and resources. And within the justice sector there are simply too many differences of opinion about too many issues and about what the priorities ought to be. However, a number of individual reforms now under consideration hold significant potential for strengthening the rule of law. There are also opportunities to enhance the prospects for additional reforms that may not yet be ripe for bringing to fruition, but that will be important for the long-term evolution of the rule of law in Jordan. These considerations suggest a selective, focused approach to reform with respect to both national efforts and coordinated international support for those efforts.

Jordanians have identified several priorities with respect to the interrelated factors of independence and accountability, institutional capacity and competence, and access to justice. Prominent among them are the constitutional issues that are referred to in the May 2011 report of the National Dialogue Committee and addressed specifically in the August 2011 report of the Royal Commission on Revising the Constitution. These reports reflect responses by the government to popular demands and, therefore, have strong prospects for leading to the adoption of important reforms. (The discussion in this report of the content of the Royal Commission's report is based on the texts of the Commission's recommendation published in advance of the formal report.)

In particular, three of the proposed constitutional amendments could lead to major improvements in the structure of Jordan's justice system. These proposals would elevate the Judicial Council to the status of a constitutional body with broad responsibilities for oversight of the judiciary, create a constitutional court empowered to review legislative and executive acts, and expand the jurisdiction of the civil courts while eliminating the quasi-military State Security Court which has had jurisdiction over civilians in sensitive criminal cases. These three constitutional revisions, together with the necessary implementing and complementary measures, would constitute far-reaching reforms.

Building on these three amendments to achieve major reforms will be a gradual and difficult process, requiring the accommodation of strongly opposed views. And yet, the political environment that has generated the idea of constitutional revision will also give momentum to the implementation of the proposed amendments. In this moment of historic opportunity, sensitive and effective international cooperation can make a valuable contribution.

In addition to the three suggested reform priorities derived from the proposed amendments to the Constitution, there is an important issue of concern to civil society that is not directly addressed in any current government-led initiative. That is the lack of knowledge of the law by many Jordanians, especially the poor, and the absence of an effective system to provide legal advice and representation to those who lack the means to engage the services of a lawyer. It is said that many distrust the justice system and assume that the courts decide cases on the basis of influence rather than by objective analysis of the facts and the law. Extending the reach of legal knowledge and services and thereby increasing the number of Jordanians who have a stake in a fair and effective justice system is integral to broadly participatory economic, social, and political development.¹⁰

There follows a summary of these key priority issues and related proposals.

Status of the Judicial Council

Under the 2001 Judicial Independence Law, the Judicial Council is made up of 11 judges who hold certain specified positions. The Chief Justice presides and the other members include two senior members of the Court of Cassation, the Chief Judges of the three Courts of Appeals, the Chief Judge of the High Court of Justice, the Chief Judge of the Amman Court of First Instance, the Chief Public Prosecutor of the Court of Cassation, and the Chief Inspector and Secretary General of the Ministry of Justice.

Because judges do not have guaranteed security of tenure and because the Chief Justice has substantial power over the assignment and retention of judges (including power over who occupies most of the seats on the Council), the Chief Justice, as President of the Council, can assure that most members share his views. There are two principal constraints on this concentration of power over the judiciary. The first is that, like other judges, the Chief Justice does not have security of tenure and incumbents tend not to remain long in office. The second constraint is that the Minister of Justice retains considerable influence, especially with regard to the appointment of judges and the budget of the judiciary. (The Justice Ministry is also the administrative home of the Judicial Inspection Unit.) The combination of concentrated power within the judiciary and external constraints by the Ministry of Justice that diminish that power may serve to balance competing institutional interests, but it serves neither judicial independence nor accountability.

¹⁰ Concern for the remoteness of formal justice systems from the lives of poor and disadvantaged people has given rise to increasing emphasis on how justice reforms can improve access to justice for the world's poor. See "Making the Law Work for Everyone," Report of the Commission on Legal Empowerment of the Poor, UNDP, 2008, [http://www.undp.org/publications/Making_the_Law_Work_for_Everyone%20\(final%20rpt\).pdf](http://www.undp.org/publications/Making_the_Law_Work_for_Everyone%20(final%20rpt).pdf).

Judicial councils became widespread in Europe, and then elsewhere, as instruments to diminish historic dependence of the judiciary on the executive and to enhance judicial independence. The Council of Europe's Consultative Council of Judges has developed suggested standards for judicial councils "entrusted with the protection of the independence of judges, as an essential element in a state governed by the rule of law and thus respecting the principle of separation of powers." Also, IFES has published international best practices for judicial councils as "a tool to strengthen judicial independence and integrity."¹¹ A regional conference in Amman in November 2008 took note of differences between the recommended international best practices and the operation of the Judicial Council in Jordan.

Questions abound about possible changes to the Council. They concern its composition, its openness to the views of members of the judiciary, the transparency of its proceedings, and its specific powers and capacity to exercise those powers effectively on the basis of objective criteria and established procedures. Reform should enable the Judicial Council to recruit, train, promote, assign, and discipline judges and support staff in the courts and to have a prominent voice as to the budget and working conditions of the judiciary. It should also assure that the Judicial Council acts transparently; that it provides voice to the broad membership of the judiciary; that its authority for financial and administrative management of the judicial system will be expanded, but will not impede the impartiality of individual judges or influence individual cases; and that it is accountable to the other branches of government and to the people.

The Royal Commission has recommended that the Judicial Council be given constitutional status in recognition of the role of the judiciary as a co-equal and independent branch of government. The Commission envisages a Judicial Council that will have broad powers with respect to personal status matters through the integration of religious courts into the regular judiciary, including the appointment of Shari'a and canonical judges. The Council will also nominate the members of the new Constitutional Court. However, the proposed constitutional amendments do not address the Council's structure and operating systems. The proposed Article 100 of the revised Constitution would leave these matters to be addressed in a special law to establish the courts.

¹¹ See Consultative Council of European Judges, "Council for the Judiciary at the Service of Society," Opinion no. 10, November 2007, <http://www.rechtspraak.nl/English/Publications/Documents/opinion-10-2007.pdf>; Autheman, Violane, and Sandra Elena, "Global Best Practices: Judicial Councils – Lessons Learned from Europe and Latin America," IFES, April 2004, http://www.ifes.org/~media/Files/Publications/White%20PaperReport/2004/22/WhitePaper_2_FINAL.pdf. See also USAID, "Guidance for Promoting Judicial Independence and Impartiality," revised January 2002, http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacm007.pdf.

The increased importance and additional authorities of the Judicial Council under the proposed constitutional revision warrant a careful review of the Council's organic law and implementing regulations. The structure of the Judicial Council, its management systems, and its capacity to use those systems to good effect will determine whether elevating this institution to constitutional status is a true reform or merely a preservation of the *status quo*. Thus, the constitutional amendments should be followed by amendments to the 2001 Judicial Independence Law, the adoption of internal standards and procedures, and the development of sound management practices and safeguards in order to reflect the principles of judicial independence and accountability that the Judicial Council should serve.

A very recent development suggests reason for optimism that the Judicial Council and the government are increasingly ready for reform. On July 26, 2011, the Council approved long pending bylaws to give formal status to the three administrative units the Council had established in 2010.¹² The Council added to the proposed bylaws an important provision for a Secretary General to provide high-level management direction for all three units and then forwarded the amended bylaws to the Minister of Justice. The Minister immediately endorsed the bylaws and forwarded them to the Council of Ministers for final approval and publication. This is a potential foundation on which the Council can build the capacity for increased judicial independence and accountability.

Judicial review of executive and legislative acts

International practice varies widely in the way states organize institutions for judicial review of government actions and legislation. Some leave constitutional questions to be resolved by all courts like any other question of law, with appeals moving up to the highest level where definitive rulings are made. Other states designate a chamber within the Supreme Court to hear and resolve constitutional questions. Still others, indeed the majority, have established separate constitutional courts.¹³

¹² The three units will give the Council enhanced management capacity in the following areas:
Judges' Affairs: records and information on matters relating to judicial appointments, promotions, salaries, transfers, discipline, leave, and other administrative matters relating to judges.
Training and Specialization: Liaison with the Judicial Institute; maintaining a data base of training opportunities; managing appointment of judges as civil or criminal case specialists; recommendations on civil and criminal specialization assignments.
Development Planning: review court statistical reports and prepare reports on judiciary performance; strategic planning; legal studies; and media and communication planning and dissemination.

¹³ See Horowitz, Donald, "Constitutional Courts: A Primer for Decision Makers," *Journal of Democracy*, Volume 17, Number 4, October 2006, page 126, National Endowment for Democracy and The John Hopkins University Press, 2006. Links to constitutional courts throughout the world can be found on the website of the Bahrain constitutional court, <http://www.constitutional-court.org.bh/CCB/en/Usefullinks/Others.htm> and that of the

At present, the civil courts in Jordan have the authority to rule on challenges that may be presented in litigation to the constitutionality of executive or legislative actions. For example, in 1998 the High Court of Justice upheld a challenge by journalists to enforcement of a restrictive press and publications law. However, such rulings are relatively rare and have effect only for the particular case before the court. They do not affect the general validity of the executive or legislative act in question.

The idea of a constitutional court for Jordan has been raised from time to time for several decades. The Royal Commission has now recommended such an institution. The Commission proposes a court consisting of a Chief Judge and ten other judges. The ten will be nominated by the Judicial Council: five from among sitting judges on the Court of Cassation and five citizens with constitutional expertise. The Constitutional Court, as proposed, will interpret the Constitution and decide on the consistency of laws, treaties, and other legal texts with the Constitution. It will also decide on conflicts of laws, conflicts of jurisdiction, and conflicting final judgments issues that do not necessarily involve constitutional questions. The jurisdiction of the Court could be invoked by the Prime Minister, by the speaker of either house of Parliament, by a group of senators or deputies, or by a judge with a pending case presenting a constitutional issue. Judgments of the Constitutional Court will be published and have the force of law.

This new institution would replace the existing High Tribunal to Interpret the Constitution which is made up of legislators and judges, thus considerably strengthening the role of an independent judicial process to interpret the law and safeguard basic rights and duties. The proposed constitutional amendment would also eliminate the separate constitutional tribunal for interpreting at the request of the Prime Minister “the provisions of any law which have not been interpreted by the courts.” This tribunal, like that for interpreting the Constitution, is made up of both judges and executive officials. Its elimination, as proposed, will further enhance the authority of the courts under the separation of powers doctrine.¹⁴

Minerva Research Group on Judicial Independence of the Max Planck Institute,
http://www.mpil.de/ww/en/pub/research/details/projects/minerva_jud_indep/domcourts.htm.

¹⁴ Article 122 of the Constitution presently authorizes the High Tribunal that tries charges against Ministers to interpret the constitution upon request from the executive or the legislative branch. This tribunal, according to Article 57, is made up of four members of the Senate and five judges. Under the proposed constitutional revision, trials of Ministers will now be before a tribunal made up entirely of judges. Section 123 of the Constitution now provides for the special tribunal (proposed to be abolished) for the interpretation of laws, made up of three judges and two executive officials.

There has been widespread enthusiasm for the proposed Constitutional Court in the legal community. On the other hand, some influential voices have expressed concern that concentrating power to interpret the constitution in a small group of judges would threaten rather than enhance democracy. The judges of the constitutional court, they argue, would be vulnerable to manipulation by powerful forces. If the constitutional court lacked credibility, this would undermine public confidence in all public institutions.

The specific mandate of the Constitutional Court is to be elaborated in legislation. This will present several questions requiring careful analysis of alternative approaches, taking into account the experience of other countries. Should the court have jurisdiction with respect to pending legislation? Will the court provide advisory opinions? Will it review decisions by the Court of Cassation? What protections, such as long tenure and salary guarantees, will safeguard the independence of the judges and what constraints will assure their accountability? Whatever approach is taken, extensive preparations will be necessary, including training of judges and support personnel as well as members of the legal community and a campaign for informing the general public. If the new court is established, there will also be a need to create operating systems and procedures as well as a system for broadly disseminating its authoritative and legally binding interpretations of the Constitution.

Another aspect of judicial review concerns the remedies available to challenge administrative decisions by public entities. The existing High Court of Justice is the principal forum for this purpose. Compared to the civil courts which annually handle many thousands of cases, the High Court of Justice considers only a few hundred cases each year. This low volume is an indication of the dissatisfaction expressed by some members of the legal community. The Royal Commission has now recommended that the High Court be reorganized to have two divisions: first instance and appellate. As in the case of the Constitutional Court, the details are to be specified in legislation. More analysis will be needed to determine what additional measures can be made to make judicial review of administrative decisions more effective. Ideally, that analysis will precede and inform the development of the authorizing legislation.

Expanded jurisdiction of the civil courts to include cases heard by the State Security Court.

At present, the prosecution service is a weak link in the criminal justice system. Jordan has only 1.6 prosecutors per 100,000 inhabitants, and only one prosecutor for every five judges. These ratios are among the lowest in the region.¹⁵ For the most part, prosecutors are drawn from the junior ranks of the judiciary and serve no more than a few years before returning to judicial duties. They receive little in the

¹⁵ Euromed, "Access to Justice and Legal Aid in the Mediterranean Partner Countries," May 2011, pages 26-27, http://euromed-justice.eu/files/site/English_book_Study_Access_to_Justice.pdf.

way of specialized training. It is reported that they have limited ability to supervise police investigations and that they lose many cases through inadequate preparation and faulty presentation.

A constitutional reform proposed by the Royal Commission, if adopted, will place additional demands on the civil courts to manage the often complex and high-profile criminal cases previously heard by the State Security Court. This change will place significant new demands on the civil courts, and especially on the prosecutors, to manage challenging cases of unusual complexity and often involving high-profile defendants. Among other things, there will be needs for training of judges and other personnel, procedures to assure timely proceedings with an appropriate balance of transparency and security, and the development of a specialized group of skilled prosecutors with nation-wide jurisdiction and secure tenure for an extended period.

Access to Justice

The foregoing priorities – status of the Judicial Council, judicial review of governmental and legislative acts, and jurisdiction over major and sensitive criminal cases – all relate to independence and accountability and to institutional capacity and competence. These important measures do not address directly the subject of access to justice. And yet, consultations in the legal community suggest that access to justice is a priority in Jordan, as it has been in other countries in the Middle East and North Africa that are experiencing popular demands for social, economic, and political reform.

Leadership for moving forward with the proposed amendments to the Constitution will rest with the government, the courts, and Parliament. However, those public institutions appear unlikely to be in the forefront of an effort to extend access to justice to those who are disadvantaged in the present operation of the legal system. This is not to say that the public authorities will be hostile to increased access to justice. Rather, the principal enthusiasm for this set of issues rests primarily in the civil society organizations concerned with protecting the rights of the disadvantaged, enhancing legal awareness, disseminating legal information, and providing legal counsel and representation to those who otherwise lack the means to obtain them.

Preliminary consultations suggest that there is readiness on the part of several civil society organizations to take the lead on a bold proposal to institutionalize a system of community-level centers for providing legal information, services, and representation. These centers throughout Jordan, perhaps linked to municipal councils, would be supported by some public resources and some volunteer services. The objective would be to create a sustainable system. The development of this concept would necessarily

involve dialogue with several ministries, the Judicial Council, the Bar Association, and international partners. Universities with clinical programs for law students might also play an important role. One leading NGO is already engaged in a national survey to determine needs and service availability with a view to creating a data base that can inform such a dialogue.

With regard to international partners, it should be noted that access to justice is a prominent theme in programs of the European Union, UNDP, and now the World Bank. Bringing the various national and international efforts together would be a challenge, but a significant measure of coordination could bring substantial momentum to the effort.

Obstacles to Reform

As observed above, resistance to reform in Jordan has been the subject of extensive commentary and analysis.¹⁶ Those who believe their interests would be severely and negatively affected cannot be expected to join a consensus for reform. In addition, there is always skepticism about proposed reforms and Jordanian society has often been described as inherently skeptical. It seems useful, therefore, to reflect on plausible arguments frequently expressed by members of the legal community that might impede reform in the justice system. In particular, two arguments were repeated in many conversations throughout the present consultancy.

The argument that judicial reform must await political reform.

This argument is that the political environment will not be conducive to judicial reform until reformed election and political parties laws are enacted, new elections are held under those laws, and a government is formed by the leader of the winning majority. That sequence will lead to a government with an interest in being reelected and, therefore, responsive to popular demand for justice reform.

It seems entirely reasonable that a democratically elected government would provide an improved enabling environment for judicial reform. In this regard, it is encouraging that the most prominent recommendations in the report of the National Dialogue Committee are for reform of the laws on elections and political parties, with draft legislation included in the report. There appears to be momentum toward new rules and new elections. However, this is hardly a reason for delaying judicial reform. To the contrary, the judiciary should be as independent, competent, and accessible as possible by the time elections are held, recognizing that reform is a long-term process. If anything, the need for progress is made more urgent by the inclusion in the Royal Commission's report of a recommendation that parliamentary election disputes be resolved by the judiciary. Progress toward judicial reform and progress toward electoral reform can proceed simultaneously and be mutually reinforcing elements of building a democratic society based on the rule of law.

The argument that the influence of the Ministry of Justice serves as a necessary check against the concentration of power in the hierarchy of the judiciary.

¹⁶ See, e.g., Muasher, note 7, *supra*; Lucas, Russell, "Jordan," in *Countries at the Crossroads*, Freedom House, 2010, <http://freedomhouse.org/template.cfm?page=140&edition=9&ccrpage=43&ccrcountry=189>.

This argument has several strands. It suggests, first, that the leadership of the judiciary is less trustworthy than the leadership of the Ministry of Justice; second, that an unconstrained judicial leadership might exercise independence in an irresponsible manner, to the detriment of the quality of justice; and finally, that the judiciary lacks the capacity to put in place safeguards, standards, and procedures to assure against irresponsible behavior by the judicial leadership.

The conclusion of this argument is that a weak judiciary, dependent on and subject to the influence of the executive, is preferable to the risks of judicial independence. This judgment clearly underestimates the value of judicial independence and the potential harm of continued dependence by the judiciary on the Ministry of Justice. It discounts the possibility that a capable judiciary could operate under safeguards to assure accountability in the exercise of independence. And it disregards the fact that judicial independence is a fundamental and universally recognized principle of democratic governance and the rule of law. It is not a foreign or inappropriate notion. It is imbedded in Jordan's Constitution, in the objectives of the National Agenda, and in international declarations to which Jordan is a party.¹⁷

A particular aspect of this argument concerns the proposed creation of the Constitutional Court. The argument by some opponents of this court that its small group of judges would be subject to irresistible pressure from powerful interests is a variation of the theme that judges cannot be trusted to use independence responsibly. Therefore, the opponents contend, the influence of the executive is needed to constrain the judiciary and thereby minimize this risk.

Other Obstacles

The USAID assessments and other studies of Jordan's justice system recite as impediments many characteristics of cultural tradition, limited operational capacity, lack of leadership continuity,

¹⁷ See Articles 97 and 101 of the Constitution of Jordan; recommendations of the National Agenda on the theme of "Justice"; the 2008 Arab Declaration on Human Rights, which obliges the States parties to "guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats"; the 2003 Cairo Declaration on Judicial Independence, which recognized "that an independent judiciary is the pivotal pillar that guarantees public freedoms, human rights, comprehensive development processes, the reform of trade and investment system and trade cooperation between Arab countries and other countries, and establishment of democratic institutions," while acknowledging with clearly implied disapproval "the interference of the executive powers in functions and affairs of the judicial authority including issues concerning appointing, transference, mandating, promotion, discharging, and management of judges' professional affairs."

inadequate media and public interest, and other factors. All of these concerns certainly contribute to a challenging environment. However, none of them rises to the level of an insurmountable obstacle. Reform efforts need to take this local context fully into account, as in any major change of policy and structure, and the impediments will need to be addressed in the framework of each specific objective and action plan.

Strategic Framework for USAID Support

Lists of concerns about Jordan's justice system fill many pages of the studies cited in this report's bibliography. A number of them are mentioned above in the report's Overview section. Donors could easily defend investing in any number of themes, such as juvenile justice, commercial dispute resolution, anti-corruption, human rights, and legal education. All have appeal as important issues and all have local champions. Yet, it is clear that Jordan needs to give priority to the fundamental policy and structural issues that it has identified for reform. Progress achieved on these basic challenges will help to make progress on particular issues more likely and more sustainable.

The updating of the National Agenda, scheduled to be completed by the end of 2011, provides an opportunity to catalogue major challenges, document progress, and build consensus on long-term goals. However, it seems clear that the practical course at this time is to concentrate on the most important issues that are ripe for action and capable of achieving transformational impact.

The selective reform agenda that seems to have the best prospects for success at this time of political ferment is one drawn from the above-described initiatives for reform that the government, the judiciary, and civil society have set in motion. It is important to emphasize that the reform agenda will be set by Jordanians and is likely to evolve over time. What is proposed here is a set of objectives that seem likely to be included in that agenda and that USAID might support. That support needs to be offered in a spirit of true partnership that advances shared interests in strengthening the rule of law as a foundation of a stable, just, prosperous, and democratic Jordanian society in which people benefit from increased freedom, security, and rising standards of living.

The recommendations in this report are necessarily based on imperfect knowledge of an evolving local context. From the starting point of local ownership, specific objectives, approaches, and program activities for USAID (and other international partners) need to be carefully tested with stakeholders and periodically validated. USAID will need to dedicate technical staff, reinforced by a diplomatic dialogue, to engage with local stakeholders and international partners on a continuing basis.¹⁸ As recently observed by Nancy Birdsall and Francis Fukuyama, "effective institutions have to evolve indigenously,

¹⁸ Possible channels for multilateral engagement might include the initiatives to support economic, social and political reform in the Middle East and North Africa cited in notes 2, 3, 4, and 5, *supra*.

reflecting a country's own political, social, and cultural realities....Institutions such as the rule of law will rarely work if they are simply copied from abroad; societies must buy into their content."¹⁹

Within the present context, possible objectives of a Jordanian reform agenda which USAID might support include the following:

- **Restructure the Judicial Council as a constitutional body with a mandate, to be further elaborated in law, to recruit, train, assign, evaluate, promote, and discipline the judges and support staff of the judiciary and with the capacity to carry out that mandate.** Creation of the restructured Council will require decisions on the membership, manner of selection (possibly including election of some members), and security of tenure. Also to be decided are how to formulate the Council's control over internal administration and the budget of the judiciary, the establishment of clear standards, transparent procedures, and appropriate safeguards of integrity and prudent management. Extensive capacity building will be needed within the Council and it will be necessary to familiarize the entire legal community and the general public about this important development.
- **Establish a constitutional court empowered to review the constitutional validity of acts of the executive and legislative branches of government.** Creating this new constitutional body will require decisions on the tenure of judges, the precise scope of the court's jurisdiction, implications of initiating a proceeding in the constitutional court for related proceedings in other courts, and the precise effect of a finding by the court of unconstitutionality. As in the case of the restructured Judicial Council, a new constitutional court will involve considerable capacity building and education efforts.
- **Expand the criminal jurisdiction of the civil courts to include cases previously in the jurisdiction of the State Security Court and assure that the civil courts and the prosecution service are well prepared for this challenge.** The expansion of criminal jurisdiction will necessitate a strengthening of the civil courts, with special attention to the capacity of prosecutors. This will include having a sufficient number of prosecutors with adequate tenure and specialized training, able to act independently to supervise investigations and present evidence competently. Decisions will be needed about how to structure an independent prosecution service, including a cadre of specially trained experts with national jurisdiction to handle major and complex cases.
- **Create an institutionalized system to provide legal information, counsel, and representation to the poor and disadvantaged.** The development of this new system will require decisions about the financing of legal services, the identity of service providers to participate in the program, a public sector focal point for the system's administration, an organizational structure, standards of eligibility for services, possible financial contributions from beneficiaries, conveniently located facilities, and measures to make the service known to the public. This will require collaboration among a number

¹⁹ Birdsall, Nancy, and Francis Fukuyama, "The Post-Washington Consensus," *Foreign Affairs*, Volume 90, Number 2, March-April 2011, pages 45-53.

of ministries, civil society organizations, the bar association, universities, and, perhaps, municipal authorities around the country.

It should be emphasized that these notional objectives are intended to suggest areas where Jordanian initiatives and USAID support might most productively converge in the area of policy and structural reform. There are certainly other worthwhile reform areas that Jordan may pursue without USAID support and other collaborative activities where USAID will want to help Jordanian counterparts to consolidate progress through ongoing development cooperation. Indeed, as discussed below, ongoing USAID programs and activities which are not within the scope of this consultancy may well have significant implications for the success of the proposed policy and structural reform issues addressed herein.

Objectives and Implementing Actions for USAID

The four above-suggested reform priorities – a strengthened judicial council, a constitutional court, improvement in criminal justice, and a system of legal services for the poor and disadvantaged – are based on the information obtained in the course of this consultation. It remains necessary for USAID to engage in dialogue with stakeholders to verify that the four suggested reform initiatives, in fact, represent Jordanian priorities. The question then arises as to what USAID can contribute to those initiatives in furtherance of judicial independence and accountability, institutional capacity and competence, and access to justice. All of these sensitive issues will require care in defining the role of USAID or other international partners, and all will involve long-term sustained effort. There follows a set of recommendations concerning approaches to stakeholders, possible objectives for USAID support, and proposed implementing actions toward those objectives.

Judicial Council

There are widely differing stakeholder views about the Judicial Council. Some who benefit from the existing structure will want to preserve it. Those who want change do not agree on what the precise change should be. The best approach for USAID would appear to be engaging the judges in a search for common ground among themselves. Once there is a broadly shared vision within the judiciary the judges will be in a strong position to influence others, including in the government and Parliament.

An initial objective of USAID support, then, might be to promote a shared understanding within the judiciary of the potential role of a reformed Judicial Council in fostering judicial independence and accountability. Actions might include exposure to international experts (perhaps representatives of several European judicial councils), inclusion of the role of the Judicial Council in training courses for judicial candidates as well as sitting judges, and promotion of dialogue through judges' workshops.

A second objective for USAID could be to enhance the capacity of the Judicial Council to carry out increased responsibilities. Actions toward that objective might include the continued development of the Council's three new administrative units, the evolution of those units toward becoming a secretariat for the judiciary, and a self-evaluation by judges themselves of how the existing system performs.²⁰

²⁰ The design for judicial self-examination might draw upon existing models, such as that of the International Consortium for Court Excellence, <http://www.courtexcellence.com>, or the American Bar Association's Judicial Reform Index, http://apps.americanbar.org/rol/publications/judicial_reform_index.shtml.

Third, USAID could address the existing well founded concern that enhanced judicial independence must be accompanied by increased judicial accountability. This might involve, for example, familiarizing judges with international standards and judicial integrity systems, support for operationalizing the judicial code of ethics that was adopted with assistance from the American Bar Association, and integrating ethics and accountability factors more fully into the work of the Inspection Unit and the Judicial Institute of Jordan. Work on this subject would provide an opportunity to reinforce the strong association between independence and accountability.²¹

Reform of the Judicial Council is fundamental. It merits USAID's highest priority attention. USAID's activities concerning the Judicial Council should be undertaken with an eye to the timeframe for adopting the proposed constitutional reforms and developing the implementing legislation that will be needed to give effect to those reforms.

Constitutional Court

If an amendment to the Constitution to establish the proposed Constitutional Court proceeds, it is likely that the government will establish a commission to study the complex policy issues presented by this initiative and prepare recommendations for the new court's legislative charter. Like any other reform, the danger of unintended consequences will be present. The United States has no need to take a position on any particular issue involved in this process, but could be helpful in assuring that the study commission makes well informed choices. One possibility for useful assistance would be to contribute to a highly professional study by a respected neutral international body. For example, the highly regarded Max Planck Institute for Comparative Public Law and International Law has done comprehensive studies to inform the deliberations of other countries and could provide a valuable service to the designers of Jordan's constitutional court. USAID might consider joining with other international partners in shared financial support for such a study as a gesture of international support for Jordan's reform initiative.

In addition, as the Constitutional Court moves forward USAID could provide support to training, integration of this major development into legal education and public awareness activities, facilitation of

²¹ The association between independence and accountability is emphasized extensively in international materials such as those collected by the International Commission of Jurists in its handbook on international principles on the independence and accountability of judges, lawyers, and practitioners, http://www.icj.org/IMG/PG-J_L-ENG.pdf.

the dissemination of constitutional court decisions (which will have the force of law), and adaption of court automation software developed under USAID auspices for use by the new court.

Criminal Justice

Because Jordanian prosecutors are all drawn from the judiciary and retain their status as judges, the starting point for engaging stakeholders is again the judiciary. USAID's objective could be to help professionalize the prosecution service, increasing its efficiency and effectiveness. Activities might include intensified training for prosecutors, with emphasis on major and complex crimes (including cases formerly tried in the State Security Court). Training in the oversight of criminal investigations and managing relations with the police while assuring respect for human rights seem especially important. In addition, accelerated installation of case tracking software and related technical assistance can contribute to improved case management.

It will be important to reach an understanding with the leadership of the judiciary that focused assistance to strengthen the prosecution service needs to be accompanied by a policy of extended assignments for those judges who are designated to serve as prosecutors. Otherwise, the provision of specialized training could be largely wasted due to rapid turnover of the recipients of that training.

Should the initial effort prove successful, including longer tenure for prosecutors, this might provide a foundation of experience on which to base reconsideration of legislation to institutionalize an independent, professional career prosecutor service within the judiciary. (A previous legislative proposal passed the lower house of Parliament, but was rejected by the Senate over concerns about whether the proposed law would have permitted undue risk of political interference in prosecutions.)

Access to Justice

Access to justice is not addressed in the official proposals for reform, but is a subject of high priority for civil society groups concerned with economic, social, and political rights. Many of these organizations focus on particular constituencies – women, persons with disabilities, those incarcerated in the criminal justice system, juveniles in conflict with the law, journalists, nascent civil society organizations trying to meet legal requirements. And some are focused on particular issues – human rights, pre-trial detention,

the informal economy. However, they all share an interest in expanding the availability of information about the law and legal services to the poor and disadvantaged segments of Jordanian society. Extending the protection of the rule of law to the many now effectively excluded by lack of knowledge or representation is essential to the very purpose of justice reform.

Because this issue is not the subject of a current initiative by the government, the judiciary, or the organized bar, the logical entry point for USAID is to engage the civil society community. With USAID encouragement, there appears to be readiness by a number of organizations to work together to form a consortium to raise the visibility of this subject and to develop a plan for engaging other stakeholders.

The focus of USAID's dialogue with the civil society organizations should be on establishing an institutionalized system of community-based legal services centers. The civil society consortium would be expected to develop a plan for engaging the many stakeholders whose cooperation will be needed. Ultimately, a successful effort might be expected to result in a structure with government support, community participation, and volunteer service that would substantially meet the demand for legal knowledge and assistance on a sustainable basis. Such a system could extend the relevance of the justice system to the majority of the Jordanian people.

Activities might include a grant to several organizations to join together and form a consortium of like-minded groups to develop a strategic plan for an institutionalized legal services system. This grant would undoubtedly require intensive management attention by USAID, given the breadth of alternative approaches, numerous stakeholder organizations to be involved, and the diversity of particular interests among the various concerned organizations. Nevertheless, planning, execution, and advocacy from within the civil society seems a far more likely way to achieve this highly desirable result than for USAID to take the lead directly with the numerous parties and interests at play.

As the process moves forward, USAID could consider additional support, such as exposure to legal aid systems in other countries, comparative data from the region, and international best practice.²² Other international partners might also be interested in participating in support of the work of the consortium. Technical assistance might well be needed in the preparation of a legal charter, establishing operating systems, creating standardized materials, and putting into operation the new system. Ongoing work by USAID with legal education can also contribute by engaging the law schools in clinical educational efforts

²² The Legal Aid Reformers Network, supported by the Open Society Institute, has compiled voluminous information on these subjects. See the Network's website, <http://www.legalaidreform.org>. The European Union has collected data from all countries in the region, compiled in a May 2011 report entitled "Access to Justice in Mediterranean Partner Countries," note 15, *supra*.

to protect the rights of the underrepresented. For the longer term, consideration might be given to the possible value of adapting case management software in use by the courts for use by the legal services system as well.

While keeping the focus on establishing a sustainable legal assistance system, the possibility should not be overlooked that a broadly based consortium dedicated to this objective could over time become a network that would engage in justice policy advocacy, monitor the performance of justice institutions, and generate learning to stimulate future justice reforms. For example, the consortium might look beyond the formal court structure to consider possibilities of integrating community-based alternative dispute resolution processes based on custom and tradition into the justice system.

USAID can draw on its own considerable research and experience in working to enhance legal empowerment of the poor, which have emphasized such themes as:

- Rights enhancement: ensuring that the poor are able to influence the development of policy and law and enhance their rights through democratic and transparent political processes.
- Rights awareness: making sure that the poor understand their rights and the processes by which they can be exercised and enforced.
- Rights enablement: ensuring that the poor are able to overcome bureaucratic and cost barriers that broadly affect their access to economic opportunity and wealth generation.
- Rights enforcement: making sure that the poor have access to affordable and fair mechanisms for enforcement of rights and dispute resolution.²³

Integrating the Current USAID Program with the Reform Agenda

The new opportunities to support policy and structural reform in the justice system arise against a background of important work by USAID that has made major contributions to the system's efficiency and effectiveness. These contributions have helped to expand the range of opportunities now present in an environment that is more conducive to policy and structural reform. It is worth noting that USAID's ongoing and planned activities can be used, in some cases with adaptations, to reinforce the reform

²³ See Bruce, John W., Omar Garcia-Bolivar, Tim Hanstad, Michael Roth, Robin Nielsen, Anna Knox, and Jon Schmidt, "Legal Empowerment of the Poor, From Concepts to Assessment," USAID, March 2007, http://pdf.usaid.gov/pdf_docs/PNADM500.pdf.

agenda. The choice for USAID is not whether to continue current efforts to consolidate important gains that have been realized or to turn instead to a focus on reform. These are interrelated aspects of strengthening the rule of law. The challenge for USAID is how to balance the continuation of unfinished efforts that have good potential with an increased focus on reforms that can lead to transformational change.

Experience has shown that interim achievements can be very important in sustaining the momentum of reform toward long-term goals. Some ongoing or planned efforts in the current program, such as those to improve the efficiency of the enforcement of civil and criminal judgments and to increase the use of court-annexed mediation can provide valuable interim measure of progress. For example, this report suggests an emphasis on an institutionalized system of legal services for the poor and disadvantaged in USAID's support for Jordan's justice reform agenda. The poor are disproportionately disadvantaged by costly and prolonged delays in the enforcement of judgments in order to realize the practical benefits of successful litigation. Likewise, the poor are the most disadvantaged by the limited acceptance of court-annexed mediation as an alternative to litigation. Similarly, in the criminal justice field, the duty of collecting fines from minor violators who do not appear in court is a tedious burden for overworked prosecutors. It is also a loss of needed revenue for the state and a demonstration of an ineffective judicial system. USAID work in this area can give an added boost to the reform objective of professionalizing the prosecution service and gain recognition of increased effectiveness in the justice system.

Conclusions

This consultation has confirmed that the Arab Awakening is arousing interest in economic, social, and political reform in Jordan. Issues that once were not openly discussed are now the subject of public recommendations. In this context, there are new opportunities for progress on policy and structural changes, some of which have long been discussed but now are moving into concrete proposals for action.

Issues of justice reform have featured prominently in the region and are receiving serious attention in Jordan. Among the areas identified for reform in the Jordanian political process are measures to enhance the independence and accountability of the judiciary, strengthen institutional capacity and competence in the administration of justice, and increase access to timely and nondiscriminatory justice. There are many issues that could be addressed under each of these broad themes. A principal task of this consultancy has been to try to identify specific priorities where progress is both important and achievable and where USAID can make a significant contribution.

The consultant's recommendations draw from ongoing movement toward amending the Constitution to provide an elevated status for the Judicial Council, create a constitutional court empowered to review acts of the executive and legislative branches of government, and expand the jurisdiction of the civil courts in matters previously directed to more political bodies. In addition, the consultant has recommended support for civil society in extending the reach of the rule of law through a system for providing legal information and services to the poor and disadvantaged. This final recommendation is responsive to the rising popular expectation of a voice and respect for rights in a more democratic society.

The identified priorities on the reform agenda all involve highly political issues about which Jordanian stakeholders are divided and hold strong views. This consideration places a premium on diplomatic support and adherence to the aid effectiveness principles of inclusive partnership which have been adopted as US policy in development cooperation: respect for local ownership, alignment with local strategies, harmonization with other international partners, managing for results, and mutual accountability.²⁴ Also, the outcome of initiatives on the reform agenda will depend in large part on the confidence of decision makers about the enabling environment for the adoption and effective

²⁴ See the OECD website on the Paris Declaration and Accra Agenda, http://www.oecd.org/document/18/0%2C2340%2Cen_2649_3236398_35401554_1_1_1_1%2C00.html; see also, White House Fact Sheet on US Global Development Policy, September 22, 2010, <http://www.whitehouse.gov/the-press-office/2010/09/22/fact-sheet-us-global-development-policy>.

implementation of the proposed reforms. In this regard, integrating a continuation of ongoing support for long-term improvements in the administration of justice with USAID's reform activities can mitigate risks and contribute to the effectiveness of the overall program.

Finally, the recommendations in this report are offered in a spirit of optimism that Jordanians are moving forward with their own reform agenda, a spirit of hope that the reforms they address will progress, and a spirit of confidence that USAID's knowledge and experience with rule of law issues in Jordan will add considerable value to the reform effort.

Annexes:

1. Bibliography of principal documents reviewed.
2. Persons interviewed.

A. James Michel's Reports and Assessments

- 4. Report on the likely impact on the Administration of Justice of the Constitutional Amendments Recommended by the Royal Committee on Constitutional Review, September 2011**



USAID
FROM THE AMERICAN PEOPLE

JORDAN RULE OF LAW PROGRAM

**REPORT ON THE LIKELY IMPACT ON THE ADMINISTRATION OF JUSTICE
OF THE CONSTITUTIONAL AMENDMENTS RECOMMENDED
BY THE ROYAL COMMITTEE ON CONSTITUTIONAL REVIEW
SEPTEMBER 2011**

INTRODUCTION

In early August 2011 Tetra Tech DPK submitted to USAID/Jordan an analysis of current challenges to the reform of Jordan's justice system. The analysis included an examination of several elements of a possible Jordanian reform agenda and suggested the following as likely Jordanian priorities which USAID might wish to consider for its support:

- Restructure the Judicial Council as a constitutional body with a mandate, to be further elaborated in law, to recruit, train, assign, evaluate, promote, and discipline the judges and support staff of the judiciary and with the capacity to carry out that mandate.
- Establish a constitutional court empowered to review the constitutional validity of acts of the executive and legislative branches of government.
- Expand the criminal jurisdiction of the civil courts to include cases previously in the jurisdiction of the State Security Court and assure that the civil courts and the prosecution service are well prepared for this challenge.
- Create an institutionalized system to provide legal information, counsel, and representation to the poor and disadvantaged.²⁵

The DPK report gave prominence to the anticipated recommendations of the Royal Committee on Constitutional Review, relying on interviews and a published draft of the Committee's report. The first three of the four recommended priority areas related directly to the possible constitutional amendments. The fourth recommended priority reflected a widely shared view among Jordanians that increased legal knowledge and access to justice were important to enable the proposed constitutional reforms to have a significant and lasting impact. Extending the reach of the justice system would be an important part of integrating the populace into the democratic society to which the constitutional reform aspired.

The Royal Committee has now presented its final report to King Abdullah II.²⁶ Follow-on action may proceed rapidly in the coming months. In this regard, in accepting the Committee's recommendations on August 14, 2011, King Abdullah expressed his desire to see a "road map of political reform" to be completed by the end of 2011. This roadmap calls for Parliamentary adoption of the constitutional amendments in September and enactment of implementing legislation by the end of 2011, beginning with the high-priority political parties and elections laws. This would be followed by municipal elections "as soon as possible."²⁷ In light of these developments, USAID/Jordan has requested Tetra Tech DPK to prepare this examination of the likely impact of the Committee's final recommendations on the administration of justice in Jordan.

²⁵ "Report on Prospects for Accelerated Reform of the Justice System of Jordan and a Strategy for USAID Support," August 2011, pages 17-18.

²⁶ Recommendations of the Royal Committee for Constitution Review, August 14, 2011, <http://www.jordanembassyus.org/new/pr/prdocs/EnglishAmendments.Final.pdf>.

²⁷ Remarks of His Majesty King Abdullah II, August 14, 2011, <http://www.jordanembassyus.org/new/jib/speeches/hmka/hmka08142011.htm>.

While some critics have complained that the proposed constitutional revisions are too modest, the prevailing reaction appears to be that the amendments are “a first step in the right direction.” That is, they are being viewed by most observers with cautious optimism as necessary but not, in themselves, sufficient reform measures.²⁸ Understandably, much of the attention has been focused on the proposals for political reform, especially the provisions relating to political parties and elections. However, the changes relating to the justice system are also profound. They provide a historic opportunity for dramatic progress toward greater judicial independence and accountability, institutional capacity and competence, and access to timely and nondiscriminatory justice. Whether that opportunity is realized will depend on whether the proposed reforms are adopted and how they are implemented.

PRINCIPAL JUSTICE-RELATED RECOMMENDATIONS OF THE ROYAL COMMITTEE

It has been observed that a constitution provides two distinct functions for a democratic society. Its normative role is to establish government institutions, set out the distribution of functions and powers among them, determine the limits of governmental authority, and prescribe the basic rules by which that authority will be exercised. But a constitution also serves a foundational role, setting forth ideals, aspirations, and values by which people want their society to be judged.²⁹

This duality of purpose is certainly present in the case of the recommendations of the Royal Committee relating to the administration of justice. Some of the Committee’s constitutional recommendations will involve major structural changes. Their implementation will require detailed legislation and regulations, extensive reorganization, and a host of institution strengthening and public education measures. Other recommendations express fundamental principles and values that will set the tone for implementing the more operational provisions. The Committee’s report also leaves open several questions that were addressed in earlier deliberations. In assessing the practical impact of the proposed constitutional amendments, the fundamental principles and values provide the most appropriate starting point.

Principles and Values

²⁸ See, e.g., Muasher, Marwan, “Jordan’s Proposed Constitutional Amendments – A First Step in the Right Direction,” Carnegie Endowment for International Peace, August 17, 2011, <http://carnegieendowment.org/2011/08/17/jordan-s-proposed-constitutional-amendments-first-step-in-right-direction/4rmy>; AFP Amman, “Analysts Welcome Jordan Constitutional Reform Plans,” Alarabiya News, August 17, 2011, <http://english.alarabiya.net/articles/2011/08/17/162719.html>; Omari, Raed, “Jordan: MPs Welcome Proposed Amendments as Important Step in Reform Process,” Jordan Times, August 17, 2011, http://www.zawya.com/story.cfm/sidZAWYA20110817040638/Jordan_MPs_welcome_proposed_amendments_a_s_important_step_in_reform_process.

²⁹ Lerner, Hanna, *Making Constitutions in Deeply Divided Societies*, Cambridge University Press, 2011, pages 17-18.

Article 27 introduces into the Constitution the declaration that the “Judicial Power is independent...” This forthright statement closes the debate about whether judicial independence in Jordan would be a good idea. It will now be a basic constitutional principle. As the Royal Committee stated in an explanatory memorandum accompanying its recommendations, “the word ‘independent’ was added to decisively assert the independence of the judicial power.”³⁰ This principle should infuse the entire body of legislation and practice in Jordan dealing with the judiciary.

Several amendments expand civil liberties and strengthen protection for human rights in ways that involve responsibilities for the independent judiciary. These include the following:

- In Article 7, a new paragraph 2 states that any “infringement on the rights and public freedoms or sanctity of private life of Jordanians is a crime punishable by law.” Once this crime is described in specific terms in legislation it will be the responsibility of the criminal justice system to give it effect. (Although this provision of the Constitution refers only to “Jordanians” it presumably would be permissible to extend protection to non-Jordanians as well in implementing legislation.)
- In Article 8, the previous prohibition against unlawful detention or imprisonment is expanded to include also any other restriction of freedom or prevention of free movement. A new paragraph 2 will require that a person who is arrested, imprisoned, or detained be treated with respect for human dignity, not be tortured or harmed physically or mentally, and not be detained in unauthorized places. Further, any statement extracted under duress in violation of these prohibitions will not be given any consideration. It would appear that any of the specific infringements of rights prohibited by Article 8 would constitute crimes to be made punishable by laws enacted to give effect to Article 7, paragraph 2. In any event, it would be the responsibility of the courts to exclude from evidence any wrongfully obtained confession or other improperly “extracted” statement.
- In articles 15 and 17, derogation of the freedom of a newspaper to publish or the freedom of any person to communicate with privacy will henceforth require that the authorities seeking to interfere with those freedoms first obtain a judicial order affirming that the restriction is authorized by law.
- Article 101 requires that civilians be tried before civilian judges, with exceptions permitted only in cases of high treason, espionage, or terrorism. (This protection is related to a structural change in the State Security Court, discussed below. As indicated in that later discussion, the government has apparently decided to propose to Parliament the retention of jurisdiction by the military-dominated State Security Court over civilians charged with drug crimes.³¹) Article 101 also adds a requirement that in all cases courts must pronounce their verdicts in public session, even if the court had closed the proceedings. In addition, this article adopts – for application by the courts – the standard that the accused is innocent until proven guilty.
- Finally, Article 128 captures the spirit in which the above-described rights have been included in the proposed amendments. A new paragraph 1 declares that “laws issued by virtue of this Constitution to regulate the rights and freedoms shall not impair the substance of these rights or affect their fundamentals.” Judicial application of this broad standard will surely present some difficulties of interpretation in individual cases. But the basic intent is clear: implementing

³⁰ Explanatory Memorandum on the Review of the 1952 Constitution of the Hashemite Kingdom of Jordan Issued in 2011, August 14, 2011, page 11,

http://www.jordanembassyus.org/new/pr/prdocs/English_Explanatory_Memorandum.Final.pdf.

³¹ See note 15, *infra*.

legislation is not expected to survive judicial scrutiny if it contravenes the spirit of the principles and values set out in the Constitution.³²

The heightened emphasis on human rights throughout the proposed amendments appears to be motivated, at least in part, by the Royal Committee's desire to assure consistency with applicable international standards. For example, in several places the text follows the language of the International Covenant on Civil and Political Rights, a widely subscribed human rights treaty to which Jordan is a party.³³

Structural Changes

Articles 55-57 will eliminate the existing High Tribunal for trying criminal cases against government ministers arising from the performance of their duties. The legal basis for action by this High Tribunal has been impeachment by a two-thirds majority of the Chamber of Deputies. It consists of a mixed group of four Senators and five senior judges.

The replacement for the High Tribunal will be the Amman Court of Appeals, acting through a five-judge panel to be selected by the Judicial Council. The court will receive a case after the Chamber of Deputies, by majority vote, refers the case to the Attorney General. The proposed amendment appears to assume there will be a rapid conclusion of any prosecution of a minister because it prohibits the suspension of the accused individual from office until there is a final ruling of conviction. Pending the court's decision, therefore, an accused minister would have greater security of tenure than those ministers who are not accused of wrongdoing. Reportedly, the government does not favor that result and has proposed a modification of the Committee's proposal.³⁴

The Royal Committee's explanatory memorandum states that this amendment restores the power of the judiciary, "which means that there are no more exceptions from the rule of overall judicial jurisdiction." It continues with the following statement of intent:

³² As stated in the Royal Committee's Explanatory Memorandum, "This provision... was meant to block any practice of authoritarian legislation or that which would take away from people the rights they are entitled to enjoy as humans. It was also meant to provide real protection of freedom in real life practice and serve as a guarantee to safeguard human rights." Explanatory Memorandum, note 6, *supra*, page 21.

³³ The Covenant is in force among 167 states. See <http://www2.ohchr.org/english/law/ccpr.htm>. Among other subjects dealt with in the proposed constitutional amendments, the Covenant addresses the duties of parties to respect the human dignity of detained persons, refrain from torture, preserve freedom to communicate, presume innocence until proven guilty, and provide court verdicts in open session. The International Court of Justice has found the Covenant to be a source of international human rights law that operates for the benefit of individuals, including nationals of other countries. Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Judgment of November 30, 2010, <http://www.icj-cij.org/docket/index.php?p1=3&code=gc&case=103&k=7a>.

³⁴ A recent press report indicates that the government has modified the language recommended by the Royal Committee on the status of a minister against whom criminal charges are brought. Instead of prohibiting the accused minister's suspension (as recommended by the Committee), the government's change reportedly would require that the accused be suspended immediately upon being charged. See "Government reveals more changes to constitutional amendments," *Jordan Times*, August 29, 2011, <http://www.jordantimes.com>.

Ministers will have sufficient guarantees, but they will receive no preferential treatment that necessitates special arrangements as they are citizens and should be tried before regular courts for violations attributed to them in accordance with the basic principles of justice and equality before the law.³⁵

Articles 58-61 direct the establishment by law of a constitutional court as “an independent and separate judicial body.” The court’s legislative charter will determine how it functions and is managed, how to appeal before it, and related matters. However, the Constitution will specify a number of the features of this new judicial body. The Royal Committee describes the establishment of the Constitutional Court as “an extremely significant juncture in the accelerating efforts to apply democracy in a manner ensuring consistency with the highest international criteria.”³⁶

According to the proposed amendments, the court will have nine members, all appointed by the King. Seven members will constitute a quorum and six votes will be required for a decision. Members will be selected from among candidates at least 50 years of age who are current or former members of the Court of Cassation, current or retired law professors, or legal experts or specialists. They will serve for four-year renewable terms, during which they may not be dismissed.

The Constitutional Court will have two kinds of jurisdiction:

- First, it “shall” rule on challenges to the constitutionality of laws and regulations in force. Challenges may be presented by the Council of Ministers, the Senate, or the Chamber of Deputies – or by the Chief Judge of the pertinent Court of Appeals with respect to a pending case. The discretion of a Chief Judge to decline to present an asserted constitutional challenge to the Constitutional Court may be constrained by a government-proposed change.³⁷
- Second, the Constitutional Court “has the right” to interpret provisions of the Constitution if requested by the Council of Ministers or by a resolution passed by an absolute majority of either the Senate or the Chamber of Deputies. (This second category of jurisdiction empowers the Constitutional Court to perform a role previously envisioned for the High Tribunal, described above. Under a related amendment to Article 122, once the Court is established the High Tribunal will cease to exist.)³⁸

³⁵ Explanatory Memorandum, note 6, *supra*, page 11.

³⁶ Explanatory Memorandum, note 6, *supra*, page 13.

³⁷ A recent press report indicates that the government has modified the language recommended by the Royal Committee on how constitutional challenges can be presented. The change reportedly would give Jordanian citizens who are litigants in cases pending in the civil courts the right to raise constitutional challenges through the Chief Judge of the relevant Court of Appeals. See “Government makes changes to constitutional amendments,” *Jordan Times*, August 25, 2011, <http://www.jordantimes.com>.

³⁸ Article 122 of the present Constitution authorizes the High Tribunal that tries charges against Ministers to interpret the constitution upon request from the executive or the legislative branch. Under the proposed

Rulings of the Constitutional Court will have the force of law, binding on all authorities, and will be published in the Official Gazette.

Article 71 will transfer from the Chamber of Deputies to the judiciary the function of adjudicating challenges to the validity of elections of members of the Chamber of Deputies. Any voter may petition the Court of First Instance for the electoral district concerned within 15 days after the elections results are announced. A three-judge panel of the court must hear the challenge and issue a final ruling within 30 days after the case is filed. The decision of the Court of First Instance may not be appealed.

In Article 98, a new paragraph 2 will give the Judicial Council a constitutional status. The Council is to be established by law. It will be responsible for matters related to the civil courts, including the sole right to appoint civil judges, and will have additional powers relating to the judicial career as may be provided by law. The conferral on the Judicial Council of “the sole right to appoint civil judges” must be read as a limitation on the permissible discretion under the unchanged paragraph 1 of the same article, which states that judges “shall be appointed and dismissed by a Royal Decree in accordance with the provisions of the law.”

In Article 100, a new clause requires that the law establishing the High Court of Justice provide for an administrative judiciary at two levels. This mandates a departure from existing legislation, which provides for only a single level of adjudication in administrative litigation with no right of appeal. As stated by the Royal Committee, this “new development...ensures individuals the right to appeal...”³⁹

Article 109 requires that the laws pertaining to the Tribunals of Religious Communities shall henceforth determine the requirements of appointing the judges for those tribunals. This requirement applies only to the religious courts dealing with personal status of non-Muslims. (Article 99 of the Constitution divides the courts into three categories: civil, religious, and special; Article 104 further divides the religious courts into Sharia and other religious communities. These articles remain unchanged by the proposed amendments.)

In Article 110, a new Paragraph 2 expressly limits the jurisdiction of the State Security Court to high treason, espionage, and terrorism. This confirms that the operation of that court will be fully consistent with the amendment to Article 101 prohibiting trials of civilians for offenses other than those three

constitutional revision, trials of Ministers will now be before a panel of the Amman Court of Appeals and constitutional interpretation will the responsibility of the Constitutional Court.

³⁹ Explanatory Memorandum, note 6, *supra*, page 18. A recent press report indicates that the government has modified the language recommended by the Royal Committee to change the name of the High Court of Justice to “Administrative Court.” *Jordan Times*, August 29, 2011, <http://www.jordantimes.com>.

specified crimes “before a court whose judges are not all civilians.” (A reported proposal by the government would have the State Security Court retain jurisdiction over drug crimes in addition to the three security offenses recommended by the Royal Commission.)⁴⁰

Remaining Questions

In some cases, the precise intent of the proposed amendments is open to interpretation. Also, some changes included in the earlier published draft recommendations were not included in the final version. As a result, questions of interpretation may arise in Parliamentary consideration of the Royal Committee’s report, in the process of implementing the amendments that are adopted, or in requests for judicial interpretation of the amended constitution. Some significant remaining questions are summarized below.

Equality of Male and Female Citizens

The draft recommendations had included amendments to Articles 5 and 6 to assure that children could inherit Jordanian nationality from either parent and to prohibit discrimination based on sex. Although the final version emphasizes human rights and civil liberties, it does not address these issues of gender equality. It leaves unchanged the Constitution’s prohibition of discrimination based on race, color, language, or religion. The courts may need to decide on the permissibility of discrimination based on sex.

Restraint of publication

The final version of Article 15 protects newspapers against suspension of publication in the absence of a judicial order. The draft revision would have extended this protection to other forms of media as well. Again, the courts may be asked to decide the validity of suspensions of publications (including electronic media) by government action in cases where no judicial authorization has been obtained.

Ratification of treaties

The final version of Article 33 expands the kinds of treaties that require approval by the National Assembly. Among these are those treaties “which impinge on [Jordan’s] sovereignty rights.” Virtually every treaty represents an acceptance of some limitation of a sovereign’s rights in exchange for other

⁴⁰ A recent press report indicates that the government has modified the language recommended by the Royal Committee on the jurisdiction of the State Security Court. Reportedly, the government has decided to continue to subject civilians to trial before military judges for drug crimes. The reported statement by the government does not indicate the scope of drug crimes to be heard by the State Security Court. Therefore, it is not clear whether this additional exception to the principle of civilian courts trying civilians will extend to even minor drug-related offenses. See “Government reveals more changes to constitutional amendments,” *Jordan Times*, August 29, 2011, <http://www.jordantimes.com>.

sovereign rights. It is unclear, therefore, what, if any, treaties can be ratified without National Assembly approval. A government proposal, however, would restore the original language of Article 33.⁴¹

⁴¹ A recent press report indicates that the government has rejected the language recommended by the Royal Committee with respect to the ratification of treaties and has decided to retain the original language of Article 33. See “Government reveals more changes to constitutional amendments,” *Jordan Times*, August 29, 2011, <http://www.jordantimes.com>.

Categorization of the Constitutional Court

Article 58 declares that the Constitutional Court is to be “an independent and separate judicial body.” However, Article 99, which specifies the categories of courts as civil, religious, and special, does not provide a separate category for this new court. (The published draft amendments would have deleted Article 99 and related references to categories of courts, leaving the Judicial Council in a position of oversight and support for the entire judiciary.) If the Constitutional Court is to be considered a civil court it would seem appropriate for legislation to specify that it will operate with support from the Council consistent with the court’s independent status. The published draft amendments had provided that the Judicial Council would nominate members of the Constitutional Court. It is not clear whether there would be any objection to including such a procedure in legislation.

Special Tribunal to Interpret Legislation

The Royal Committee described the Constitutional Court’s replacement of the High Tribunal as the forum for trying ministers under Article 57 and also for interpreting the Constitution under Article 122 as a restoration of the power of the judiciary, leaving “no more exceptions from the rule of overall judicial jurisdiction.”⁴² Yet, the Committee retained the mixed political-judicial Special Tribunal under Article 123 to interpret laws. This seems inconsistent with the principle that authoritative interpretation of the laws is a judicial function. The published draft amendments would have deleted the Special Tribunal provided for in Article 123.

IMPACT OF THE CONSTITUTIONAL AMENDMENTS

The changes to the Constitution recommended by the Royal Committee, described above, have enormous potential to strengthen the rule of law and to dramatically improve the capacity of the justice system to fulfill its role as an independent branch of government providing valuable service to the nation and its people. However, as many commentators have observed, the constitutional amendments are only the first step. Realization of their potential will depend upon the quality and timeliness of implementing legislation and the skill and determination of the judicial institutions to develop the capacity to demonstrate by their performance the value of the reforms.

Judicial Council

The most profound impact of the constitutional amendments on the administration of justice will be achieved through a rigorous execution by the Judicial Council of its new constitutional mandate. More

⁴² Explanatory Memorandum, note 6, *supra*, page 11.

than anything else, how the Judicial Council is organized (including how its membership is determined), how the Council is empowered by its legislative charter, and how it carries out its new authorities will determine the meaning of the declaration in Article 27 that “the Judicial Power is independent.”

Basic questions about Council organization and membership include whether all members should be judges and whether some of them should be elected by the judiciary rather than by *ex officio* designations of certain senior judges. As noted by authorities cited in the earlier Tetra Tech DPK report, a participatory approach is considered a good practice based on international experience.⁴³

The implementing legislation will have to recognize the Council’s exclusive authority to appoint judges under Article 98. That “sole right” should exclude any role for the Ministry of Justice or other authority. The Council should select candidates for appointment and refer them to the King, whose Royal Decree should then be a formality.

Other powers of the Judicial Council will need to be decided in the legislation, consistent with the constitutional principle of an independent Judicial Power. This legislation presents a historic opportunity for bold measures to end the tradition of dependence by the judiciary on the executive. If not seized, that opportunity could be lost.

Particular responsibilities that might be placed by law in the Judicial Council include the following:

- Training of judicial candidates, judges, and support staff of the judiciary, including a transfer of the Judicial Institute of Jordan from the Ministry of Justice to the Judicial Council.
- Assignment, evaluation, promotion, and discipline of judges and support staff, including a transfer of the Inspection Department from the Ministry of Justice to the Judicial Council. (This would also involve the creation of a support staff specialized in court administration that would be accountable to the Judicial Council rather than to the Justice Ministry.)
- Establishing a special regime for judges serving as prosecutors to encourage specialization, training and extended assignments.
- Rulemaking authority to enable the Judicial Council to introduce procedural innovations in the interest of increasing efficiency and effectiveness. (Streamlined procedures could help overcome Jordan’s low ranking in resolving commercial disputes and its high percentage of the prison population that has not been tried and convicted of any offense. In addition, it would facilitate the timely disposition of those sensitive cases, such as election disputes, trials of ministers, or suspension of a newspaper’s publication, where prompt judicial action will be necessary.)

⁴³ See, *e.g.*, Consultative Council of European Judges, “Council for the Judiciary at the Service of Society,” November 2007, <http://www.rechtspraak.nl/English/Publications/Documents/opinion-10-2007.pdf>.

- The right to present directly to Parliament a budget for the Judicial Council and the civil courts. Because the constitutional amendments retained the distinct categories of civil, religious, and special courts, this function would need to be coordinated with the budget processes for the religious and special courts, which are not under the authority of the Judicial Council.

Other issues that might be addressed in the legislation include security of tenure and preservation of salary and benefits for sitting judges, authorization for a judges association,⁴⁴ and a special regime for the relationship between the Judicial Council and the Constitutional Court. (This subject could alternatively be addressed in the legislative charter for the Constitutional Court.)

Most of the above-mentioned possible subjects for a revised legislative charter for the Judicial Council are likely to encounter some resistance. Doubts about judicial independence have not disappeared and the doubters will want to construe narrowly the Judicial Council's mandate. Arriving at an acceptable legislative package will involve broad consultation – among judges, with the government and Parliament, and throughout the legal community and civil society.

The ambitious legislative agenda set out in the above list implicitly commits the Judicial Council and the civil courts to carry out their increased responsibilities efficiently and effectively. Legislative authority should be sought only to the extent there is reason to believe that it will be exercised successfully. Accordingly, even as the elements of the legislation are being developed, the Judicial Council would be well advised to undertake an intensive self-examination of its needs and capacities, drawing on the knowledge and experience of sitting judges. It should seek to convert this analysis into a prioritized work plan that will maximize capacity and competence to carry out an expanded legislative mandate. Presumably, acceleration of the development of the Council's recently established three administrative units would be emphasized in the work plan.

Constitutional Court

The other truly profound impact of the constitutional amendments will result from the creation of the Constitutional Court. The number of cases decided by this single court of nine judges is not likely to be large, especially in comparison to the workload of the regular courts. Yet, each decision will represent an authoritative interpretation of the Constitution. While the regular courts have made constitutional rulings from time to time, the new Constitutional Court is unique in being created for the express purpose of invalidating acts by Parliament or the government that it finds to contravene the Constitution.

⁴⁴ The Royal Committee has recommended an amendment to Article 16 of the Constitution providing that Jordanians are entitled to establish associations, subject to regulation by law.

As in the case of the Judicial Council, many details about the operation of the Constitutional Court will be determined by a legislative charter to be developed. These might include how the nine judges will be selected, how the court will be managed, whether the court will have authority to prescribe and modify its rules of procedure, and what safeguards will assure both independence and accountability.

An important issue is whether the court will have authority to decline to accept a case, for example, if it concludes that the case does not present a significant constitutional question. This could help to limit the court's vulnerability to being drawn into political disputes and also avoid being inundated with frivolous petitions for constitutional review.

As suggested in the earlier Tetra Tech DPK report, USAID's principal interest would seem to be that these issues be decided in a considered manner, with full information so as to minimize the risk of unintended consequences.

Other Amendments

Beyond the two fundamental changes concerning the Judicial Council and the Constitutional Court, the principal impact of the recommended constitutional amendments on the administration of justice will be to create broad reliance on the judiciary and high expectations for judicial performance. The amendments do this in several ways.

First, they increase the jurisdiction of the civil courts. This expanded jurisdiction is not likely to involve a statistically significant increase in the volume of cases. However, the kinds of cases involved will tend to be of high visibility because of their time sensitivity and importance. Specifically, the courts will now have a constitutional responsibility for:

- Trials of ministers for offenses in the performance of their official functions (Article 55).
- Determination of the constitutional validity of laws and regulations in force and interpretation of the Constitution (Article 59).
- Determination of the validity of elections to the Chamber of Deputies (Article 71).
- Trials of civilians for major crimes previously within the jurisdiction of the State Security Court (Article 101).

The amended Constitution also looks to the courts for the enforcement of an expanded enumeration of constitutionally protected human rights. For example:

- Humane treatment of arrested or detained persons (Article 8).
- Exclusion from evidence of statements extracted under duress (Article 8).
- Safeguarding lawful newspaper publication (Article 15).
- Safeguarding the privacy of lawful communications (Article 18).
- Assuring that the presumption of innocence is applied (Article 101).

The declared policy of judicial independence, the new institutional structure, the expanded jurisdiction of the courts, and the increased emphasis on judicial protection of human rights constitute a powerful combination. Together, these provisions create an expectation that Jordanians should be able to rely on the judiciary to perform a number of difficult tasks. The courts will establish independent and capable institutions and systems. They will decide hard cases promptly and fairly. They will wisely interpret the constitution. And they will protect human rights. Meeting those expectations will be a major challenge.

SEIZING THE OPPORTUNITY AND RESPONDING TO THE CHALLENGE

While the challenge of expectations is formidable, as suggested at the outset of this analysis it is important to bear in mind the historic opportunity the constitutional amendments represent to strengthen the rule of law as a foundation of a democratic Jordanian society.

Considerations for the Judiciary

As the judiciary develops its plans to seize the opportunity and respond to the challenge it will need to bear in mind several important factors, including the following:

- First, developing and implementing the reforms will require both time and money. A preliminary timeline and estimate of additional budgetary resources will need to be early priorities. It will be an important threshold test for the existing Judicial Council to initiate the process that will lead to a dramatically changed institution. The Council is starting from a position of dependence on the executive. Yet, it seems essential that the judiciary itself take ownership of the reform process in order to build the independence, accountability, capacity, and competence to meet the expectations implicit in the constitutional amendments.
- Second, the existing Judicial Upgrading Strategy (JUST) is primarily a Ministry of Justice initiative which does not necessarily reflect the policies and priorities of the amended constitution. It would seem necessary to undertake an early review of JUST to determine which activities should be continued because they respond to current priorities, which need to be modified, and which are superseded by the new constitutional structure.
- Third, the success of this important reform of the justice system will require public awareness and support. Part of the challenge will be for civil society, through monitoring and advocacy, to be actively involved in the reform process. Another part of the challenge will be meeting the heightened expectation of Jordanian citizens that the amendments make a real difference to them. Increased access to justice – knowledge of the law, competent legal counsel and representation, and the availability of affordable, timely and fair dispute resolution will make

the reforms meaningful. Public support for reform has played a vital role thus far in the openings that are evident in the constitutional amendments. That same public support will be crucial to translating those amendments into practical, beneficial, and substantive results.

The importance of the opportunity, the difficulty of the challenge, and the remaining imbalance between the judiciary and the executive suggest that a structure of judicial leadership and stakeholder support will be important ingredients of success. It would seem that the Judicial Council needs to be at the center and that the first level of support must come from within the judiciary itself. A second level could be provided by reform champions within the broader Jordanian community, including both the public sector and civil society. International partners, while always respectful of local ownership, could provide encouragement and support at all levels.

Considerations for USAID

The four priorities recommended in the earlier Tetra Tech DPK report (quoted in the introduction of this memorandum) remain an appropriate focus for USAID.

- The final report of the Royal Committee confirms the need to convert the Judicial Council into the leader of an independent judiciary. This is an area where USAID is well positioned to provide effective support.
- The challenge of extending access to justice more broadly throughout the population takes on an added importance if the Royal Committee's emphasis on human rights and civil liberties is to have a practical impact on people's lives. USAID has a wealth of experience in working with civil society on local reform initiatives such as systems for increasing public awareness and providing legal knowledge and services.
- The creation of the Constitutional Court is obviously a development of great importance which USAID should support for that reason, even though USAID's role will be a limited one. Harmonized international support to help assure informed decisions in the court's design and development can be a valuable service.
- Finally, the Royal Committee's expansion of the criminal jurisdiction of the civil courts with what are likely to be high-profile cases confirms the need to strengthen the capacity of the criminal justice system, especially the prosecution service. This need is even greater because of the several human rights guarantees regarding criminal justice that the Royal Committee has recommended. (These include, for example, the exclusion of evidence obtained by duress and the presumption of innocence.) The ability of the courts to manage criminal cases will be an important measure of the success of judicial reform. Again, this is an area where USAID can draw on its considerable expertise to support local criminal justice reform efforts.

Other justice-related constitutional reforms, such as the creation of two levels of administrative justice, will require attention, but lack the same coincidence of urgency and importance and do not warrant the dilution of USAID's efforts that would be needed.

As USAID engages in consultations with the judiciary, the government, the Parliament, and civil society, as well as with Jordan's other international partners engaged in the justice sector, the sequence of events will be an important factor. The expectation is that the Parliament will take up the constitutional amendments in September. Undoubtedly, the government will form expert groups simultaneously to prepare implementing legislation. As legislative proposals emerge, they will be presented to Parliament, with priority on the calendar for the legislation on elections and political parties. This process is likely to continue over several months. During this period, the concerned institutions will be developing their own plans to build or strengthen their capacities to carry out their new or increased responsibilities.

In this dynamic environment, a wide ranging consultation should begin as soon as possible in order to keep USAID informed of developments and able to engage in ways that will contribute to the ability of Jordanians to make the most of the opportunity for justice reform that is available in 2011. The following list of issues, which summarizes the analysis provided in this report, may be a helpful tool for this purpose.

Subject: Adoption of constitutional amendments

USAID Objective: To gain understanding of the process, timing, and key issues.

Issues:

- What are the procedures and likely timeframe for adopting the amendments?
- Are any of the amendments considered controversial and likely to be the subject of debate and possible modification?
- Is the omission of a guarantee of male-female equality (as earlier proposed) intended to leave gender equality issues for the courts?
- Do the declaration of an independent judicial power and the elevation of the Judicial Council to the status of a constitutional body imply a decision to empower the judiciary to end its dependence on the executive?
- If the policy of the Royal Committee was to consolidate dispute resolution and legal interpretation functions in the judiciary, why was the Special Tribunal under Article 123 retained as an alternative to the courts?

Subject: Implementing legislation to empower the Judicial Council

USAID Objective: To encourage and support the enactment of a sound legislative basis for governance of an independent and accountable judiciary.

Issues:

- What will be the process for developing the legislation? Will there be a committee of experts? Who will participate? What timeframe is foreseen?
- Would it be helpful for international partners to finance objective background information or technical advice from international organizations with expertise on issues of judicial councils and judicial independence – such as the Consultative Council of European Judges or the International Commission of Jurists?
- Who will be the members of the Council? How will they be selected? Could some of the members of the Council be elected by the judges?
- Will Council members have security of tenure to enhance their independence?
- Could the Council assume broad responsibility for human resource management in the judiciary – recruitment, training, assignment, evaluation, promotion, and discipline of judges and support staff?
- Beyond human resources, is it envisioned that the Judicial Council will have broad authority over administrative and financial management of the judiciary?
- Is it foreseen that entities in the Ministry of Justice, such as the Inspection Department and the Judicial Institute of Jordan, will be placed under the authority of the Judicial Council?
- What are the budgetary requirements for expanding the role and increasing the capacity of the Judicial Council, both start-up costs and continuing requirements?
- How will the legislation promote the independence of individual judges – protection against reduced compensation, assured tenure subject to good behavior, authorization for a judges association?
- How will the legislation promote accountability of the judiciary (including the Judicial Council itself)? Will there be requirements for transparent proceedings, audit of finances and operations, codification of ethical standards and disciplinary proceedings?
- Will the Judicial Council have regulatory authority to foster procedural streamlining in the interest of fairness and efficiency?
- Will the Judicial Council be empowered to present a judicial budget to Parliament?

Subject: Implementing legislation to create the Constitutional Court

USAID Objective: To encourage and support the enactment of a sound legislative basis for this new institution.

Issues:

- What will be the process for developing the legislation? Will there be a committee of experts? Who will participate? What timeframe is foreseen?
- Would it be helpful for international partners to finance objective background information or technical advice from international organizations with expertise on constitutional courts such as the Max Planck Institute for Comparative Public Law and International Law?
- How will the nine judges be selected and nominated for appointment by Royal Decree? Will the Judicial Council have a role?
- How will the court be managed? Will the Constitutional Court be considered a civil court under Article 99 and, if so, is a relationship with the Judicial Council contemplated (for example, to deal with human resource management)?
- What are the budgetary requirements for establishing this new institution, both start-up costs and continuing requirements?

- Will the court have authority to decline to hear a case if it considers it to be without merit? Are there other safeguards against the court being inundated with frivolous challenges or being drawn into disputes that are political more than legal?
- How will the legislation promote both independence of the judges of this court and also accountability? Will Constitutional Court judges be subject to the same ethical standards, inspection, and disciplinary procedures as other judges? Will their performance be evaluated before they are considered for re-appointment?

Subject: Cooperation to increase capacity and competence of the judiciary

USAID Objective: To encourage thoughtful planning and timely, systematic execution of plans to carry out increased responsibilities.

Issues:

- How will the judiciary develop a strategic plan to assure that it will be prepared to carry out the high expectations of the pending constitutional amendments for an independent judicial power?
- Will there be an exercise of self-examination by the judges to determine priority needs?
- Would it be helpful for international partners to finance objective facilitation of such a process by international experts, such as from the International Consortium for Court Excellence?
- Are there foreseeable strategic objectives that are highly likely to be given priority?
- Is it foreseen that a new strategic plan with objectives responsive to the evolving constitutional and legal framework will be needed to replace the Judicial Upgrading Strategy developed by the Ministry of Justice?
- What current international support should be continued or sustained in the new environment?
- What are the likely sources of support for a more independent, accountable, and capable judiciary and what are the likely sources of resistance to reform? What strategies might enhance support and overcome resistance?
- Is consideration being given to public outreach efforts?
- What are the anticipated budgetary requirements and how will they be integrated into strategic planning, both start-up costs and continuing requirements?
- Are there threshold issues on which work can begin now in advance of the development of a strategic plan and calendar? For example, would it be possible to accelerate the development of the administrative units in the Judicial Council, to initiate advanced training and other preparation of prosecutors to be assigned to longer terms of service, or to identify needed changes in staff roles – perhaps through an audit of current human resource needs and availabilities?

Subject: Support for the creation of a sustainable system for providing legal information and services

USAID Objective: To stimulate the formation of a civil society network to extend legal information and services more broadly throughout the Jordanian population.

Issues:

- Would the political climate that contributed to an emphasis on protections for civil liberties in the constitutional amendments also support measures to enable people to exercise those protections?
- Might a consortium of concerned civil society organizations develop a strategy for designing and gaining broad approval for a sustainable system that would make legal information and services available to those in need in communities throughout the country?
- How might such a system be organized to attract a combination of public and civil society participation and funding?
- Are there identifiable priorities that will shape the agenda?
- How could the diverse stakeholder interests be accommodated – in national and municipal government, the judiciary, the organized bar, civil society organizations, etc.?
- Would it be helpful if international partners were to finance objective technical assistance and background information from sources such as the Legal Aid Reformers' Network?
- What other international support would be most useful?

- How should the work begin? Should a small steering group prepare a draft strategic plan for broader discussion?

CONCLUSIONS

The success of any constitutional reform depends on many variables which evolve and interact over time. Political, geographic, economic, and cultural settings differ in many ways. The ultimate impact of reform initiatives is inherently unpredictable. Yet, some settings are more propitious than others. Certainly, the setting in Jordan is a favorable one for reform. In this favorable setting, it can be said with confidence that the recommendations of the Royal Committee on Constitutional Review hold potential for accelerating movement toward a more democratic Jordan, including through improving the balance among executive, legislative, and judicial powers and through strengthening and broadening the application of the rule of law and individual rights.

This memorandum supplements earlier analysis of prospects for justice reform with a description of how the proposed constitutional amendments relate to the reform agenda. In addition, it provides suggestions for USAID engagement on how to seize the opportunity these amendments represent. This examination leads to the conclusion that the opportunity is genuine. The amendments set out worthwhile objectives. Jordanian institutions and society are capable of achieving the objectives of the amendments. USAID can provide valuable support for the Jordanian efforts. While success cannot be guaranteed, the opportunity is important, the challenge is manageable, and the potential of these amendments can be realized. In these circumstances, a determined effort is clearly worthwhile.

Appendix

B. Ombudsman Reports

- 1. Strategic Plan (Draft)**
- 2. Process Reengineering Report**

B. Ombudsman Reports

1. Strategic Plan (Draft)



Strategic Plan (draft)

Jordanian Ombudsman Bureau

Introduction

The Jordanian Ombudsman Bureau (JOB) was established pursuant to Law No. (11) of 2008. Its establishment was concurrent with royal directives encouraging reform and aiming at enhancing transparency, integrity and accountability; they sought to create solid partnerships among various segments of society for the benefit of national interests. The Bureau's establishment came parallel to the Jordanian government's efforts, in the field of administrative reform, to move towards the institutionalization of procedures related to receiving citizen grievances and to enable all citizens/residents to benefit from services provided by the Kingdom's public administration.

The JOB is a national monitoring institution with an independent legal status that receives complaints against the public administration, or its employees, in accordance with criteria prescribed by law; it then seeks to resolve these issues. The Bureau also leads initiatives through which it recommends streamlining complex administrative processes into effective and easy procedures. Since the establishment of the JOB in early February 2009, it diligently worked on assisting all public administration complaints in Jordan in order to upgrade public institutions and enhance confidence of public administrations and their staff.

Since its creation, the Bureau has aimed to become the comprehensive and trusted reference for receiving complaints against public administrations and resolving them. To this end, the JOB was keen to develop a future strategy that would serve as a roadmap for achieving excellence as a comprehensive, independent monitoring institution.

The main purpose of the JOB strategic plan is to create an effective and integrated administrative and legal framework aimed at enhancing the effectiveness of public administrations and their employees as well as increasing citizens' confidence in them.

➤ Overview

The JOB was established in early February 2009, pursuant to the provisions of the Ombudsman Bureau Law No. (11) of 2008. The purpose of the JOB was to manage grievances filed against public administrations, or its staff, according to criteria specified in the law. Since it began, the JOB placed high importance on educating the public about its establishment, mission and goals via print and audio visual communication media. The JOB was also deliberate to set the legal framework for receiving and managing complaints as well as communicating with the entity complained against and the complainant.

➤ Vision

The Bureau is the trusted body for receiving and managing complaints against the public administration.

➤ Mission

The mission of the JOB is to instill the principles of justice, fairness and transparency in public administrations.

➤ Core Values

- **Equity:** the Bureau seeks to follow fair procedures in carrying out its duties and making its services available to citizens in an equitable manner
- **Independence:** the Bureau is a national institution with full administrative and financial independence
- **Integrity and Transparency:** the Bureau plays the role of a neutral conciliator between citizens and public administrations, according to data verified by the Bureau in accordance with the powers provided to it under the provisions of the law
- **Effectiveness and Efficiency:** the Bureau seeks to provide its services in a timely and cost-effective manner; its work complements the services provided by other public institutions that seek to achieve transparency and integrity

➤ JOB's Mandate and Duties

- Review complaints relating to any decisions, procedures, practices, acts, or lack thereof, by either the public administration or its public servants. No complaint against any public institution will be accepted if: it falls within the jurisdiction of any other administrative or judicial body; if its subject matter is pending before any judicial body; or a final judicial decision has been issued in its regard.
- Recommend the simplification of administrative procedures to enable citizens to benefit from the services offered by public administrations in an effective and easy manner through the complaints submitted to it in this regard.
- The Bureau may, upon the initiative of the JOB, study any subject related to decisions, measures or practices undertaken by public administrations and send its recommendations as well as include them in the Bureau's annual report.

➤ Work Mechanism

The Bureau follows the following mechanisms for carrying out its assigned functions and duties:

- Aim to resolve complaints amicably with objective mediation sessions between the complainant and the complained-against party
- Investigate complaints or grievances by using means deemed as appropriate by the JOB
- Address the complaint and correspond with the complained-against entity for their response
- Request documentation from the complainant and the complained-against party
- Access the documents with relevance to the subject matter
- Issue a recommendation based on the outcome of the investigation

➤ JOB Institutional Framework

The institutional framework and work mechanisms of the Ombudsman Bureau were defined as follows:

- **The Ombudsman:** The Bureau is managed by an Ombudsman appointed by the decision of the council of ministers upon the recommendation of the prime minister that shall be ratified by royal decree. The Ombudsman performs his/her duties with full independence, subject only to the law; he/she may not engage in any other work, job or profession whilst overseeing the JOB.
- **Ombudsman Assistants:** The Ombudsman appoints two assistants who meet the requirements of appointment as Ombudsmen, provided that they do not have less than ten years of combined experience in the law and public administration. The assistants perform assigned duties and exercise authorities as they are delegated.
- **Advisors and Experts:** The Ombudsman may resort to the expertise of advisors and experts in instances that he/she believes require technical expertise.

➤ Analysis of JOB's Internal and External Environment

First: Internal Environment

1. Strengths

- Clarity of vision, mission and objectives.
- The Bureau's mandate has been granted pursuant to a law.
- The financial and administrative independence of the JOB and its ability to perform its functions and mandate objectively, without influence or interference by any entity.
- Availability of adequate infrastructure and technology.
- The JOB boasts an excellent work environment and good collegial relations amongst JOB staff.

2. Weaknesses

- The Bureau is a new entity which requires the necessary financial and material resources for proper functioning.
- There is a great need for training the Bureau's human resources and making specialized expertise available.
- Lack of an advanced information technology system.
- Retention of qualified and trained staff and who possess technical expertise.

Second: External Environment

1. Opportunities

- Royal support for the establishment of the JOB as an independent monitoring institution.
- Serious plans by the government for reforming and enhancing the public sector.
- Presence of popular support for accountability, administrative reform and a societal environment keen on safeguarding integrity and fairness.
- Availability of international support in technical assistance and development.

2. Threats

- Fluctuating and changing policies.
- The non-mandatory nature of recommendations issued by the Bureau.
- The weak role of civil society organizations and the public sector in the area of administrative reform.

➤ Target Groups

- Different types of government institutions and public administrations and their staff.
- Jordanian citizens, inside and outside Jordan.

➤ JOB Strategic Objectives

- Strengthen the JOB's institutional capacity and enhance its efficiency and effectiveness.
- Provide excellence in grievance intake and resolution as well as develop an effective and comprehensive administrative and legal framework.
- Improve internal and external communication and increase JOB's awareness.
- Institutionalize relations and coordinate efforts with key stakeholders.

➤ Strategic Pillars

Pillar (1) - Strengthen the JOB's institutional capacity and enhance its efficiency and effectiveness.

This pillar aims at enhancing the operational effectiveness of the JOB through developing human resources systems, training staff and developing the Bureau's organizational structure.

Project (1)	Develop and Enhance JOB's Human Resources
	<p>This program aims at enhancing institutional performance and achieving organizational development. All JOB staff will be guaranteed continuous education as it relates to the realization of JOB's goals. This will be achieved through the following:</p> <ol style="list-style-type: none">1. Review HR policies: said policies include job descriptions that outline the position's main objective, expected tasks and duties, and required education and skills necessary to perform their job. The policies also include the organization's salary scale and benefits that are adopted in assessing jobs in a scientific and structured way, guaranteeing internal equity. The JOB compares salaries with those offered in the local job market in order to review and amend their scale accordingly. Jobs in different directorates and units will be set by establishing the minimum and maximum salary levels while ensuring the competitiveness of said levels. The policies also include a performance evaluation system.2. Staff training and development: this aims at enhancing human resources capacity by investing in staff and training them both inside and outside of Jordan. This will be achieved through assessing staff training needs and developing a three-year training plan. It will be taken into account the gap between actual and expected staff performance as per requirements outlined in the staff performance enhancement plan.

Project (2)	<p>Organizational Structure Development</p> <p>The program aims at streamlining work at the JOB through restructuring different directorates and units, clarifying their tasks and priorities in accordance with the strategic plan, in order to upgrade staff performance and enhance their productivity in a manner concurrent with the Bureau's objectives.</p>
Project (3)	<p>Implementation and Evaluation of the Strategic Plan and Performance Monitoring</p> <p>The JOB aims at monitoring and assessing its achievement level pertaining to the implementation and evaluation of the strategic plan program. Change management methodology will also be adopted which outlines the JOB's change management plan and how it manages changes in the work environment. The Bureau will rely on the electronic system that will be implemented to monitor and evaluate the strategic plan within the agreed timeframe and with the financial and human resources available.</p> <p>The performance monitoring program aims at guaranteeing achievement of JOB's organizational objectives and the level of success of the policies and strategies outlined in the plan. This will be achieved by adopting a clear and defined mechanism for assessing levels of achievement through a key performance indicators matrix. Through this program, a performance evaluation system will be built that will be based on the balanced scorecard methodology which aims at translating the JOB's vision to objectives and implementation plans.</p>
Project (4)	<p>Transparency and Accountability</p> <p>This program is concerned with observing the JOB's compliance with and adoption of the highest ethical standards including integrity, credibility and transparency in all of its practices. This includes the adoption of a code of conduct which provides the Bureau's staff with guidelines and general rules to govern conduct within a safe work environment. It also provides a fair framework that enables staff to perform their duties in an optimal manner and provides for the adoption of meritocracy principles and work standards as a basis for advancement- all which will reflect positively on the JOB's image.</p>

- **Pillar (2)** – Provide excellence in grievance intake and resolution as well as develop an effective and comprehensive administrative and legal framework

This pillar aims at raising the effectiveness of the grievance intake process and the efficiency of their resolution. This will be achieved through a series of strategic programs, including classification of grievances and performance monitoring through the adopted standards.

Project (1)	Process Reengineering
	Through this project, the Bureau’s main operations that significantly contribute to the fulfillment of its mission and objectives will be defined and documented. This will lead to the development of standard operating procedures and the mapping of said procedures. Such activities will help guarantee the effectiveness and efficiency of procedures and will also ensure that any changes made to the workflow and operations will not result in the duplication of work. It will also assist in clearly defining the roles and responsibilities among the different departments in a manner that increases the level of service extended to citizens.
Project (2)	Classification and Segmentation of grievances according to type
	Work under this project will focus on classifying complaints according to their type and level of intensity. It will be supported by a comprehensive statistical system stratified according to the complained-against entity in order to efficiently process the complaints and achieve an outstanding level of citizen satisfaction. Additionally, the program will help the investigation and analysis of complaints, in an effective and transparent manner, which will also dictate its practices and external dealings with all entities and individuals.
Project (3)	Continuous Improvement and Development
	This project aims to clarify and outline the JOB’s methodology with regard to continuous improvement and to determine the steps followed by the Bureau to: enhance performance, improve effectiveness, instill a culture of excellence and provide the highest quality of service through the continuous assessment of the efficiency of services provided to citizens (customer satisfaction) and following up on citizen complaints against the Bureau.
Project (4)	Automation and Information Technology
	This system aims at assisting the JOB in supporting all the efforts and initiatives aimed at continuous improvement and which contribute to upgrading the quality and timeliness of work, improving services offered to citizens, advancing the efficiency of administrative procedures, adopting KPIs as a real measure for improving performance, and enhancing the capacity, skills and knowledge of staff. The automated system is inclusive of all informational aspects needed by the Bureau to cover administrative aspects pertaining to all



directorates, departments and units. These include a human resources system, a complaints management and quality control system, a financial system, and a performance monitoring and evaluation system. Said application helps to provide easy access to information in an accurate and comprehensive manner and helps to improve administrative communication, effectively and efficiently provides decision makers with vital information, and supports strategic planning efforts.

- **Pillar (3) – Activate Internal and External Communication and Increase Awareness** Improve internal and external communication and increase JOB’s awareness.

The overall aim under this pillar is to build the JOB’s identity and create/improve communication links with the various entities and citizens as well as to develop an awareness-building plan to increase knowledge among citizens of the JOB’s services and means of accessing them.

Project (1)	Public relations
	<p>The public relations program aims to provide support to the JOB’s strategic plan and assist in undertaking an additional step in meeting the public relations needs of the Bureau, citizens and relevant entities in a broad manner. Through said project, the objectives and messages directed to the public will be clear. It will define the methodologies, activities, work plan, and resources needed to assist in improving the Bureau’s capacity to respond to the needs and inquiries of target groups related to complaints and services provided by the JOB. This will be achieved through enhancing internal communication, developing mechanisms for augmenting internal and external relations and raising awareness among citizens about the Bureau’s role and its efforts taken towards reform and development.</p>
Project (2)	Awareness building
	<p>The awareness-building strategy aims to achieve the JOB objectives through educating citizens and various institutions on its law, mandate and work mechanisms. It also works to raise public awareness with respect to the Bureau’s role and its efforts pertaining to reform and development. The strategy will help to identify the environment in which the Bureau operates as well as to define the opportunities, obstacles and challenges that impact it work. It will assist in identifying and developing various means of communication that make it easier for citizens to access the JOB and communicate with it, expanding the circle of those benefiting from its services. Additionally, the Bureau will work on developing and activating external communication channels with beneficiaries, and those working with the Bureau, by developing and regularly updating the information available on the JOB website in a manner that enhances transparency, equity and expands the scope of beneficiaries for JOB’s services. Efforts related to awareness-building will also include the preparation of internal and external newsletters, as well as monthly reports to inform the public about achievements related to reform and development as well as the Bureau’s future plans.</p>
Project (3)	Annual report issuance
	<p>The JOB will prepare an annual report that will be presented to relevant entities, and those outlined in the law, and will include the results of the Bureau’s work and efforts in the area of administrative reform and the opinion of relevant and specialized entities.</p>

- **Pillar (4) –**
- Institutionalize relations and coordinate efforts with key stakeholders

This pillar aims at institutionalizing relations between the JOB and official and public institutions through enhancing partnerships and formalizing relations with said entities while also coordinating efforts with civil society organizations.

Project (1)	Formalizing Relations With Government Departments
	This program aims for the Bureau to adopt a unified system that would be applied by official and public institutions that are spread across the country to facilitate access the Bureau’s services. It also aims at creating a mechanism that would facilitate both cooperation and coordination between the Bureau and official and public institutions and the bureau’s access to information to streamline investigation procedures at the lowest possible cost.
Project (2)	Coordinate Efforts with Civil Society and Other Key Stakeholders
	Activities under this program aim at coordinating efforts with civil society organizations in the area of reform and in efforts that achieve the implementation of the JOB’s strategy. This will be realized through involving civil society organizations in public activities held by the Bureau, within the realm of authorities prescribed by law. It will also be achieved by the coordination of efforts related to building awareness among citizens about the Bureau’s mandate and their right to file grievances against any entity under the Bureau’s mandate.

B. Ombudsman Reports
2. Process Reengineering Report

Complaints Receiving and Handling Procedures' Reengineering Project

Ombudsman Office

Rule of Law Project

18-8-2011



AL JIDARA, P. O. BOX 831063, AMMAN 11183

TEL: +962-6 5858315

FAX: +962-6 5858316

WWW.ALJIDARA.COM

This report had been prepared by AL JIDARA Company for Consultation Services /
Mohammad Ammawi, Lana Al Dajani, Malak Sukariah and Zeina Dababneh

فهرس المحتويات

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1. Executive Summary:

The reengineering project of the Ombudsman Offices' work procedures was done in order to improve and simplify procedures and reduce the time needed by the Office to respond to submitted complaints and to improve the quality of the verification process that all submitted complaints must undergo. These improvements will ultimately lead to an increasing level of satisfaction for those citizens and residents of the Kingdom registering complaints against the public administration.

The Project began in November 2010 with the Office's organization restructuring project. The outputs of the restructuring project were taken into account in the procedural reengineering. The reengineering project yielded a whole group of new documented work procedures, the application of which facilitates the Office's procedures. The Project also extended to public institutions with which the Office works. The new procedures took into account the establishment of defined time frames which govern the Office's responses to submitted complaints and also govern its conclusion and follow up of settlements reached between citizens/residents and the various public institutions. The project also resulted in the establishment of disciplinary mechanisms to be used in order to assure that public institutions cooperated with the Office. Additionally, defined standards related to the closure of complaints were established. The work procedures were reengineered in a way which would facilitate its total or partial automation.

The Project's work team, in cooperation with the Office's related staff members, supervised the implementation of newly reengineered procedures. Both parties reviewed, evaluated, and amended the new procedures.

The Project yielded a number of outputs, namely:

- 1) A map illustrating the work procedures applied by the Office when receiving complaints. The map includes an analysis of weak points and bottlenecks affecting such procedures.
- 2) New standardized and documented work procedures with a detailed mapping of the new procedures.
- 3) A procedural manual illustrating the responsibilities of each department , amendments, and new procedures and forms.

- 4) Practically supporting the implementation of new procedures at the both the complaints reception division and the verification division.

It is anticipated that the application of the new procedures will result in the reduction of the time needed to determine if complaints will be accepted or rejected, investigate citizen complaints, and work to help provide solutions and settlements to accepted complaints. The new procedures will also lead to an increased level of satisfaction for those who work with the Office in resolving complaints, both complainants and public institutions.

Despite the end of the Project, there are still a number of points which require the Office to follow up on its implementation:

- 1) The final and official adoption of the work and procedures manual
- 2) The delegation of some powers of the President and his deputy to staff members
- 3) The development of form letters
- 4) Continue staff members' capacity building process
- 5) Begin the work procedures automation.

The report illustrates the details of the work completed, the Project's outputs, and detailed recommendations of the next steps which must be taken in the future.

2. Introduction:

Reforming the work procedures applied in receiving and handing complaints by the Ombudsman Office was done based on project findings from an institutional and procedural evaluation of the Office made by a number of the Rule of Law Project's consultants from May to August, 2011. It was also based on outcomes from a workshop held on 31st July, 2010 attended by the Office's President and staff.

The above-mentioned workshop and project resulted in recommendations related to the reengineering of the Office's work procedures, to manage bottlenecks that the current applied procedures were suffering from. It was agreed that these reengineering efforts would coincide with the delegation of powers and authorities to the President's assistants and the heads of departments, particularly the Complaints and Verification departments which work with complaints submitted to the Office by citizens and complaints which are referred to for verification or settlement. The recommendations also called for the establishment of time frames for working with submitted complaints, using standardized forms, and the adoption of clear mechanisms related to the follow-up and conclusion of complaints which are referred to verification or settlement. It was also recommended that a work manual documenting the new procedures and forms must be developed and published to enhance the Office's competency and efficiency.

The current Project began to work with procedural reengineering, the development of the Office's working forms related to complaints from the moment they are received by the Office to its acceptance or rejection from the Office, and their review by the verification department until the conclusion of the complaint either through friendly settlement or by listing it in the Office's Annual Report.

2.1 The Project's scope and methodology:

- 1) This study relied on the past project's evaluation of the applied work procedures. It extensively worked towards indentifying the Office's applied procedures-tools, forms and registers, through detailed study and participating in meetings held with the Office staff and managers responsible for supervising the application of such procedures. The evaluation project also included reviews of a sampling of previously submitted complaints, in order to better indentify procedures and how

they are being applied in the most detailed ways possible, and how much time is required for applying such procedures.

- 2) Analysis of both work procedures and the forms used in order to identify weaknesses and the possibilities related to improving and developing such procedures. It was agreed upon to submit the results of this analysis to the Office's management and staff members who apply such procedures so as to agree on the main components related to the development of new work procedures.
- 3) The design of new procedures according to analysis results. The new procedures must take into account the results of the Office's organizational restructuring project: job descriptions, titles and the new telecommunications.

The procedures' new design included the documentation of such procedures, which took the form of a flowchart, showing the interconnection between the work procedures and the persons/administrative units responsible for its application. The design also includes a detailed and standardized description of such procedures, including:

- The aim and application extent for each procedure
- Detailed steps
- The person/administrative unit entrusted in applying the procedure
- Applied forms and tools
- Necessary references (if exist)
- Notes

The design of the new procedures also took into consideration the procedures and forms for future automation requirements.

- 4) Supporting application of the new procedures by:
 - a) Conducting a workshop to present the new procedures and answering any questions related to them , and agreeing on an implementation work plan.
 - b) Supporting the implementation of the new procedures by providing the Office's staff with on-site support to provide any needed assistance or direction during the implementation period.

2.2 Project's Objectives:

The project aims at reengineering the work procedures related to managing complaints submitted to the Office by the Public. The goal of this project is to make the acceptance and investigation of complaints more efficient. It also aims at creating unified work procedures and forms to be used for complaints, according to the Office's new organizational structure. All of these developments and improvements are to be done in a way that will facilitate the future automation of the Office's work and procedures.

2.3 Work Plan and Outputs:

Diagram number (1) shows the Project's general framework and methodology

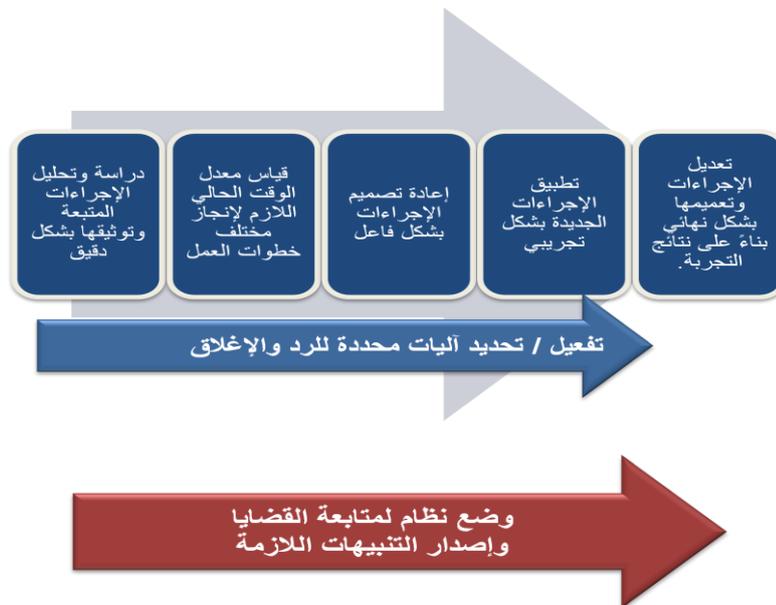


Diagram number (1): the complaints handling procedures Project general framework and methodology

The project was divided according to the above framework , into 5 work phases as stated in table number (1) below; it also shows the main activities and outputs related to each phase.

Phase	Outputs
Preparation and Project's initiation	- Project's work plan
Reviewing and documenting the current applied procedures	- The standard procedures form - The current procedural mapping
Procedures' analysis	A workshop for relevant Office staff where analysis results and development recommendations were presented.
Designing new procedures	- New documented procedures - New procedural maps.
The experimental implementation	- A detailed implementation plan. - A workshop to presenting and discuss new procedures. - The final format of new procedures. - The final report.

Table number (1) the Project's phases and outputs

-

3. Project's Results:

The following is a presentation of the Project's results according to each phase:

3.1 reviewing and documenting the current procedures:

The procedures currently applied to managing complaints received by the Office were subject to initial analysis; this analysis was already completed by a previous project. The project revealed inefficiencies of complaint procedures, forms and registers used. This was done through:

- a) Meeting with staff from the Complaint and Verification sections (the receiving section, according to the new organizational structure) to learn their work procedures, including tools and forms used, in a detailed and focused way. Meetings were held with the heads of each of the above-mentioned sections at the time. Additionally, meetings were held with a number of investigators, advisors and employees of the Complaint section.

- b) Having members of the consulting team present to review work procedures at the complaints and verifications sections, to personally witness methods used in managing the complaints.
- c) Reviewing a selected sample of complaints which were received and processed by the Office. A total of (20) files were reviewed; these files were submitted for review by the Office's Verification section. This review gave the consultants an opportunity to know the current work procedures and forms in a more detailed manner. It also allowed them to conduct a detailed analysis for the length of time needed by the Office to accept submitted complaints and the time needed to conduct each step of the process through to final resolution and execution, if necessary.

Below, diagram number (2) illustrates the procedures applied by the Office in managing complaints at the beginning of the Project; table number (2) shows the time spent managing the complaints according to the reviewed sample.

The said table also shows, in addition to the average time needed to accept, investigate and resolve a complaint, the difference between the actual time needed and the average, the standard deviation.

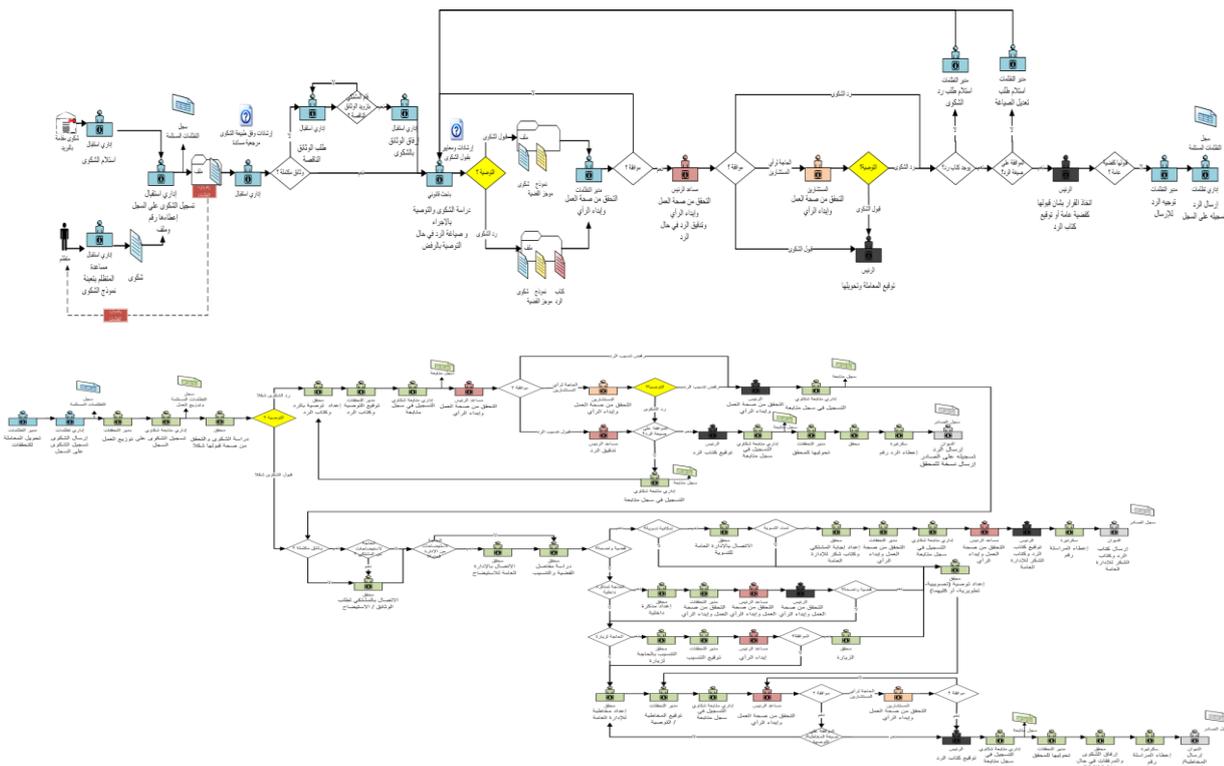


Diagram number (2) below illustrates the procedures applied by the Office in managing the complaints at the beginning of the Project

	Complaints (administrative, receiving, Complaints 'director	President's Office (President's assistant advisor,)	A response letter to the complainant		Receiving a response in relation to a correspondence 1	Period between correspondence 1-2	Correspondent 2 If applicable	Receiving a response in relation to a correspondence 2	Period between 2-3 correspondences
Average (calendar days)	4.92	15.32	7.00	25.81	36.80	99.67	22,33	28,70	97.00
Standard deviation	8.01	19.61	Not available	24.34	44.75	98.45	17.40	20.96	49.37

	(3) الاجابة وجدها (ثالث)	Receiving a response in relation to a correspondence 3	Period between correspondence 3-4	Correspondence 4	Receiving a response in relation to a correspondence 4	Recommendation	Receiving a response in relation to a recommendation	Thank you letter	The complainant's life time
Average (calendar days)	33.40	6.33	10.00	10.50	14.00	69.44	46.50	15.33	235.20
Standard deviation	40.32	1.15	Not available	13.44	Not available	47.05	39.34	13.06	115.00

Table number (2) : time average of complaints and their standard deviation

3.2 Procedural Analysis Results:

After an in-depth study and analysis of the procedures, the consultants reached the following results related to the weaknesses affecting the Office's procedures when managing complaints.

- 1) The procedures do not define an exact time for concluding the complaint. This is true despite the existence of a previous circulation by the President's Office which emphasizes the importance of concluding all received complaints within six months from the date it was received. Despite the fact that the Office's Law states that all related public administration bodies have to reply to the Office's inquiries and correspondences, such time frames are not respected. There are no time frames which govern the period needed for accepting or rejecting a complaint, or needed for completing any of the other steps stated within the procedures. Because there are no time frames throughout the life of a received complaint, a large number of cases require a long time to be disposed of or settled, as shown in the above table number (2). The table shows that the average time needed to settle a complaint is eight months and such period may extend in some instances to a year. However, some complaints could be settled within four months.
- 2) The absence of procedures for escalating the complaint. This is needed when the related public administration office does not cooperate or respond to the Office's inquiries or suggestions, despite the fact that the Office's Law gives its President the authority to take certain measures

in case the public administration does not cooperate, including writing to the Prime Minister or listing the complaint in the Office's Annual Report , which is submitted to the Prime Minister and referred to the Parliament.

- 3) The absence of a system which provides needed warnings during various phases of the process. Such a warnings system will enable the Office's staff members to pay special attention to the processing of complaints which takes more time than usual; the system will also enable decision makers at the Office to follow up on the processing of delays in the processing of complaints.
- 4) The existence of a clear centralized decision-making system and the lack of authority delegation. The procedures' analysis showed that many procedures and steps require the pre-approval of the Office's President or his assistant. Such approvals are required even in relation to the most routine actions, such as signing correspondence and letters directed to complainants that inform them if their complaints had been accepted or not and why. The pre-approval also includes the signing of routine letters directed to the public administration requesting information or responses with regards to complaints. The analysis showed that many actions take a long time to be processed because of the absence of authorized personnel.
- 5) Duplication and overlapping in many of the work procedures, particularly between the Complaint and Verification sections. For example, the Verification section reviews the complaints' details and subject matter in order to decide if there is any misconduct on the part of the public administration. The same process is repeated by the Complaint section which, in some instances, contradicts the conclusions reached by the Verification section. Such duplications and overlapping are due to the lack of defined standard and documented work procedures governing the work of the Office's internal sections.
- 6) The use of different forms, when corresponding with citizens and the public administration, despite the similarities between the subject matter of many such correspondences. The absence of standardized forms and formulas requires staff members to continually draft new correspondences and have it sent to the typist. Therefore, the preparation of a correspondence takes a long time to be prepared; typing staff are busy and many drafts contain typos or drafting errors.
- 7) The use of different work registers. Both the Complaint and Verification sections use separate, manual or computerized, registers

which were developed by staff members without any regard or coordination with other sections and departments. Stand-alone registers are not inner-connected to other departments within the Office. The Reception section uses the incoming complaints register to document accepted and rejected complaints. The Verification section documents its receipt of complaints on the complaint distribution register; it uses a separate register to follow-up on outgoing correspondences for internal approval purposes only, without tracking the movement of such correspondences in other sections of the Office.

3.3 New Work Procedures:

According to the detailed procedural analysis illustrated above, the process of reengineering the complaints handling procedures started. The reengineering process will focus on simplifying work procedures, enhancing efficiency and reducing the time needed for processing accepted or rejected complaints. The following had been taken into consideration while designing the new work procedures:

- 1) Supporting the procedures with a fully-computerized system. The newly- designed procedures took into account the Office's plans related to automating all work procedures, which would eventually simplify procedures and enhance efficiency. The new procedures were designed in a way that takes into account the automation requirements and desired results; they provided details of such procedures and defined the responsibilities and authorities related to it. Detailed maps providing a clear illustration of new procedures were also developed; such maps will facilitate the automaton process when it starts.
- 2) The establishment of defined timeframes. Timeframes were developed in order to track public administration (and all other related bodies) responses to Office correspondence and also to govern work steps taken inside the Office. For example, a two week period was given to the public administration to respond to the Office's correspondences either sent for inquiry, verification purposes, or requesting the related body to take certain actions in relation to a submitted complaint. The correspondence must be sent by fax in addition to being sent by regular mail, to guarantee that it will reach the concerned party without delay. A one week period was given to the Office for it to decide whether or not to accept or reject a complaint. Finally, a six month period was given to the Office to conclude any submitted complaint that it decided to accept.
- 3) The development of certain procedures in order to escalate the complaint when the public administration is uncooperative or irresponsive to the Office's

correspondences. The periods governing each procedure were established in a clear and detailed manner.

- 4) Activating warning systems which notify staff members about the status of a complaint. The new procedures include the generation of a computerized warning system when work procedures and steps exceeded their given timeframes. Such systems would help staff members and decision makers in taking action when timeframes are not being respected.
- 5) Granting more responsibility and clarifying the authority of staff members in both the Complaint and Verification sections. New procedures suggest giving the Complaint department the authority to accept or reject submitted complaints on the basis of formality (formality means completing the related complaint form and providing the all required attachments) and on jurisdictional grounds (meaning that a complaint submitted against an institution of the public administration and the complainant exhausted all remedies available; additionally, the complaint is not being heard by the courts. Accepted complaints shall be referred directly to the Verification section, eliminating the need to first be submitted to the Office's President or his assistant. The new procedures were designed in a way that gives the investigators more authority and power, limiting the referral of any complaints to the President or his assistant.
- 6) Establishing clear and defined mechanisms to govern the closure of accepted complaints, which are closed in one of the following instances:
 - a) Closing complaints due to a friendly resolution
 - b) Closing the complaint as a result of the public administration's cooperation with the Office
 - c) Closing the complaint because there was no misconduct found by the public administration
 - d) Closing the complaint due to the public administration's lack of cooperation, and listing such complaint in the Office's Annual Report.
- 7) The new procedures were designed based on the Office's new organizational structure. The new procedures took into account the results of the Office's restructuring and the results stemming from it in relation to functions, authorities , new channels of communications , job descriptions and job titles.

The new procedures were documented in a table format which defines the following details:

- The scope and objective of each procedure
- Detailed steps

- The person/administrative unit responsible for implementation
- Used tools and forms
- Necessary recourses, if applicable
- Notes

The procedures were also designed on a flow chart that clarifies each procedure and provides its relation between the various work phases.

The procedures were divided into five distinct processes:

- a) Procedure number 1/5: the receipt of a complaint and its acceptance or rejection
- b) Procedure 2/5: not accepting the complaint
- c) Procedure 3/5: accepting the complaint- settlement (friendly resolution)
- d) Procedure 4/5: accepting the complaint- Verification
- e) Procedure 5/5: preparing and publishing the Annual Report

3.4 Workshop:

A workshop was held on 17 March 2011 and attended by the Complaint and Verification sections staff members in order to present the Project's activities and achievements to date. The current procedural documentation analysis and results were presented at the workshop; weak points in the procedures were shown. The suggested new work procedures were also presented in detail to the attendees and were subject to discussion. All questions with regards to the analysis results and the new suggested procedures were answered. Some comments were taken into consideration and incorporated in the suggested new work procedures.

The one-day workshop was also attend by the Office's President, his assistant, the President's consultants and other sections' staff members working in close relation with the IT section, the Evaluation and Research department, and the Communications department.

At the end of the workshop, it was agreed upon that the next steps to be taken included an additional review from staff members of the current work procedures and the implementation of new work procedures when the new Office's organizational structure is in place. It was also agreed to start immediately to implement some

procedures which do not require any further reviews and not related to the restructuring of the Office.

3.5 New procedural implementation results:

The consultation team supervised the implementation of the new work procedures for three weeks. The implementation of new procedures at the Reception section (previously the Complaint section) was supervised by the team for one week. After a one week supervisory period, the team began supervising the implementation of new procedures at the Verification section for two weeks.

To help in the implementation of the new procedures, a small workshop was held to present and discuss the procedures for a second time and to revisit any questions before the implementation process began. The team of consultants was also present with the Office's staff members during the implementation of the new procedures. According to discussions, new and final amendments were introduced to the new procedures.

Section	Training	Date
Reception	Orientation Session	24-7-2011
Reception	Practical training on the application of new procedures	24/07/2011
Sections within the Reception department	Orientation Session	31/07/2011
Sections within the Verification department	Practical training on the application of new procedures	31/07/2011
President's assistant	Orientation Session and training	7/8/2011
President	Orientation Session and training	8/8/2011

Table number (3): the new procedures implementation support plan

3.6 Final procedural manual:

The final version of the procedural manual on managing complaints submitted to the Office was developed according to implementation results. The manual included the following sections:

- a) Introduction
- b) Manual's management and control
- c) Manual's responsibilities
- d) Detailed procedures:
 - 1) Procedure number 1/5: the receipt of a complaint and its acceptance or rejection.
 - 2) Procedure 2/5: not accepting the complaint
 - 3) Procedure 3/5: accepting the complaint- settlement (friendly resolution)
 - 4) Procedure 4/5: accepting the complaint- Verification
 - 5) Procedure 5/5: preparing and publishing the Annual Report
- e) Procedures and flow charts
- f) Forms related to procedures

The manual was thoroughly reviewed by all concerned parties.

4. Final Recommendations:

- 1) The adoption of the manual and new procedures. Despite the application of most work procedures, the official and full application of such procedures requires the Office's President to sign the procedural manual and order its use to be applied. The President is also required to issue directions or a circulation allowing the adoption of the manual, the new procedures and the forms which are stated in it and start implementing them in an official manner.
- 2) Delegation of powers. The delegation of powers by the Office's President will help, to a large extent, in facilitating work procedures and reducing the time needed to manage and resolve complaints, without affecting the quality of the Office's decisions or causing any legal issues. The delegation of such power shall be done through clear decisions issued by the President and without any ambiguity. The delegation of powers shall be done according to the following:
 - First: the President shall delegate his/her powers related to the acceptance and rejection of submitted complaints to the head of the Reception section.
 - Second: the President shall delegate his/her power related to signing routine correspondence during the verification phase to the heads of the three Verification units, such as the request for

information letters, clarification letters, letters encouraging friendly resolution, and any other correspondence routine in nature. The President shall personally carry out his/her power to sign or agree upon on a final settlement, for a referred complaint to be included in the Office's Annual Report, or sign letters which include the issuance of a general recommendation to the related public administration institution or the ones which include detailed reports.

- Third: the President shall delegate his/her powers to review the public administration's files to the heads of the Verification units, whenever the interest of the investigation requires taking such a measure.
- 3) The development of standard correspondences and letters. This standardization can be done by selecting a number of different correspondences according to its type (inquiry, rejecting or accepting a complaint, requesting information/clarification, closure of a complaint, etc...) and adopting them as standard correspondence forms, after the adoption of any necessary amendments. Such standardized forms shall be distributed to all related sections; this will help in delegating and reducing the time needed for preparing such correspondence.
 - 4) Continue the staff member's capacities building process. This process will be done through training and awareness, through the delegation of powers, and accompanied with continual supervision and follow-up. It is advisable to hold a bi-monthly meeting for all Receipt and Verification section staff members, headed by the President's assistant, in order to discuss any work-related matters and continue the coordination and cooperation between the various sections. The meeting shall also address and work to solve any issues faced by staff members.
 - 5) Automating work procedures. As previously stated, new procedures were designed in a way that facilitates its automation. Although procedural automation projects generally take longer to be completed, the results of such projects are always positive - facilitating work procedures and increasing efficiency, having a positive impact on the Office's staff and the various parties and bodies with which it works.

Appendix

C. Exploring the Gaps and Priorities Related to the Practical Application of the Societies Law No. 51 of 2008

Civil Society Program - AED
Rule of Law Program – Tetra Tech, DPK
The International Center for Not-for-Profit Law

Exploring the gaps and priorities related to the practical application of
The Societies Law No. 51 of 2008

Prepared By: Advocate Nancy Fashho
July, 2011

Acknowledgments

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The author appreciates the valuable technical assistance of the staff of the Civil Society Program – AED, the Rule of Law Program – Tetra Tech, DPK, and the International Center for Not-for-Profit Law staff.

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Executive Summary

This research was conducted in response to a request from the Civil Society Program – AED, the Rule of Law Program – Tetra Tech, DPK, and the International Center for Not-for-Profit Law. The goal of the research is to identify the gaps and priorities related to the practical application of the Societies Law No. 51 for the year 2008 in order to design further capacity building support for NGOs and the Ministry of Social Development staff.

In July 2011, two focus-group discussions were held in the central and northern regions. The majority of the focus groups were NGOs registered under the Social Associations and Organizations Law No. 22 for the year 1966.

Through the use of semi-structured open-ended questions, the moderator was able to obtain in-depth data on the gaps and needs related to the practical application of the Societies Law No. 51 for the year 2008. The findings reported came out of this

qualitative research. As such, they do not necessarily represent the whole Jordanian NGOs.

Based on the findings from the focus-group discussions, the gaps and priorities related to the practical application of the Law can be classified under the following categories: legal and administrative restrictions imposed by the Law and relevant official agencies, knowledge about the Law and all regulations issued by virtue thereof, trust between the official agencies and the NGOs, knowledge about the Fund for Societies Support, knowledge about good governance and board governance practices.

The majority of the respondents called for amending the Law and reducing restrictions imposed there under. The NGOs emphasized the necessity of having unified guidelines that identify their obligations and provide a clear process for rectifying problems that may be faced by the NGOs. They also emphasized important role staff with the knowledge, skills, and resources could play in reducing the gaps stem from the practical application of the Law.

Based on the respondents' recommendations and the research findings, the researcher has suggested a comprehensive program for the NGOs and the staff of the relevant official agencies to overcome all the problems related to the particle application of the Law.

Exploring the gaps and priorities related to the practical application of the Societies Law No. 51 for the year 2008

Background:

The Societies Law no 51 for the year 2008 was passed in 2008. In 2009 the Law was amended following the criticism by the Jordanian and international civil society.

The Jordan Civil Society Program – AED (“CSP”), the Rule of Law Program – Tetra Tech, DPK (“ROLP”) ,and the International Center for Non-Profit Law (“ICNL”) are cooperating on providing support to the Societies Registry at the Ministry of Social

Development (“MoSD”) and the NGOs on the Societies Law No. 51 for 2008. To that end, the Rule of Law Program supported the drafting of regulations and directives on the Law while CSP and ICNL provided legal training for relevant ministries staff and NGOs on the application of the Law.

However, there is still a big demand among the NGOs about the Law and its application. This research was conducted in response to a request from the CSP, the ROLP and the ICNL, to identify the gaps and priorities related to the practical application of the law in order to design further capacity building support for NGOs and the MoSD staff.

Research Objectives:

The research aims to:

- Identify areas in the Law in which NGOs of Jordan lack knowledge.
- Determine the type of activities needed for building the NGOs capacity on the NGO Law.
- Understand obstacles faced by NGOs when performing their obligations under the Law or interacting with relevant ministries and MoSD field staff.
- Identify NGOs expectations from the Fund for Societies.
- Identify challenges and needs with regard to board governance.

2.2.12.4.

2.2.12.5. Selection method and characteristics of respondents:

The respondents were identified through the records of the NGOs Registry at the MoSD. The selection criteria for respondents was NGOs which were registered before the issuance of the new Law in 2008, and with budget over JD 50,000 in the north and JD 100,000 in the middle, in order to test challenges in relation to funding both local and foreign.

The majority of the NGOs who participated in the focus groups discussions are affiliated under the MoSD.

2.2.12.6.

Data collection procedure:

Two focus group discussions were conducted with NGOs which are duly registered under the Jordanian legislations, in particular under the Social Associations and Organizations Law No. 22 for the year 1966.

24 NGOs from the north and middle were invited to participate in the two focus groups discussion. 14 NGOs participated in the two Focus Groups, and 20 respondents from the participating NGOs joined the two focus groups.

Focus Groups	Number of invited NGOs	Number of participating NGOs	Number of participating respondents
First Focus Group	13	8	10
Second Focus Group	11	8	10
Total	24	16	20

The moderator used semi-structured open-ended questions to obtain in-depth data related to (Annex 1 – Moderator’s Manual).

All respondents we requested to fill out a general information questionnaire which included few questions about the NGO (Annex 2 - General Information Questionnaire). According to the information collected from the respondents:

- 13 respondents in the focus groups discussion know about the Law through the daily operation or training workshops. One respondent answered “YES” he/she knows about the new Law without identifying “HOW”. 4 respondents in the focus groups discussion answered “NO” they do not know about the Law. 2 respondents in the focus groups discussion answered “NO” but they know about the previous law.
- The majority of the NGOs participated do not have internal written by-laws that regulate financial, administrative or labour matters.
- The majority of the respondents could not simply identify if there are other official agencies that have powers to oversee or control their activities.

All respondents were asked to describe in detail the cons and pros of the new Societies Law and how this Law affects them whether positively or negatively, their relationship with the staff of the relevant official agencies, their recommendations on developing and enhancing

the application of the Law, their expectations from the Fund for Societies Support, and their perception of what constitutes good governance.

In addition, the respondents were encouraged to discuss different issues expressed during the focus group discussions. The researcher conducted the focus group discussions on 25 and 27 July 2011. The moderator used inquiring questions when respondents were not forthcoming, further clarification, elaboration of an idea was needed, the meaning of a word or a situation was not clear.

The focus groups were conducted in Arabic and then transcribed in English by the researcher. Each focus group session lasted approximately 3 hours.

Ethical Issues:

Participation in the research was voluntary. Prior to the focus group discussions, each respondent was contacted by phone and the purpose of the study was briefly explained. The purpose of the research and the benefits were explained in detail. Each respondent consented to participate in the research. Respondents were told that the information given would be treated confidentially.

2.2.12.7.

2.2.12.8. Results and Discussion:

➤ Respondents' perception of the Societies Law No. 51 for the year 2008

“We hoped the new Law will be a platform for a more mutually beneficial partnership between the Government and the NGO, but unfortunately it has not fulfilled our expectations.”

The respondents reported that the Law did not achieve any changes, on the contrary the Law expands the Government control over the registration of NGOs, maintains broad legal and administrative supervision by the government over the NGOs, and requires the Council of Ministers' approvals on foreign funding. The Law ignores the importance of voluntarism and all efforts that are being pursued to develop voluntary work.

Two respondents said: *“People want to amend the Societies Law.”*

- **Respondents knowledge of the practical application of the Societies Law No. 51 for the year 2008**

The majority of the respondents reported that they are unaware of any regulations and directives issued pursuant to the Societies Law. They reported that the relevant official agencies usually do not share with them any newly endorsed by-laws. Some participants reported that most of the bylaws and guidelines that are developed by the ministries are ineffective.

A respondent said: *“guidelines are developed to assist the ministry in winning the ISO.”*

Some respondents are not aware of the practical application of the Law in respect of NGOs registration procedures. Others reported that the practical application of the new Law imposes restrictions on the NGOs registrations.

A respondent said: *“The Law requires founding members to submit a certificate of no criminal record; however, when you apply to the Ministry of Social Development they refer you to the governor.”*

Some respondents reported that the system for determining the competent ministry is not understandable; it is recommended therefore, to affiliate all NGOs under one agency.

Some respondents reported that there are loopholes in the new Law in regard to geographical scope of the NGOs operation, the NGOs financial resources and the devolution of the NGOs assets upon dissolution.

A respondent said: *“the Law does not address NGOs regional and international scope of work. When we consulted the staff at the relevant official agency, they could not help us.”*

Another respondent said: “the Law is poor, but we are required to comply with it.”

The respondents also reported that the relevant official agency, still applies by-laws passed pursuant to Social Associations and Organizations Law No. 22 for the year 1966 in regards to records keeping, which places a burden on the NGOs. They recommended adopting a developed model of records system taking into consideration the NGOs difference in financial and administrative capacity.

The majority of the respondents emphasized the important regulatory role the relevant official agencies play in regard to attending the general assembly meetings and periodic visits to the NGOs premises. However, they recommended drafting guidelines identifying the rights and obligations of the NGOs, and regulating those agencies regulatory powers.

A respondent said: “Are they allowed to enter into our premises and take our record and reports without notification. That should be duly regulated and should not be left to the staff’s discretion.”

➤ **The NGOs’ perception of the relevant competent agencies’ and staff role:**

The respondents reported that there is inconsistency in the interpretation of the Law and the procedures applied by the relevant official agencies due to the staff’s lack of knowledge about the Law and lack of legal and administrative skills.

A respondent said: “The Law is always interpreted according to the mind of the relevant official agency and the staff’s discretion. We faced that during the process of rectifying the NGOs situation.”

A respondent said: “we encountered a dilemma related to a foreign grant which was approved by the Council of Ministers, and the grantor thereafter withdrew its approval on the grant. We sought advice from the relevant official agency, but they could not help us.”

Another respondent said: “there is a missing link between the NGOS and the staff due to the staff’s lack of knowledge about the Law.”

The respondents reported that there is a lack of cooperation from the staff, which pushes the NGOs to depend on their personal connections and relations to expedite their work.

Two respondents said: “Personal connections facilitate the procedures and expedite our work.”

The respondents reported that there is a lack of confidence by the staff, and they always play the role of police instead of cooperating with the NGOs in rectifying any issues faced by the NGOs.

The respondents reported that the absence of automated connection among the relevant official agencies prolongs the procedures. They emphasized the importance of expanding the e-government policy and activate electronic transaction between the NGOs and the competent official agencies.

Two respondents said: “All applications and inquiries submitted to the directorate shall be referred to the Ministry which lengthens the procedures. E-government policy should be activated by the relevant official agencies.”

➤ **FUNDING AND FINANCIAL RESOURCES:**

Some respondents were obviously unaware of the approvals required for obtaining approvals on Jordanian and non-Jordanian financial resources.

One respondent was astonished to find out that orphan non-Jordanian sponsorship requires the approval of the Council of Ministers.

The majority of the respondents could not identify the purpose for requesting such approval, whether it is related to the donor, to the funding objectives, to the NGOs or to all those factors. However, few respondents reported that such approval is required for security purposes, taking into account the penalties stipulated in the Law for any breach of this requirement.

● **Non-Jordanian Funding**

The majority of the respondents, who were aware of the approval requirements, reported that though the approval can be attained in most occasions, still this requirement may cause losing the funding/grant because of the length of procedures and complexity of requirements.

The respondent reported that the approval requirement is redundant, specially that most of the donors are international well-known organizations and implementing projects in the

Country pursuant to bilateral treaties signed with the Jordanian Government. They added that in most cases they proceed with signing the agreement with the donor, even if the approval is not received.

Moreover, the respondents reported that the approval requirement extends to all types of funding, grants and donations and includes small-amount and in-kind donations, which leads to decline receiving such small donations. The NGOs therefore, try to find a leeway to avoid such approval.

A respondent said: "a member may receive the non-Jordanian donation in his name and then pass it to the NGO."

The respondents reported that documents and information required by the relevant official agencies for obtaining the approval place burden on the NGOs.

A respondent said "There is no need to provide a copy of the proposal translated into Arabic, a copy of the donor/grantor approval would suffice."

The respondents reported that approval requirement should be abolished, given that approving the same by the general assembly of the NGO and providing the competent ministry with the annual financial and administrative reports of the NGO would suffice to give a clear picture of the NGOs financial situation and projects progress.

The respondents reported that issuance of such approvals can be entrusted into the competent ministry or directorate, and the period stipulated in the law should be lessened to one week.

● **Jordanian Funding**

The majority of the respondents could not simply distinguish between ordinary fundraising and charitable fundraising, which usually takes place through bazaars, raffle, fundraising against a receipt.

Respondents who know about the Charitable Fundraising Regulation No. 1 for the year 1957 reported that this Regulation imposed constraints, and that the practical application of this

Regulation is inconsistent. The respondents also reported that approvals stipulated in this Regulation usually take long time and sometimes received after the date of the event.

A respondent said: “We apply for the approval and conduct the event on its planned date, even if the approval is not received.”

The majority of the respondents reported that this Regulation was enacted for security purposes, and it contradicts with the amended Public Assembly Law.

➤ **FUND FOR SOCIETIES SUPPORT**

A respondent said: “we did not hear about this Fund, is it the National Aid Fund?”

The majority of the respondents emphasized the importance of having a clear legal framework to regulate the Fund. They also emphasized the importance of including representatives from the civil societies in the Fund management structure.

The majority of the respondents reported that they expect inequality in opportunity due to the gap between large and small NGOs.

A respondent said: “the portion of small NGOs’ will be small. Capacity building of those small NGOs is therefore a priority.”

Another respondent said: “we experienced inequality, and most of the support was given to big and royal NGOs.”

The respondents reported that the government budget allocation to this Fund will be inconsistent, which constitutes a big challenge. Few respondents recommended that all aids allocated for supporting NGOs and community must be deposited in this Fund.

A respondent said: “all aids must be out in one pot and distributed on equal basis.”

The majority of the respondents reported that support must be in the form of well-studied projects and programs, and must be provided based on the NGOs objectives, organizational capacity and field work. They also reported that high priority must be given to support projects and programs that serve the community. Direct financial support for small NGOs is acceptable.

Some respondents suggested that the Government must extend the exemptions provided for the NGOs to include electricity consumption and telephone bills. Other respondents suggested extending the support of the Fund to cover the percentage of contribution which is usually required by foreign donors.

➤ **Good Governance and NGOs management**

The Majority of the respondents are not aware of good governance concept and practices. The respondents reported that the concept of “**governance**” is new.

A respondent said: “I read it in the Law but did not understand it.”

The majority of the respondents reported that their NGOs do not have written internal financial and administrative by-laws. Some respondents could not distinguish between the Articles of Association of the NGO and the internal financial and administrative by-laws.

A respondent said: “All financial and administrative matters are addressed in the Articles of Association.”

Regarding the Board of Directors, the majority of the respondents reported that the NGOs face internal management issues which can be attributed to the board member’s lack of knowledge and skills, domination by a group of people who serves for consecutive terms, lack of communication and interaction among board members.

A respondent said: “the problem is not the Law but the management bodies of the NGOs, which is an old and new issue. They lack of knowledge, skills and experience.”

Few respondents considered the role of the NGOs board members as prestigious and honorary membership, and board members do not have substantial powers over the NGOs.

A respondent said: “I was elected as a board member, and since then I did not exercise any of the powers vested in the board of directors except for attending the board meetings. Besides, I have never read the articles of association of the NGO and other internal bylaws. I did not recognize the importance of the role of the board of directors until our NGO faced a problem with a public agency and the board members were considered fully responsible.”

Regarding the characteristics of an effective board of directors, the majority of the respondents reported that the role of the board of directors is influential, and elected members therefore must be skilled, qualified and trained. Some respondents

emphasized that a board member should be transparent, have no personal interest and loyal to voluntary work.

The majority of the respondents emphasized the importance of having internal bylaws and rules on ethics, which help in institutionalizing and sustaining the work of the board of directors. They reported that only 5% or less of the NGOs have internal financial and administrative bylaws and internal rules on conflict of interests.

Some respondents recommended establishing a center to train and qualify board members, developing eligibility criteria for board membership, and developing a system of material and moral incentives to encourage voluntary work.

➤ **Monitoring and control**

All respondents are aware of Law requirements related to the submission of annual financial and administrative reports and financial statements after being ratified by the general assembly of the NGO. The respondents are also aware of notification requirements stipulated in the Law concerning the general assembly meetings.

➤ **NGOs perception of their role in decision-making process**

The respondents were asked to define their role in decision-making process in all areas and at all levels, and how to develop such role.

There was a hesitation on the part of some respondents; however, other respondents reported that the Law restricts NGOs freedom and it should be amended.

A respondent said: "Reading the definition of "Open-Membership Society" provided in the Law, a person understands that the Government desires to expand legal restrictions. In fact, the interpretation of "Political Activities" is always subject to the mind of the Government... such interpretation is selective."

The respondents referred to prohibition under the Law concerning political activities; however, they could not differentiate between political activities which fall under the framework and activities of political parties and those related to the NGOs participation in decision-making process.

A respondent said: "NGOs are prohibited from conducting political activities according to the Law."

To enhance the NGOs participation, the respondents emphasized the importance of the sustainability and building the capacity of the NGOs. Few respondents reported

that most of the NGOs registered with the NGOs Registry are inactive, hence, there should be a plan focusing on quality rather than quantity.

The respondents also emphasized the importance of training NGOs on skills related to advocacy and participation in decision-making process. They also emphasized the importance of coalition among NGOs, and institutionalizing their efforts to enhance their participation in decision-making process.

The respondents emphasized the importance of fostering voluntarism among schooled and universities students. They also emphasized the importance of building trust between NGOs and citizens and raising awareness at community level of the NGOs role as their representatives and not only as community workers.

The respondents also emphasized the important role entertainment education using media and community activities play in raising awareness of the NGOs role in the community.

➤ **Conclusions and Recommendations:**

The results of the research indicate that:

The NGOs considers the Societies Law No. 51 for the year 2008 as an instrument to pursue the historical control by the Government over the NGOs, and diminish the role of NGOs to become merely community workers. The NOGs do not combat the ordinary regulatory system, but they call for legislations which enable to reach a mutual beneficial partnership between the Government and the NGOs.

To that end, it is important to open a dialogue between the Government and the NGOs to lessen the gap between both parties, reach a model of agreement that enables to increase NGOs participation in all areas and at all levels and enhance their role in the community.

NGOs are only aware of the basic common practical application of the Societies Law No. 51 for the year 2008. There is an obvious lack of knowledge about any regulations and directives issued pursuant to the Law, which significantly affects the NGOs operation.

Lack of cooperation and miscommunication between the NGOs and the relevant official agencies can be attributed to NGOs and the staff of the relevant official

agencies' lack of knowledge about practical application of the Law and regulations issued in virtue thereof. In addition, the absence of guidelines identifying the NGOs rights and obligation towards the relevant official agencies, expand the gap between the two parties.

To that end, it is clear that a great deal of effort needs to be done to improve the level of knowledge of the NGOs and the staff of the relevant official agencies about the Law. Drafting guidelines that identify the NGOs rights and obligations and provide clear process for rectifying any practical problems faced by the NGOs and the staff will help in lessening disagreement between the both parties.

Regarding the NGOs funding, it is obvious that the NGOs are aware of the basic requirements for receiving foreign and Jordanian funding. Requirements for receiving funding are redundant, especially that the NGOs are required under the Law to submit annual administrative and financial reports, and that the staff of the relevant official agencies have power to oversee the implementation of the NGOs projects. Consequently, it is recommended to simplify the procedures by classifying donors and consider funding by those donors who already signed bilateral treaties with the Jordanian Government are automatically approved pursuant to those bilateral treaties, and to lessen the information required for obtaining the approval.

Regarding the Charitable Fundraising Regulation No. 1 for the year 1957, this regulation was passed in 1957 and does not comply with the new Law which abolishes any approval requirement for Jordanian funding, as well as it contradicts the amended Public Assembly Law. Accordingly, it is recommended to simplify the requirements for charitable fundraising.

Respondents are not aware of the Fund for Societies Support, its legal structure and objectives. They are not enthusiastic about the Fund because of the past experiences, and expect inequality in opportunity. Therefore, it is recommended to draft policies and guidelines aim at providing equality of opportunity and transparency and share them with the NGOs. Moreover, it is recommended to train them on the funding process and writing proposals.

There is a lack of knowledge about good governance concept and practices and board governance. To that end, more research is needed to further investigate the NGOs needs in this field, and more efforts need to be done to raise awareness of good governance and board governance best practices, and how institutionalization of governance best practices serves the NGOs sustainability. A comprehensive program for NGOs on good governance and board governance consists of various components including training workshops, developing a training material and manual on good governance tailored to the NGOs, etc. can be implemented.

Enhancing the NGOs role in civic participation in all areas and at all levels requires training the NGOs on capacity building, training the NGOs on skills related to advocacy and civic participation, fostering voluntarism among new generation citizens, building trust between the NGOs and citizens, and raising awareness at

community level of the NGOs role as their representatives and not only as community workers. A comprehensive program of various components including awareness campaigns can be implemented to improve the NGOs role in civic participation.

Appendix 1

Civil Society Program - AED

Rule of Law Program – Tetra Tech, DPK

The International Center for Not-for-Profit Law

Exploring the gaps and priorities related to the practical application of
The Societies Law No. 51 of 2008

Moderator's Guide:

Research Goal:

- Identify the needs of the NGOs in Jordan regarding the application of the new Societies law No. 51 of 2008 and its amendments and all regulations and directives issued in virtue thereof.
- Identify common issues of implementation faced by MoSD field offices across Jordan.

Research Objectives:

- Identify areas in the Law in which NGOs of Jordan lack knowledge.
- Determine the type of activities needed for building the NGOs capacity on the NGO Law.
- Understand obstacles faced by NGOs when performing their obligations under the Law or interacting with relevant ministries and MoSD field staff.
- Identify the type of practical issues that MoSD field face while implementing the Law, and how such issues are dealt with.
- Assess the understanding of MoSD staff of the NGO Law and its implementation; including their supervisory authorities.
- Identify expectations from the Fund for Societies
- Identify challenges and needs with regard to board governance.

Questionnaire:

Participants will be asked to fill in a short questionnaire before starting with the focus group. The questionnaire will include questions about:

- Name and name of organization.
- Did you apply for readjustment: yes/no?
- Did the respondent deal with the new Law? (if yes, define)
- What is the relevant ministry that supervises your organization?
- Other regulatory bodies that supervise your organization?
- What types of regulations your association adopts: association bylaws, financial manual, administrative manual, employees regulation?

Focus Group Questions:

- 1- What do you think of the new NGO law?
 - a- What are the good things in the Law?
 - b- What are the bad things?

- 2- Application of the Law:
 - a- How has the new law affected your organization? Why?
 - b- How would you describe your relation with MoSD staff and relevant ministries? Why?
 - c- What can be done to facilitate your work?
 - d- In your opinion, how can procedures adopted by relevant bodies be simplified?

- 3- How do you describe your experience in applying for re-adjustment? What do you think of the procedures?

- 4- What are the main challenges that you face with regards to implementation of the Law? Why? What causes these challenges?

- 5- Funding:
 - a- What procedures you follow when you apply for local funding?
 - b- What procedures you follow when you receive funds from a foreign body to support your projects? Embassy?

- 6- Government Supervision:
 - a- What documents you file at the end of the year, and to whom?
 - b- How do you conduct general assembly meetings? How often?

- 7- Good Governance:
 - a- In your opinion, what is meant by good governance?
 - b- How do internal bylaws help you govern your NGO?

c- What are documentation and records keeping obligations?

8- Board governance:

a- What are the main challenges you face with the board?(members practices, others?)

b- What would be the main needs to overcome these challenges? Why?

9- Fund for Societies:

a- How can the Fund support the NGOs?

b- What is the expected impact of the Fund on the NGOs?

10- If there is one thing you could change about the law, what would it be and why?

Appendix 2

Civil Society Program - AED

Rule of Law Program – Tetra Tech, DPK

The International Center for Not-for-Profit Law

General Information Questionnaire

- Name _____ and _____ name _____ of organization: _____

- Did you apply for readjustment: _____ yes/no?

- Did the respondent deal with the new Law? (if yes, define)

- What is the relevant ministry that supervises your organization?

- Other regulatory bodies that supervise your organization?

- What types of regulations your organization adopts: association bylaws, financial manual, administrative manual, employees regulation?
