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JORDAN JUSTICE SECTOR ASSESSMENT REPORT AND RECOMMENDATIONS

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ACRONYMS

ABA	American Bar Association
ACC	Anti-Corruption Commission
ACJLS	Arab Center for Judicial and Legal Studies
CLE	Continuing Legal Education
CMD	Civil Case Management Department
CSO	Civil Society Organization
DPK	TetraTech-DPK
GID	General Intelligence Directorate
GOJ	Government of Jordan
IT	Information Technology
JC	Judicial Council
JIJ	Judicial Institute of Jordan
JOB	Jordanian Ombudsman Bureau
JUST	Judicial Upgrading Strategy
LOE	Level of Effort
MIZAN	Automated case management system
MOJ	Ministry of Justice
MoSD	Ministry of Social Development
MOU	Memorandum of Understanding
NGO	Non-Governmental Organization
ROL	Rule of Law
ROLP	USAID funded Rule of Law Program
SBLC	Small Business Legal Clinic
TC	Cassation Court Technical Office
TCN	Third Country National
UN	United Nations
USAID	United States Agency for International Development

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EXECUTIVE SUMMARY

To assist the judiciary and the Ministry of Justice (MOJ) to improve the delivery of justice in Jordan and specifically to give direction to future USAID support for that process, a team of international consultants supported by the local USAID funded Rule of Law Program (ROLP) staff conducted a general assessment of the justice sector in Jordan, and defined legal framework, operational, and other areas requiring focus for continued justice sector development. The resulting report describes the overall status of the justice sector, challenges to reform, and opportunities for further USAID programming assistance.

The report gives particular focus on justice sector areas related to current ROLP programming though does not limit recommendations to ROLP's scope of work. ROLP's scope of work falls under USAID/Jordan's Operational Plan objective "Governing Justly & Democratically: To promote and strengthen effective democracies in recipient states and move them along a continuum toward democratic consolidation" and Program Area 2.1: Rule of Law and Human Rights. ROLP's focus areas are: 1) Enhance judicial performance to reduce delays and increase public confidence, 2) Promote an independence and empowered judiciary, 3) Expand access to justice, rule of law, and public awareness of the rule of law, and 4) Windows of opportunity. Key ROLP activity areas include developing professional case management and court administration systems, enhancing the institutional capacity of the Judicial Council, implementation of support to the training body (Jordanian Institute of Justice), and grants to rule of law related NGOs. The report investigates areas for important new and continued justice sector interventions that go beyond this current scope of work.

Status of the Justice Sector

The assessment team in conducting interviews for this report noted that there is a tangible yearning for enhancing the rule of law in Jordan. On the "demand" side, consumers of justice sector service generally, and judicial sector services specifically, see much room for improvement. Lack of strong political will for wide reaching reforms on the "supply" side remains a critical obstacle to rule of law development. Recent events in the Middle East, now including Jordan, suggest that the population is increasingly dissatisfied with the status quo and demand more immediate and far reaching reforms, and that there is a corresponding sense of and need for urgency in defining and addressing required reforms.

There are positive activities underway and many achievements have been made. Some such as

automating all the courts in Jordan (with USAID funding support) and changing the face of the judiciary by having over 50 percent of new judge candidates be women versus the current make-up of the judiciary of having only 9 percent women will take some time to fully impact the justice system in a positive way. All persons interviewed by the Team cited the automation of the courts as a major factor in improving the efficiency of court operations, access to case information, and the perception that the courts are modern institutions providing greatly improved services.

USAID's ROLP is perceived as a significant contributor to the positive achievements that have been realized or are underway. There have been successes in modernizing many court procedures; more efficient management structures; improved transparency in and access to court processes through automated case management (CMS or MIZAN) and case history systems; and increased professionalism of judicial and non-judicial staff through training and development of procedural guidelines. The skills of many new judges have been improved through improvements to the Judicial Institute of Jordan (JIJ), most notably through the Future Judges Fund which has helped introduce merit-based policies for selection of future judges and successfully and significantly increased the participation of women in judicial careers.

The following is an overview **summary of the current status of the Jordanian justice sector** with specific focus on the Jordanian judiciary and related institutions and areas in which further improvement is needed.

- **Legitimacy and effectiveness of the justice sector** is undermined by the use of outmoded and questionable techniques such as executive branch-issued temporary laws and use of special courts versus normal justice sector processes in some instances, and some continued inefficiencies in procedures within the justice sector institutions.
- **Fairness of the justice sector** suffers from lack of access to justice for women, undue and inappropriate influence on judicial decision-making by executive and legislative bodies and officials, undue influence exerted by higher level judges on lower court judges, the absence of sufficient legal aid and public defense for indigents, and court staff not fully qualified or trained to appropriately deal with court clients.
- **There is lack of utilization of constitutionally enabled checks and balances** that define appropriate separation between the judiciary and the legislative and executive branches of government. The judiciary does not exercise administrative and financial independence. The MOJ controls some key functions that under separation of powers principles may be better placed under the judicial branch such as judicial inspections.
- **Philosophical consensus is lacking on what judicial independence means.** Within the

judiciary there is a lack of a clearly and publicly articulated definition/scope of “independent judiciary,” empowered and encumbered by checks and balances with executive and legislative branches, and driven by a strategic plan and timetable to achieve the key elements that will achieve the goal of the judiciary independently setting and controlling policies and administrative and human resource processes for the judicial branch.

- **The judiciary needs to strengthen its institutional capacity.** There is a lack of institutional strength in the judiciary to function as a truly independent branch of government. (e.g., weak institutional and administrative capacity, no strong systems of accountability, lack of management culture, lack of merit-based personnel systems and professionalism, frequent changes in leadership, and a lack of change agents). The Judicial Council has recently commenced the development of new management and administrative units which have the potential to substantially improve the Council’s institutional capacity and will need significant technical assistance and training to take on its new roles and functions.
- **Application of the law is inconsistent.** There are problems with effective and consistent application of laws, especially in the criminal area, due to underperformance by prosecutors who are often inexperienced and insufficiently trained. There is a lack of respect for the orders of the judiciary due to ineffective execution of judgments, excessive delay, and perceptions that judicial rulings can be overturned or influenced by higher ranking authorities. These perceptions and realities undermine confidence in and respect for the justice system.
- **Judicial decision making lacks uniformity.** Jordan does not have a Constitutional Court or similar appellate body that can unify interpretation of the law by the courts, resulting in inconsistent decisions in cases involving the same factual circumstances.
- **Further professionalism in the justice sector is needed.** The capabilities of justice sector personnel – judges, non-judicial court and administrative (MOJ and Judiciary) personnel, and attorneys – have improved yet require further enhancement in knowledge, experience, skills, and motivation.
- **Productivity gains need to be consolidated and expanded upon.** Modernization of courts and judicial departments has occurred yet additional technical assistance to improve use of modern productivity tools and techniques, training, and procedural reform is required to increase productivity, expediency, efficiency, and predictability.
- **Greater integration and communication between the institutions within the justice system is required.** Greater links and communication/cooperation are also needed between formal and informal dispute resolution systems, e.g., ADR, *Sharia*, and tribal.
- **Alternative dispute resolution (ADR) services are effective yet underutilized.** Mediation services have been introduced and achieve strong results yet disputants take advantage of the

option in less than 1 percent of cases.

- **Key justice related institutions such as bar associations, law schools, and civil society require strengthening** to promote long-term justice sector reform and promotion of a rule of law culture.

Challenges to Justice Sector Reform

Challenges to address the foregoing issues and strengthen the justice sector are:

- **Political will from the Royal Court and Executive Branch for a strong, co-equal, and fully independent judiciary is uneven** and at times resistant to changes, even though public demand is strong.
- **Frequent changes in justice sector leadership have disrupted reform continuity** and undermine the establishment of a strategically-planned change process with short, medium, and long term goals. This is particularly true in the MOJ and other key governmental positions.
- **Lack of assertive leadership in the judiciary** in defining a way forward has resulted in low morale and confidence among judges. There is also a lack of leadership over substantive, administrative, and judicial behavioral changes necessary to implement fundamental reforms to achieve judicial independence.
- **The legal framework controlling the organization and operation of the justice sector at times impedes the efficient delivery of justice sector services.** Despite key legal and regulatory reforms supported by ROLP, there remain deficiencies in the organization and roles and responsibilities of justice sector institutions, judicial power, and roles and responsibilities of the legal community. There are also overly complex and inefficient procedures in different case types (e.g., criminal, civil, family). Present deficiencies in these areas undermine the efficiency of the justice system and the protection of basic human rights.
- **Jordanian culture generally remains pessimistic about the chance for real change,** with general disrespect for legal institutions and wide cultural acceptance of the way it has always been done.
- **Lack of enforcement of rules** is a general Jordanian cultural problem and has specific application in the courts with judges unwilling to enforce procedural rules with attorneys and in general with enforcement of judgments.
- **Judges and prosecutors tend to not recognize the benefit of a greater role for support staff** and the importance of customer service to the public's perceptions of the justice sector.
- **There is limited media engagement and lack of civil society organizations** focused on the rule of law and the justice sector to encourage external demand for judicial reform and

improved services.

Recommendations for Reform

The list of needed reforms in the justice sector is long given the assessment of the current situation in Jordan. There is an increasing sense of urgency for action given the noted unrest in Jordan with government institutions overall and the current organization of the government. Strong and effective justice sector institutions are critical to moving forward. The focus on reforms that are outlined in this assessment build on the work that has been done to date, .e.g., technical support activities in areas of delay reduction, training, and use of technology. The recommended reforms also respond to the real need to focus on strategic and broader legal framework reforms, including better definition of the roles of the different justice sector institutions with a more independent judicial branch. We note three major areas of focus as follows: (1) strengthening the conditions for long term justice reform by supporting policy reform dialogue, legal reform, and other strategic reform activities critical to strengthening the legitimacy and performance of the justice sector over the long term; (2) targeted technical and training activities, including continuity of ROLP technical activities and initiation of new initiatives that address key justice sector deficits and have strong prospects for sustainable results and impact within the project performance period; and (3) engagement with civil society in supporting and monitoring needed reforms in the justice sector.

1. Strengthen Conditions for Justice Reform.

The team recommends that ROLP should support the launch of key initiatives designed to **improve political leadership and conditions for justice sector reform, strengthen the legal framework and structure of the justice sector institutions, and increase policy reform dialogue on rule of law issues.** While the full impact of such activities cannot be expected to occur within the project's performance period, the initiation of such activities is essential to chart a longer term course to achieve needed systemic reforms. The project can undertake measures to ensure the processes set in motion are sustainable after ROLP's support ends. Key activities should include:

Promote Policy Dialogue on Justice Reform. A primary approach to developing improved conditions for substantial reform is **initiation of stakeholder policy dialogues on the role of justice sector reform in Jordan's future.** Such dialogue should include justice personnel, members of legislative and Parliamentary committees, lawyers, CSOs, business and professional associations, and key members of the Jordanian reform movement. The objective would be to

develop common visions around plans to achieve effective justice sector development. Such dialogue could include, for example, discussion about judicial independence, the appropriate use of special courts and temporary laws, and a greater role for the Judicial Council including in proposing legislative reform. The dialogue would also aim to promote understanding of the need and means to improve access to justice for women, strengthen conflict of interest and disciplinary processes, elevate the status of court staff, and enhance legal aid and public defense.

Key activities would include:

- Facilitate dialogue, meetings, and workshops among key justice sector institutions
- Provide technical assistance to justice sector institutions for the development of strategic plans and agreements that clarify institutional roles and strengthen judicial independence
- Provision of comparative models and best practices for justice sector institutional roles, mandates and organic legislation

Support Legal Reform. Building on legal and regulatory reforms supported by ROLP to date, further legal reform is another key area of focus to strengthen the legitimacy of the legal and justice systems and improve supporting conditions for a more effective justice sector. Legal reform support is needed for both **organizational** (e.g., judicial budgeting independence, enhancing the prosecution career path, improved judicial review of election matters), **procedural** (e.g., revise procedural codes, enhance sanctions against attorneys for delaying tactics), and other **legal framework reforms** (e.g., execution of judgments, notifications) through working committees of key stakeholders – including judges, lawyers, and professors to ensure buy-in – to strengthen legitimacy of the law, judicial independence, and increase justice sector access, performance, and efficiency.

Specific assistance could include:

- Convene working groups of legal professionals to draft laws and procedures
- Provide comparative models and best practices on targeted laws and procedures
- Organize expert consultants to advise Jordanian counterparts on the development of revised laws and procedures
- Train in legal drafting or policy development to justice sector institutions and legal professionals
- Engage local organizations in developing or advocating for new laws or procedure

Increase Justice Sector Stakeholder Cooperation. There is a need to improve cooperation among the key justice sector stakeholder groups. Such an outcome can be promoted through joint

initiatives with judges, court staff, attorneys, prosecutors, police, and other justice stakeholders to improve cooperation and reduce delay tactics and use of improper influence on judicial decision making. For example, bench-bar committees focused on concrete issues like procedural code reform have proven effective in building cooperation among courts and attorneys.

Develop Justice Sector Leadership. There will be benefit from further training of key justice sector personnel on leadership, change management, and institutional performance and integrity, to create change agents and establish pre-conditions for successful reforms.

2. Targeted Technical and Training Activities to Improve Efficiency and Effectiveness of Justice Sector Institutions.

ROLP activities that should be continued and in some cases intensified include: support for organizational **development of new Judicial Council administrative units**; continued support for specialized training programs for justice officials and further **support to the specialization process**; strengthening the administrative and legal research capacity of the **Cassation Court Technical Office**; further institutionalization of **training programs for court staff**; continued justice sector automation through a local institutional partner with enhanced emphasis on training and **use of automation as a tool to promote transparency and accountability**; **enhancing case management** by courts building on the modernization tools established under ROLP to date including through development of performance indicators and **reducing judges' involvement in administrative tasks** in the litigation and execution phases; **promoting customer service, access, and continuous improvement** through introduction of the Q10 Court User Survey; **improving legal research services** at the Court of Cassation; and **strengthening the work of the office of Prosecutor and Attorney General** through training, automation, and technical assistance.

New areas of reform focus by ROLP or others should target areas where there is identified need and prospects for success are favorable due to expressions of support from relevant counterparts. Potential areas of focus include:

Order and Security

- **Develop a program to help reduce excessive pre-trial detention** as a means to reduce violations of basic human rights and reduce delay in criminal case processing e.g., develop tickler systems in the courts to alert judges of excessive detention situations
- **Support implementation of human rights reforms in the area of juvenile justice**, e.g., improve sentencing policies and expand rehabilitation service options through grants,

technical assistance, and training of NGOs

Legitimacy

- **Promote use of data driven management throughout justice sector institutions.**
Activities can include publication of data from the automated case management system (*MIZAN*) to increase judicial transparency and accountability and enhance public support for the work of the justice sector, greater use of program budgeting, and cost-benefit analysis in resource allocations
- **Develop judges and court managers organizations** dedicated to improve professionalism among judges and court managers, establish continuing education standards, advocate for appropriate salaries and benefits for judges and court personnel, and generally enhance the status of judges and court personnel in Jordan

Checks and Balances

- **Help reduce conflicts of interest, improper influence on judges, and lack of transparency** by improving use of codes of ethics, clarifying conflict laws, improving judicial inspections systems, engaging civil society in judicial watchdog activities, and increasing engagement with the media
- **Promote merit-based personnel systems** through a working committee dedicated to enhancing systems of judicial and non-judicial personnel evaluations, promotion, and discipline
- **Build consensus for and assist in the creation of a Constitutional Court** that can improve uniformity of legal interpretation and judicial decision making and **train judges on constitutional law issues** to improve quality and uniformity of decisions invoking constitutional issues
- **Strengthen the Opinion and Legislative Bureau** of the Prime Ministry through technical assistance for organizational development and training on legislative drafting, rendering of legal opinions, and providing counsel and various legal services to the members and committees of the Parliament
- **Provide technical assistance and training to build capacity of judges and managers** to assume the administrative, budgeting, and policy making responsibilities relating to having an independent judicial branch

Fairness

- **Focus on improving public outreach, communications, customer service, and access to services and information** by justice sector institutions and provide support for specific

customer service improvement and access to information efforts

- **Help improve access to justice for historically disadvantaged groups** including women, displaced persons, disabled, and rural poor e.g., through targeted public awareness campaigns, training for judges and court staff on handling gender-centric matters (e.g., gender based violence), enhanced legal aid and public defense, and promoting positive linkages between *Sharia* and formal courts in family law cases
- **Support provision of counsel for indigent defendants through support for public defender and legal aid programs** by the bar association(s), law schools, and NGOs
- **Support civic education programming** in schools to build civil society awareness and for society to demand democracy, judicial independence, the rule of law and human rights.

Effective Application

- **Launch initiatives to build consensus and implement criminal and civil judgment execution reforms** taking into account ROLP's automation of execution departments and pilot program work with the Amman First Instance Court's Execution Department
- **Improve access to justice through introduction of fast tracking by the judiciary of appeals of administrative agency decisions involving citizen access to legal remedies and government services**
- **Assist strengthening of interagency cooperation** (police, prosecutors, attorney generals, and execution departments) to improve application of the law and case outcomes e.g., through development of inter-agency standard operating procedures, information sharing protocols, coordinating committees, and other means
- **Promote judge referral and litigant use of mediation** in suitable cases to reduce court workloads, increase public satisfaction, and prevent disputes from escalating into conflicts through public awareness campaigns, engagement with the bar to promote attorney buy-in, and related approaches
- **Explore a program of cooperation with law schools** to strengthen the knowledge and practical skills of future lawyers, judges, and prosecutors including introducing modern teaching approaches into the curriculum and developing practice clinics

Cross-cutting Issues

- **Reduce corruption's negative impact on justice sector** functioning through engagement with the Anti-Corruption Commission to explore opportunities for strengthening its capacity and effectiveness

3. Civil Society Engagement

ROLP grants activities to promote NGOs working in access to justice for women and youth and promotion of gender equality should be continued. Additional activities should be undertaken with civil society to advance legal empowerment and advocate for needed reforms. Such activities should be carefully designed to promote development of legitimate NGOs and sustainability of activities. Focus of expanded work with civil society should include:

- **Engage civil society to provide legal aid and empowerment services and promote improved culture of respect for the law and justice sector** through grants and other means
- **Support development of broad based NGO coalitions** to advocate for rule of law and justice sector reforms
- **Strengthen NGO justice sector monitoring activities** to reinforce reform objectives e.g., give focus on progress towards judicial independence, pre-trial detention, judicial ethics, access to information, and merit-based promotion systems

1. INTRODUCTION

To assist the judiciary and the Ministry of Justice (MOJ) to improve the delivery of justice in Jordan and specifically to give direction to future USAID support for that process, a team of international consultants supported by the local USAID funded Rule of Law Program (ROLP) staff conducted a general assessment of the justice sector in Jordan, and defined legal framework, operational, and other areas requiring focus for continued justice sector development. The resulting report describes the overall status of the justice sector, challenges to reform, and opportunities for further USAID programming assistance.

The report gives particular focus on justice sector areas related to current ROLP programming though does not limit recommendations to ROLP's scope of work. ROLP's scope of work falls under USAID/Jordan's Operational Plan objective "Governing Justly & Democratically: To promote and strengthen effective democracies in recipient states and move them along a continuum toward democratic consolidation" and Program Area 2.1: Rule of Law and Human Rights. Under Program Area 2.1, Program Elements are:

Program Element 2.1.1: Constitutions, Laws and Legal Systems

Sub-Element 2.1.1.2: Public Knowledge and Understanding of the Rule of Law

Program Element 2.1.2: Judicial Independence

Sub-Element 2.1.2.2: Independence and Accountability

Sub-Element 2.1.2.3: Public Awareness and Advocacy

Program Element 2.1.3: Justice System

Sub-Element 2.1.3.1: Justice System Actors

Sub-Element 2.1.3.2: Operations of Institutions and Actors

Sub-Element 2.1.3.3: Fairness and Equity

Sub-Element 2.1.3.4: Access to Justice

ROLP's contractual focus areas are: 1) Enhance judicial performance to reduce delays and increase public confidence, 2) Promote an independence and empowered judiciary, 3) Expand access to justice, rule of law, and public awareness of the rule of law, and 4) Windows of opportunity. Key ROLP activity areas include developing professional case management and court administration systems, enhancing the institutional capacity of the Judicial Council, implementation of support to the training body (Jordanian Institute of Justice), and grants to rule of law related NGOs. The report investigates areas for important new and continued justice sector interventions that go beyond this current scope of work.

2. METHODOLOGY

The international assessment team (Team) members gathered in Amman, Jordan from approximately February 5-18, 2011. The international team comprised of Joseph Traficanti, a former US judge and court administrator who has had experience managing USAID rule of law projects in Macedonia, Glenn Robinson, a Political Scientist and Professor on the Middle East from the Post Graduate Naval Academy in Monterey, and Nabil Isifan, a regional expert and former Chief of Party for USAID funded Rule of Law Project in West Bank/Gaza. They were joined by Wally Kuencer, Chief of Party of the Rule of Law Program (ROLP) and two local senior technical staff of the ROLP, Diala Khamra, Deputy Chief of Party, and Qais Jabareen, Judicial Independence and Training Component Lead. The team conducted organizational meetings and a series of interviews and consultations, which became the framework and foundation for this assessment report.

In the course of the consultancy, the Team reviewed the strengths and weaknesses of major segments of the justice sector. The assessment focused on rule of law issues at the higher levels of the judiciary as an independent power and then addressed reform of the judiciary and future openings for meaningful intervention. The Team also focused on other government institutions responsible for stakeholder roles in providing services related to the justice sector, quasi-governmental and non-governmental organizations, international organizations engaged in justice sector activities, and other professional and law related and/or educational institutions.

Relevant documents supplied by ROLP and other sources were reviewed. The team used the *Jordanian Rule of Law Assessment and Evaluation of USAID Interventions*, dated January 2008 as a base document. The Team also received local updates from the ROLP Chief of Party and staff, conducted interviews largely at the interviewee sites, conducted stakeholder meetings, and conducted a half-day session with the Judicial Council with almost all members present. The ROLP office staff superbly handled the logistics of meetings and transportation for the Team. A list of interviewees and their affiliation can be found in Annex 1 of this report.

In Section 3.0, the Team has summarized its findings as to the status of the justice sector relative to the situation as described of the justice sector in the 2008 report, including discussion of strengths, weaknesses, and recent progress through activities supported by the ROLP that provide a foundation for broader reform. In Section 4.0, challenges to justice sector reform are analyzed.

Section 5.0 includes the Team's recommended future actions, in light of current circumstances and reform challenges, including new opportunities for reforms outside of the current scope of activities under ROLP.

The Team was unable to assess the following relevant justice sector issues and areas due to time constraints and a need to maintain focus on the areas that are most feasible for USAID support:

- Penal reform/administrative detention/prisons
- *Sharia* Courts
- Special Courts' relationship to the National Courts
- Other Ministries
 - Ministry of Social Development
 - Ministry of Labor
 - Ministry of Industry and Trade
 - Ministry of Interior

3. STATUS OF THE JUSTICE SECTOR

USAID's January 2008 Rule of Law Assessment for Jordan identified key challenges and made a series of recommendations for enhancing the rule of law in Jordan. The purpose of this section is to identify significant changes in both the overarching challenges confronting the justice sector and in gauging the current status of the recommendations made in the 2008 report. The progress on those various recommendations informs our current set of recommendations by suggesting what has been done and what is likely of continued importance and doable in the coming years.

A key point of departure is that the assessment Team noted that there are many positive activities and trends underway with many achievements made. Some such as automating all the courts in Jordan (with USAID funding support) and changing the face of the judiciary by having over 50 percent of new judge candidates be women versus the current make-up of the judiciary which has only 9 percent women will take some time to fully impact the justice system in a positive way. USAID's ROLP is perceived as a significant contributor to the positive achievements that have been realized or are underway. There have been successes in modernizing many court procedures; more efficient management structures; improved transparency in and access to court processes through automated case management (CMS through the *MIZAN* operating system) and case history systems; and increased professionalism of judicial and non-judicial staff through training and development of procedural guidelines. The skills of many new judges have been improved through improvements to the Judicial Institute of Jordan (JIJ), most notably through the Future Judges Fund which has helped introduce merit-based policies for selection of future judges and successfully and significantly increased the participation of women in judicial careers.

The above achievements notwithstanding, there continues to be a tangible yearning for enhancing the rule of law, at least on the "demand" side where the consumers of the judicial sector see much room for improvement. We are less convinced that sufficient political will currently exists at the top of the "supply" side to adopt the far reaching reforms necessary to have a truly effective and efficient justice sector, with a judiciary which is independent and shielded from undue influence. More technical interventions, provide important tools and foundations to this goal and are appropriate for continued USAID support. USAID also can at this time help set in motion processes aimed to build consensus and develop political will for more significant reforms.

USAID's *Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework* identifies five elements that comprise the rule of law: order and security, legitimacy, fairness, checks and balances, and the effective application of law. The 2008 ROL Assessment identified

challenges in each area:

ORDER AND SECURITY

As mentioned, due to time constraints the assessment Team was unable to devote attention to several justice sector institutions with a key role in maintaining order and security, including the Ministry of Interior and prisons. The 2008 Assessment properly identified the extensive security challenges facing Jordan, particularly given Jordan's geographic setting. Many of those security challenges remain, although the improving situation in Iraq and the diminishing threat from al-Qa'ida ease the concerns to some degree.

The perceived concern for security has resulted in the creation and use of some questionable justice sector institutions, notably the State Security Court. The existence of such a court may well be inconsistent with the rule of law and the requirements of an emerging democracy. Another concern is the frequency with which cases may be diverted from the regular judicial process to the State Security Court that have no obvious security dimension. Rather, many of these cases may involve issues that are politically embarrassing to powerful people, and the State Security Court can more effectively suppress awkward details from publicly emerging. We can see no improvement in this regard over the past three years.

Two changes that have occurred, as reported to us, include that a regular judge now also sits on the State Security Court panel and that appeals can be made directly to the Court of Cassation. Both these changes seem designed to partially integrate the State Security Court into the judiciary, but much more needs to be done.

LEGITIMACY

The 2008 Assessment identified three practices that had a negative impact on the perception of law and the justice sector as legitimate and worthy of adherence: special courts, temporary laws, and gross inefficiencies. There continue to be some issues here. Special courts for the Police, General Intelligence Department (GID) intelligence service, Civil Defense, and the State Security Court continue to exist outside of the judiciary. It was reported to the Team that the limited grounds for appeal of sentences to the Court of Cassation have been expanded, again with an eye toward partial integration of these special courts into the regular judiciary. There should be some analysis as to whether there is a need for these special courts to exist at all versus integrating their caseloads into the general jurisdiction courts. If they continue, their function should be more integrated into the overall operation of the judiciary.

Temporary laws continue to be passed in large number by the executive branch of government. Parliament can and has passed, amended, or rejected a number of temporary laws, providing some check on this practice, but in many cases Parliament fails to do so in a timely manner. While the content of some of the temporary laws is no doubt meritorious, the manner in which the executive branch has passed temporary laws is both unconstitutional and inconsistent with best democratic practices.

Legitimacy of the law and justice sector has benefitted from ROLP-assisted efforts to reform the legal and regulatory framework:

- Amended Penal Code including changes related to enhancing chances of prosecution and increasing sanctions for crimes committed against women and children
- Grand Felonies Court (Criminal Court) Law amended by Parliament allowing the Criminal Court to speed up the trials of major felonies by assigning the prosecution of related minor crimes to lower courts; the law also allows the Criminal Court to transfer financial claims related to criminal sanctions to civil courts for faster issuance of judgment.
- Adoption by the MOJ of the temporary law on Public Prosecutors Law of 2010 to create a more independent and effective system of public prosecutors (subsequently defeated in Parliament)
- Adoption by the MOJ of the temporary law State's Cases Directorate Law of 2010 aimed to improve legal representation of the Government of Jordan
- Draft amendments to the Industry and Trade Law pending before Parliament, aimed to improve judicial efficiency and reduce backlogs by diverting a significant number of court cases filed involving fines for violating the regulations of ministries such as Industry and Trade, Agriculture, Labor and Health to be settled in the issuing ministry
- Regulations relating to the Judicial Council organization and functioning; use of legal research and law clerk support to the Cassation Court (the final appellate court); and organization and functioning of the Jordanian Judicial Institute

More effort is needed to strengthen the legal framework governing the justice sector including better definition of roles and responsibilities of justice sector stakeholder institutions and to streamline criminal and civil procedures e.g., reducing the unlimited number of appeals and delays that lawyers can utilize without penalty.

With USAID assistance the training of judges and non-judicial staff and the automation of elements of the judicial process over the past eight years has clearly been beneficial and created some greater efficiencies. The judicial sector requires further improvements in case processing

efficiency and delay reduction. Delay comes from many sources, including inefficient procedures, court staff and judges in need of further training, and lawyers who use delaying tactics without penalty. These factors impact on public confidence in the judicial process in Jordan. The execution of judgments is an area of particular concern, where cases won are then lost through the lack of execution. This applies to both civil and criminal verdicts. The execution of judgments is an area where much improvement can be made in reasonably short time although some legislative changes will be needed.

FAIRNESS

The 2008 Assessment noted four concerns in the area of fairness, as defined in the USAID's ROL Strategic Framework: access to justice for women, improper influence on judicial decisions by connected individuals (commonly referred to as 'telephone justice'), insufficiently trained and underpaid court staff, and the absence of legal aid/public defense. Despite some progress in improving access to the courts, impediments to justice for women in Jordan remain. Two positive developments are worth noting. First, the percentage of females attending the Judicial Institute of Jordan has soared from 4 to 58 percent currently, suggesting many more female justices will soon be on the bench. In addition, it was reported to us that harsher sentences for honor killings have been the norm in recent years.

The practice of senior judges interfering in cases, particularly criminal cases in which kin or friends are involved, remains common in Jordan. Automation and case management changes have made such conduct more difficult, however, this so-called telephone justice is broadly culturally accepted, and is difficult to change in a short timeframe.

While judges have received a significant rise in salaries since the 2008 report was released, the same cannot be said for court staff. Insufficiently trained and poorly paid court staff remains a problem. However, with ROLP's support, the MOJ has initiated a training department for court staff in the JIJ, so improvements should be realized.

Legal counsel is only guaranteed for the poor in Jordan in cases involving the death penalty or life imprisonment. The need for legal aid is significant, and there is a serious effort currently underway by NGOs in Jordan to push for legal aid. We believe this is a real target of opportunity for USAID assistance in the coming years.

CHECKS & BALANCES

The absence of checks and balances figured prominently in the 2008 assessment report in two

major categories: the lack of judicial independence and the lack of transparency and accountability within the judiciary.

The lack of judicial independence is of central significance, and, despite efforts of ROLP and other donors, there have been limited serious steps by Jordanians to promote the judiciary as an independent and co-equal branch of government. Although its performance and professionalism has improved through recent modernization efforts, the judiciary remains weak in relation to the executive branch of government. The judiciary still lacks administrative and financial independence from the MOJ; the ultimate selection of judges remains in the hands of the MOJ; the MOJ still controls the judicial inspection function, although there have been improvements in the automation of inspection data and regulations governing inspection; and there has been limited progress in creating a Constitutional Court and the current Court of Cassation lacks the power of judicial review.¹ The 2008 Assessment found generally low morale and self-confidence among judges, and the institutional impediments to the judiciary remain. A significant increase in judicial salaries and other benefits and ROLP supported training and modernization initiatives have improved judicial morale.

Recent decisions by the Judicial Council to create four administrative units within the Judicial Council are positive steps toward enhancing the capacity of the judiciary to self govern. We believe there are opportunities for USAID assistance in bolstering this administrative capacity.

The need for more transparency and accountability noted in the 2008 Assessment continue to be issues to confront. A temporary law developed with ROLP's support to make prosecution more independent from the judiciary was subsequently defeated in parliament. The composition of the Judicial Council remains unchanged. Most Judicial Council decisions are now posted online. In a recent round of evaluations, 100 percent of the judges were promoted, suggesting a lack of seriousness in judicial evaluation. Parliamentary and public oversight of the judiciary remains rudimentary, although, with ROLP's assistance, an increasing amount of MIZAN data is available at courthouse kiosks and through a web portal.

EFFECTIVE APPLICATION

The 2008 Assessment noted four main issues in the effective application of law. It found that Jordanian judges tend to have high case loads by comparative standards. We found one

¹ ROLP's current 2010-2011 work plan reflects plans to commence assistance to civil society and governmental interests in assessing the need for and the appropriate structure of a Constitutional Court.

explanation for this to be the procedural codes and case management practices which permit almost unlimited appeals and delays by lawyers without penalty. As a result, the number of scheduled hearings per individual case is relatively high. This practice has been found to be one of the most inefficient means of court calendaring and adding substantially to the cost of litigation. Also, some interviewees cited the fact that many judges have outside work such as teaching law, or otherwise do not put in full days worth of work on a regular basis. While high case loads can be mitigated by an effective system of mediation, this still has not caught on in Jordan. While mediation services developed with ROLP's and ABA ROLI's support have proven effective in achieving case settlements and user satisfaction, less than 1 percent of all cases go to mediation.

The enforcement of judgment process is not effective. We found a major flaw in the operation of the Jordanian justice system is the inadequacy of enforcement of judgments. This flaw contributes directly to making the judicial system ineffective and weak. Fifty thousand (50,000) criminal judgments in Amman are currently unenforced because a name or address was inadequately noted in the record. Civil enforcement is equally poor. Building on initial automation and pilot program work by ROLP in this area, we believe there is a significant opportunity for USAID to assist in upgrading the executions department, and that is a major recommendation we make.

There appears to be no change in the lack of timely access to new laws by judges, attorneys, and the public, although efforts are underway to improve publication of laws. With ROLP's assistance, serious efforts were made to amend the law to enhance the competency and independence of the prosecution, particularly through making prosecution a 12-year career path. This temporary law ROLP helped develop was reversed by Parliament, but ROLP is working to support development and adoption of an amended version.

CROSS-CUTTING ISSUES

There were five cross-cutting issues noted in the 2008 Assessment. They are

- Weak Legal Education
- Low Qualifications of Judges
- Poorly qualified court staff
- Low Public Awareness of Law
- Lack of Institutionalized Leadership

We found that there have been significant improvements in two areas: the qualifications of

judges and institutionalization within the Judicial Council. The “Ifad” program that appointed over 200 judges with questionable qualifications to the bench has been stopped. The ‘future judges’ program has been effective in promoting qualified new judges in Jordan. Curriculum enhancements at the JIJ have also improved the qualifications of judges. In addition, the recent decision to create four administrative bodies within the Judicial Council, which ROLP is poised to assist, contains the promise of enhancing institutionalized leadership and capacity within the judiciary to establish policy and administer the judicial system. Legal reform in Jordan is still too dependent on the personality of the Chief Justice and the Minister of Justice, but planned institutional enhancements to the Judicial Council should reduce the role of the Chief Justice and Minister of Justice in legal reform.

Jordan’s law schools have had no significant changes since the 2008 Assessment. We did find a great willingness at the University of Jordan law school to undertake significant reform and improvement if the resources were available. We were not able to assess whether the same level of enthusiasm is present at other law schools. But certainly this is an area of great need that appears ripe for investment by USAID. We speak more on this in the recommendations section.

Another opportunity ripe for investment concerns public awareness of and education in the law and broader rule of law issues. Research has shown that legal empowerment of citizens can be a cost-effective and sustainable means to promote and maintain the rule of law. ROLP has been working with civil society through assistance to the Ministry of Social Development / Registry of Societies to implement the Law on Societies 2008/09, engaging with civil society organizations to obtain their input on reform initiatives, and grants programs with NGOs with a focus on promoting access to justice for women and youth. We speak further in the recommendations section about opportunities for legal empowerment, legal aid, justice sector monitoring, and civic education, through the law schools, the bar association, and NGOs.

As noted, a great and persistent weakness of the judiciary is the poorly qualified court staff. With ROLP’s support, a significant effort to address this area has been started including designation of numerous court administrators in larger courts and development of a comprehensive, multi-stage training program for court administration staff. These efforts are in their early stages and the results should be evident over the next few years.

Status of Recommendations

The strategic approach in the 2008 Assessment was summarized (p. 27) as follows:

“In sum, a complete rule of law assistance program would include, in order of priority, activities that 1) enhance judicial performance to reduce delays and increase public confidence; 2) promote a more independent and empowered judiciary balanced by greater accountability and transparency; 3) strengthen the legal profession; and 4) expand access to justice, particularly for women. USAID assistance in each of these areas will only be successful if specific steps are taken by the GOJ.”

We believe this strategic approach is still warranted. The intervening three-plus years have suggested which steps are more likely to be achieved in the short term, and which are more likely to take time.

Most of USAID’s judicial activities in recent years have been geared toward achieving the first goal (enhance judicial performance to reduce delays and increase public confidence), trying to modernize and make more efficient the judicial sector. There is still more to be done. We believe the executions department represents a critical target of opportunity for USAID in the near term. The second goal (promote a more independent and empowered judiciary) has been blocked primarily by a lack of political will at the top echelons of the Government of Jordan (GOJ), and secondarily by a judicial leadership not keen on internal reform. Promoting judicial independence and empowerment should remain a key goal.

Reform is critical. We believe the stunning demands for reform in early 2011 throughout the Arab world (termed the *Arab Spring* by some) have further whetted the appetite for reforms in the justice sector by the users of the system. There has yet to be a concomitant commitment to reform by the top leaders in Jordan. As described further below, ROLP has made various attempts to promote development of reform leadership although success has been somewhat limited. The Team believes that given the recent changes in the political environment, there is an opportunity for USAID to support strategic interventions that hasten development of reform commitment in the GOJ and internally within the justice sector, and the judiciary in particular.

Goals three (Enhance the Legal Profession) and four (Expand Access to Justice and Awareness of the Rule of Law) from the 2008 Assessment represent achievable targets of opportunity in the near term given significant desire by those in legal education and promoting legal aid to move forward. Many of our recommendations seek to take advantage of these new opportunities.

Numerous specific recommendations were made in the 2008 Assessment. What follows is a brief synopsis of the status of each of those recommendations:

Goal 1: Enhance Judicial Performance to Reduce Delays and Increase Public Confidence

- Significant progress has been made in court automation with ROLP's key support. World Bank's *Doing Business 2011* report recognizes the progress: "Jordan introduced software featuring automated notification and case tracking."
- Significant progress has been made in the automation of a case management system, although its use by the Jordanian judiciary to achieve concrete improvements in performance and public confidence can be improved.
- Efforts have been made to enhance the capacity of court personnel. ROLP has assisted the recent development of a comprehensive court administration training program and its implementation has recently commenced. Numerous administrators were chosen for training in court administration, and knowledge and skills development is underway.
- There has been some reform to Procedural Codes with ROLP's support, although more changes are needed to reduce case delays and enhance effectiveness.
- Although specialized training programs have been developed, there has been only *ad hoc* specialization of judges as resistance to the reform has been encountered. But it appears with ROLP's support that there is growing awareness in the judiciary of the benefit of a program of systematic specialization and there may be opportunity to move specialization forward.
- A series of recommendations focused on enhanced mediation within the judicial process. Despite its demonstrated effectiveness, satisfaction of mediation users, and ROLP's efforts to promote mediation, it has not yet caught on in Jordan, and less than 1 percent of all cases go to mediation. The one place where its use is more common – Amman's First Instance Court – it works well. A systematic effort to promote the value and effectiveness of mediation, using concrete data on mediation's results, as well as legal reforms to mandate mediation as a first step in certain cases, is required to demarginalize mediation in Jordan.
- A temporary law ROLP helped the MOJ develop that would have made prosecution more autonomous from the regular judiciary was set aside by parliament shortly before the assessment team arrived. ROLP is working to support timely adoption of an amended version of the law.

Goal 2: Promote an Independent and Empowered Judiciary that is More Transparent and Accountable

- The administrative and technical capacity of the Judicial Council has taken a potentially significant step with the recent creation of four internal administrative bodies. The functioning and development of these bodies should be given strong focus and encouraged by

USAID.

- The exclusive composition of the Judicial Council by senior judges is unchanged.
- No Judges Association has been developed, although it is a recommendation in the current JUST strategy of the MOJ.
- With ROLP's assistance, the Judicial Institute of Jordan (JIJ) has improved significantly in recent years and has a strategy in place for further improvement.
- The preparatory and continuing education courses at the JIJ have been sustained and developed significantly.
- A full time corps of qualified instructors has not yet been created at the JIJ, although there is mixed opinion of its necessity.
- Transparency and accountability of court operations has improved somewhat with automation and other case and information management reforms supported by ROLP. For example, World Bank's *Doing Business 2011* report stated: "Jordan introduced software featuring online access to court records."
- The JIJ library has been reclassified and automated with ROLP's assistance, and includes both Adaleh and internet access. In the process, the JIJ librarian (who was not a change agent) was terminated, carrying positive symbolic value.
- The appointment, promotion, and discipline procedures of the Judicial Council remain below professional standard. The main significant improvement in recent years has been the elimination of the Ifad program for appointing unqualified judges. Promotion remains universal and discipline virtually non-existent. The full automation of the courts using MIZAN provides ample data on judges' work and an opportunity for developing more effective career systems. The evaluation of judges continues to lack transparency, although input data has been automated. In the current climate where there is strong public demand for meaningful government reform, improvements in these areas, along with judicial inspections, have the potential to achieve visible changes in the delivery of impartial justice for average citizens and reduce the use of "telephone justice" based on political and family connections. The result will be measurable improvement in public confidence in the justice sector and the Government of Jordan.

Goal 3: Enhance the Legal Profession

- Accreditation requirements for law schools have not changed in ways that enhance skills building. Moot court is a limited activity and there is no fifth year of practicum coursework.
- Nor have other steps been taken recently to institutionalize practical skills among the law faculties receiving USAID support. There is strong support in the law schools and among students and practitioners to develop practical skills in a systematic manner in law school.

- While women remain a distinct minority in the legal profession, the increase in women attending the JIJ has been astounding – to over 50 percent of the participants. In general, significant steps have been taken to build capacity and training among female legal professionals.
- The Jordan Bar Association remains a primarily political body that declines to participate in USAID activities. The assessment team interviewed the president of the Bar Association who expressed some willingness to engage in USAID supported activities, but we remain skeptical that this will actually happen any time soon.

Goal 4: Expand Access to Justice and Awareness of the Rule of Law

- There has been no systematic campaign of public awareness for the rule of law in Jordan. Rather, there have been piecemeal activities typically supported through the ROLP grants program although the grants program to date has been focused primarily on gender equality promotion. The media give scant attention to rule of law issues in Jordan, outside of the issue of electoral law, and there are few judicial watchdog groups that can mobilize significant public pressures for reform.
- The system of limited legal aid remains unchanged in Jordan, but there is an emerging movement by some civil society organizations to enhance legal aid for women and the indigent.
- Efforts to develop civil society capacity to promote access to justice and legal empowerment must follow a strategic, integrated approach to help assure development of effective and sustainable local capacity.

4. CHALLENGES TO JUSTICE SECTOR REFORM

Challenges to address the foregoing issues and strengthen the justice sector are:

Political will from the Royal Court and Executive Branch for a strong, co-equal, and fully independent judiciary is uneven and at times resistant to changes, even though public demand is strong. For example, under ROLP the team has found while public statements to support a strong independent judiciary have been made there is no evidence of real support by virtue of the absence of any action taken.

Frequent changes in justice sector leadership have disrupted reform continuity and undermine the establishment of a strategically-planned change process with short, medium, and long term goals. This is particularly true in the MOJ and other key governmental positions. For example, during the six years of USAID rule of law programs there have been seven ministers of justice and three chief justices. The MOJ defined a strategic plans (JUST) for years 2004-2006 and 2010-2012. The strategies are not consistently renewed or updated and ministry commitment to using the strategies as development and operational plans varies with the individual ministers.

Lack of assertive leadership in the judiciary in defining a way forward has resulted in low morale and confidence among judges. There is also a lack of leadership over and judicial behavioral changes necessary to implement fundamental reforms to achieve judicial independence.

The legal framework controlling the organization and operation of the justice sector at times impedes the efficient delivery of justice sector services. There currently are deficiencies in the organization and roles and responsibilities of justice sector institutions, judicial power, and roles and responsibilities of the legal community. There are also overly complex and inefficient procedures in different case types (e.g., criminal, civil, family). Present deficiencies in these areas undermine the legitimacy of the legal system, efficiency of the justice sector, and the protection of basic human rights.

Some significant legal and regulatory reforms to improve justice sector independence, efficiency, accountability, and protection of human rights have been supported by ROLP e.g., amendments to the Penal Code (to enhance sanctions for crimes against women and children), amendments to the Grand Felonies Court (Criminal Court) Law (allowing the Criminal Court to speed up the trials of major felonies by assigning the prosecution of related minor crimes to lower courts and

to transfer financial claims related to criminal sanctions to civil courts for faster issuance of judgment), a temporary Public Prosecutors Law of 2010 to create a more independent and effective system of public prosecutors (subsequently defeated in Parliament), a temporary State's Cases Directorate Law of 2010 (to improve legal representation of the Government of Jordan), amendments to the Industry and Trade Law pending before Parliament (to improve judicial efficiency and reduce backlogs by diverting a significant number of court cases filed involving fines for violating the regulations of ministries such as Industry and Trade, Agriculture, Labor and Health to be settled in the issuing ministry), and regulations relating to the Judicial Council organization and functioning; use of legal research and law clerk support to the Cassation Court (the final appellate court); and organization and functioning of the Jordanian Judicial Institute.

However, further reforms are needed in areas such as procedural code reforms to reduce endless, frivolous appeals and other delaying tactics by lawyers. As further detailed in Section 4.0, the Team recommends a comprehensive assessment of the justice sector's legal framework be undertaken and assistance provided for key legal reforms with involvement of key stakeholders.

Jordanian culture generally remains pessimistic about the chance for real change, with general disrespect for legal institutions and wide cultural acceptance of the way it has always been done.

Lack of enforcement of rules is a general Jordanian cultural problem and has specific application in the courts with judges unwilling to enforce procedural rules with attorneys and in general with enforcement of judgments.

Judges and prosecutors tend to not recognize the benefit of a greater role for support staff and the importance of customer service to the public's perceptions of the justice sector. Also, senior judges that hold substantial clout lack understanding of the importance of maximizing customer service at the courts. System users the Team spoke to expressed frustration at the lack of knowledge and customer service approach at many justice sector institutions. Efforts by ROLP to train court staff, establish computer kiosks at courts, and make court information available online have helped in this area. However, the training of non-judicial court staff is in its early phases. ROLP is beginning to support implementation of a 10 question court user feedback survey at courts which should increase courts' awareness of user opinions of the courts' services and also provide data for targeted, continuous improvement of service delivery.

There is limited media engagement and lack of civil society organizations focused on the rule of law and the justice sector to encourage external demand for judicial reform and improved services.

5. RECOMMENDATIONS FOR REFORM

The purpose of this section is to identify and recommend areas of opportunity for major reform which will have sustainable impact on essential areas of the rule of law. The opportunities and recommendations are organized according to the elements contained in the USAID Rule of Law Strategic Framework (2010)²: Order and Security, Legitimacy, Fairness, Checks and Balances, Equal Application of the Law, and Cross-cutting Issues. Under each element, we have presented recommendations regarding reform activities to strengthen conditions for justice reform and targeted technical activities, including continuation of priority activities of ROLP and new activities. The recommendations aim to address the key reform needs and challenges to reform identified in Sections 3 and 4.

The list of needed reforms in the justice sector is long. There is an increasing sense of urgency for action given the noted unrest in Jordan with government institutions overall and the current organization of the government. Strong and effective justice sector institutions are critical to moving forward. The focus on reforms that are outlined in this assessment build on the work that has been done to date, .e.g., technical support activities in areas of delay reduction, training, and use of technology. The recommended reforms also respond to the real need to focus on strategic and broader legal framework reforms, including better definition of the roles of the different justice sector institutions with a more independent judicial branch.

We note three major areas of focus as follows: (1) strengthening the conditions for long term justice reform by supporting policy reform dialogue, legal reform, and other strategic reform activities critical to strengthening the legitimacy and performance of the justice sector over the long term; (2) targeted technical and training activities, including continuity of ROLP technical activities and initiation of new initiatives that address key justice sector deficits and have strong prospects for sustainable results and impact within the project performance period; and (3) engagement with civil society in supporting and monitoring needed reforms in the justice sector.

5.1. Strengthen Conditions for Justice Reform

The team recommends that ROLP should support the launch of key initiatives designed to **improve political leadership and conditions for justice sector reform, strengthen the legal framework and structure of the justice sector institutions, and increase policy reform dialogue on rule of law issues**. While the full impact of such activities cannot be expected to

² http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/ROL_Strategic_Framework_Sept_08.pdf

occur within the project's performance period, the initiation of such activities is essential to chart a longer term course to achieve needed systemic reforms. The project can undertake measures to ensure the processes set in motion are sustainable after ROLP's support ends. Key activities should include:

Promote Policy Dialogue on Justice Reform. A primary approach to developing improved conditions for substantial reform is **initiation of stakeholder policy dialogues on the role of justice sector reform in Jordan's future**. Such dialogue should include justice personnel, members of legislative and Parliamentary committees, lawyers, CSOs, business and professional associations, and key members of the Jordanian reform movement. The objective would be to develop common visions around plans to achieve effective justice sector development. Such dialogue could include, for example, discussion about judicial independence, the appropriate use of special courts and temporary laws, and a greater role for the Judicial Council including in proposing legislative reform. The dialogue would also aim to promote understanding of the need and means to improve access to justice for women, strengthen conflict of interest and disciplinary processes, elevate the status of court staff, and enhance legal aid and public defense.

The dialogue can build on past efforts including the JUST Strategy developed by the MOJ with ROLP's support. The overall goal will be to create shared understanding of the critical reforms that need to be undertaken to improve the effectiveness and build confidence in the justice sector and specific approaches to achieve those reforms.

Key activities to be supported by ROLP or others would include:

- Facilitate dialogue, meetings, and workshops among key justice sector institutions
- Provide technical assistance to justice sector institutions for the development of strategic plans and agreements that clarify institutional roles and strengthen judicial independence
- Provision of comparative models and best practices for justice sector institutional roles, mandates and organic legislation

Support Legal Reform. Laws have two important functions in society. They embody moral norms and they have mandatory effect. For reforms to have a chance to prove their benefit, they need the full support of law: first the moral sanction that the law indicates what is right; second, the authority that comes from the law's mandatory effect. Over time, the law reinforces the new practices and make them enduring. Ultimately, for the Jordanian courts to change and adopt internationally recognized standards and true reform, the practices must be given mandatory

authority and be passed into law.

Building on legal and regulatory reforms supported by ROLP to date, further legal reform is another key area of focus to strengthen the legitimacy of the legal and justice systems and improve supporting conditions for a more effective justice sector. Legal reform support is needed for both **organizational** (e.g., judicial budgeting independence, enhancing the prosecution career path, improved judicial review of election matters), **procedural** (e.g., revise procedural codes, enhance sanctions against attorneys for delaying tactics), and other **legal framework reforms** (e.g., execution of judgments, notifications) through working committees of key stakeholders – including judges, lawyers, and professors to ensure buy-in – to strengthen legitimacy of the law, judicial independence, and increase justice sector access, performance, and efficiency.

Specific initiatives and activities can include:

- Secure the agreement of the judicial policy makers to be proactive in reviewing all laws pertaining to the judiciary and agree in an MOU to support them.
- An international expert and legal advisor should be sought for mid to long-term service. The expert should be familiar with international development, and a key interlocutor in the project’s efforts to change the laws and to represent the project on working groups engaged in legal revision. The project should organize other expert consultants to advise Jordanian counterparts on the development of specific revised laws and procedures.
- Assist in establishing a unit within a department of the Judicial Council dedicated to interaction with the Legislative Drafting Bureau, the MOJ and others responsible for judicial related legislation, including the annual court budget.
- Provide a procedure within the Judicial Council dedicated to reviewing all legislation relating to the judiciary; proposing, advocating or opposing proposed laws.
- Assist the Judicial Council in developing an annual “Legislative Package” as a proactive way to anticipate the annual session of the Parliament and to advocate for the judiciary’s agenda.
- Convene working groups of legal professionals to draft laws and procedures
- Provide comparative models and best practices on targeted laws and procedures
- Train in legal drafting or policy development to justice sector institutions and legal professionals
- Engage local organizations in developing or advocating for new laws or procedure

Increase Justice Sector Stakeholder Cooperation. There is a need to improve cooperation among the key justice sector stakeholder groups. Such an outcome can be promoted through joint initiatives with judges, court staff, attorneys, prosecutors, police, and other justice

stakeholders to improve cooperation and reduce delay tactics and use of improper influence on judicial decision making. For example, bench-bar committees focused on concrete issues like procedural code reform have proven effective in building cooperation among courts and attorneys. Inter-agency coordination committees in areas such as family law can also improve outcomes in cases that strongly influence the public's opinions of the law and justice system.

Develop Justice Sector Leadership. The Jordanian Judiciary, through the modernization processes over the last several years has made some impressive strides, however to a large extent, the leaders, champions, and implementers of change have been from development donor programs and some few individual personalities from within the justice system. Sustained and meaningful reform requires Ministry of Justice and Judicial Council leaders committed to reform, interested in seeking every opportunity to improve justice sector competencies and services and taking a clearly defined and visible leadership role.

Most management decisions to emergent problems are reactive. Most subordinate personnel and judges look to those higher in the organizational structure for clues, cues or outright instructions for their behavior and decisions. Since few, if any, proactive managers or leaders willing to take risks for decision making exist in the justice sector the safest course of behavior is to maintain the status quo. A final impediment to a strong management culture in the justice sector is the traditional lack of reliable performance information available to decision makers. This situation is much improved with the advent of computerization of the courts; the challenge remaining is to encourage use of the available information in formulating management decisions. Substantive reforms will require strong, risk-taking leaders seeking opportunities to make proactive information based management decisions.

Leadership and strategic planning are closely linked, and a court system needs both. Leaders know where an organization is, and where it should be going. Leaders think about and create dreams, purpose, and mission, and inspire others to act on and work toward the mission. The courts need leaders who understand and appreciate the importance of the current operations, and can strategically plan and carry out change initiatives. Lack of leadership and management training also plays a large part in these shortcomings. Leaders are more than managers; they are the prime movers, the agents for change and the fortress to guard against regression of hard-fought for reforms.

A common refrain among interviewees of the Team was that court staff and administrators have traditionally been poorly trained in their jobs and some simply did not know what to do when

confronted with a common situation which should have generated a routine response. This situation is improving as court staff training is rolled out with ROLP's support. Automation has also helped but has not solved the basic problem. Court staff are regular civil servants employed by the MOJ. Often low qualifications and competence of court staff negatively impact the administration of justice.

The Team recommends the following activities:

- Widespread leadership and management trainings of the top leaders of the judiciary should be delivered through conferences, seminars, workshops and “on-site” sessions with professional trainers, the curricula to include:
 - Leadership and Strategic Planning
 - Personnel and Organizational Development
 - Management of Employee Resources
 - Work Ethics and Professionalism at Work
 - Individual Consultations conducted with top leadership
- Inspired leadership training should take place from the top of the institutions through middle management including the Judicial Council and its departments as well as appropriate departments within the Ministry of Justice.

5.2 Targeted Technical and Training Activities to Improve Efficiency and Effectiveness of Justice Sector Institutions

5.2.1 Continuation of Current ROLP Activities

ROLP activities that should be continued and in some cases intensified include:

Support for organizational development of new Judicial Council administrative units. The ROLP is currently assisting the Judicial Council implement the “Judicial Council Administrative Units Regulation of 2010”. The regulation creates three units: the Judge’s Affairs Unit, the Training and Specialization Unit, and the Development and Planning Unit; secretariat services will also be developed to support the Judicial Council and office of the Chief Justice. The Judge’s Affairs Unit will be responsible for recordkeeping and administration of information concerning, and making recommendations to the Judicial Council on matters related to judicial appointments, promotions, salaries, transfers, secondments, discipline, leaves and other administrative matters related to judges.

A new automated database is being created to enhance the capacity of the unit to effectively manage judges' affairs. The Training and Specialization Unit will be comprised of two separate departments 1) Training and 2) Specialization. The Training Department will primarily be concerned with administrative functions and liaison with the Judicial Institute. The Specialization Department will be responsible for maintaining a database of information concerning all training opportunities (preparatory, CLE, local and international conferences, international training, etc.); managing all aspects of appointments of 1st Instance court judges as civil or criminal case specialists and making decisions and recommendations to the JC on appointments to training and international travel opportunities.

The Development and Planning Unit will compile and review court statistical reports and prepare information and reports on the performance of the judiciary. The Secretariat will provide management oversight of the units and other support needs of the Judicial Council and the Chief Justice. Preliminary organizational development of these units began in December 2010 and targets establishing the three units during 2011 with basic administrative capacity; however ROLP support to this activity should be ongoing for the life of the program.

Strong administrative capacity is critical to building confidence in the legislative and executive branches of government in the judiciary's ability to accept and responsibly manage additional independence (e.g. budget, human resources, strategic planning, etc.). Additionally, the administrative scope of work and authorities of the units are only loosely defined in the enabling law, thus leaving significant opportunity for the judiciary to use these units and create additional units to assume and play a greater role in proactive management of the judiciary.

Recommended initiative and activities include:

- The law and ROLP's current activities strengthen the *administrative* capacity of the judiciary; the next logical and critical role for ROLP should be to guide and assist in the strengthening of the *management* capacity of the judiciary.
- The ROLP grant to ACJLS will assist the Judicial Council and the judiciary recognize the importance of judicial and court performance monitoring and evaluation and incorporating statistical information into their decision processes. If the ACJLS goals are successful ROLP and/or ACJLS should follow up with institutionalization of judicial sector performance monitoring in the administrative units of the Judicial Council.
- Strengthen the Judicial Council's capacity to develop and promote legislation and establish lines of communication with the Legislative Bureau. The assessment team heard from several sources that the judiciary should be more involved in formulating, introducing, and

participating in dialogs with the parliament on legal framework amendments or new legislation affecting the justice sector. The first priority should be a new law on enforcement of judgments.

Support Specialization of Justice Officials. ROLP should continue support for specialized training programs for justice officials and provide further support to the specialization process. The “Public Prosecutor Law of 2010” created a centralized national jurisdiction for specific specialized case types. The law named embezzlement, sabotage, fraudulent bankruptcy, crimes committed against the commercial securities law, trafficking in persons law, money laundering, anti-trust, and trademarks as specialization types. While the temporary law was struck down by the parliament the need for training programs for these case type specializations still exists for hearing judges and prosecutors. ROLP is in the process of developing training programs in conjunction with the JIJ for these specializations. ROLP is working with the Judicial Council’s Specialization Department in these efforts.

Recommended initiative and activities include:

- Provide the specialization training programs to as many judges and prosecutors as possible and modify them if necessary and offer them as training opportunities for lawyers and law schools.
- Integrate the delivery and management of these courses into the Judicial Council’s training and specialization units and maintain attendance and performance measures for individual judges in their employment files in the judges’ affairs unit.
- Develop the administrative capacity of the Judicial Council’s training and specialization units related to these responsibilities.

Strengthening the administrative and legal research capacity of the Cassation Court

Technical Office. The “Cassation Court Technical Office Regulation of 2010” created an organizational framework for legal research services to the Court of Cassation. ROLP is assisting the Cassation Court implement this regulation with the goal to provide more timely and just Cassation Court decisions. The first steps of implementation have begun with the Judicial Council appointment of a Director of the Technical Office and four judges seconded to the research teams; they have been charged with a mandate to develop enabling administrative and legal procedures to provide the research services. This activity is showing early successes and interest by the Cassation court by their assignment of backlog cases to the technical office for review for administrative compliance prior to being assigned to a Cassation panel.

Recommended initiatives and activities include:

- Institutionalize whatever successes the technical office achieves during its establishment in 2011 in the following years to ensure that the office and its work products sustain the turnover of the office's director and staff judges.
- Conduct feasibility studies and programs to establish similar forms of legal research capabilities and law clerk assistance to judges at other appellate levels in the Jordanian legal system is also recommended.

Further institutionalization of training programs for court staff. Modern justice systems have discovered the value of having a competent, well trained support staff. Jordan has not yet come to this understanding. A key justice sector weakness noted by system users the Team interviewed is the quality and training of non-judicial court staff. Until very recently, they had received limited formal training. Since 2010, ROLP commenced support to the JIJ for development and implementation of a comprehensive training program for court administration staff (focused on Court Administrators and Chiefs of Diwan), including foundation, intermediate, and advanced level curriculums. Michigan State University (MSU) is coordinating with the ROLP for the trainees to receive MSU's Judicial Management Training Program certification; enhancing the credibility of the program.

Numerous staff have completed the foundation level training and the intermediate level training began in early 2011 with a total of 188 training hours to be provided to participants. The courses cover topics such as Advanced Case Flow Management, Visioning and Strategic Planning, Facilities Planning and Security, Leadership, Records Management, Budgeting, Building Effective Work Teams, Effective Communication, Performance Indicators, Strengthening the Relationship with the Executive, Leading Organizational Change, Coaching and Mentoring, Education, Training and Development and Critical Thinking.

The training program is well-designed and training participants' feedback has been highly positive so far. ROLP has been working with the JIJ to formally adopt the court administration training program within the institution as part of its training agenda.

The court administration training is in its early stages and support to the JIJ to complete its implementation should be continued as a priority activity. Consistent with ROLP's 2010-2011 work plan, specific activities should include:

- Continue support to JIJ in the delivery of Foundation, Intermediate, and Advanced Level training to court staff system wide (2011-2012)

- Provided targeted assistance to JIJ to institutionalize the training and ensure its sustainability e.g., through training of trainers (2012-2013)
- Monitor JIJ's efforts in training non-judicial staff and provided assistance as needed (2013)

Continued justice sector automation through a local institutional partner. There should be enhanced emphasis on training and use of automation as a tool to promote transparency and accountability. USAID funded rule of law programs have custom developed an Arabic language case management software (MIZAN) and automated all 74 courts throughout the Kingdom representing 100 percent of the national caseload. The application and data are hosted and managed from a state-of-the-art data center in Amman. USAID has invested approximately \$6.5 million in this result. The Ministry of Justice has developed their capacity to sustain the operations of the technology infrastructure of the national court automated systems. All persons interviewed by the assessment team cited the automation of the courts as a major factor in improving the efficiency of court operations, access to case information, and the perception that the courts are modern institutions providing greatly improved services.

While the scope of automation is broad there remain some court services that are not yet automated or require extension of functionalities to reach their full potential. Additionally, all justice systems that have computerized their courts and rely on the computer generated management information have a need to continually enhance their systems to keep pace with legal and process changes. The failure to do so causes the automated systems to slip into obsolescence and disuse when the computerized tools no longer meet the needs of the data entry or information users and risks the loss of the investment in computerization. While the MOJ has made good faith efforts to build their capacity to sustain operations and maintain relevance of the software systems they still require ongoing assistance with project management of systems support and development, occasional equipment purchases due to the current fiscal constraints of the Jordanian government, and financial support for application development of MIZAN enhancements and new applications. USAID should not allow their substantial investment in such an acclaimed and beneficial system to be wasted for lack of a fraction of its creation costs for ongoing support.

Recommended initiatives and activities include:

- Provide continuing technical services and financial support for as-needed application enhancements and new application development in support of reform interventions proposed in this report

Enhancing Case Management by Courts. The Ministry of Justice created the concept of Civil Case Management Departments (CMD) in 2001 within First Instance (general jurisdiction) courts. The goal of the CMD was to introduce a more proactive approach to preparing cases for trial and judgment. All new civil cases were routed to the CMD where judges who would not preside over the substantive hearings of the case attempted to notify all parties, gather and organize all pleadings from attorneys, prepare a complete case file ready for hearing, and determine the points of agreement and disagreement in cooperation with the attorneys. From 2004 to present USAID funded Rule of Law programs assisted the Ministry replicate CMDs in all First Instance courts, develop CMD practice guides and best practices, develop and conduct training programs for case management judges and trial judges, and conduct closed case surveys to assess the impact of the CMDs. However, the current practice of case management within the context of Case Management Departments is not effective. The authorization and definition of case management under Article 59 of the Civil Procedure Law does not provide sufficient authority necessary to support a fully proactive judge. Control of the pace of case preparation and trial remains, for the most part, with the attorneys, which means that real progress in reducing delay is almost impossible.

The ACJLS grant program is developing judicial and court performance indicators and targets. Once established the judicial council and hearing judges need to implement some effective means to manage cases to meet the established targets to reduce time to disposition and age of cases. When judicial council leadership identifies and recognizes delay issues within the courts through the ACJLS performance measurement tools and wants to implement some of ACJLS's proposed performance management principals they will need to have judicial case management strategies that judges can practice within the existing legal framework to manage cases toward targets. Additionally, they will require assistance to identify and draft the necessary legal framework amendment to empower judicial case management. Currently the ROLP has ceased all activities related to mediation at the request of a former minister of justice.

Recommended initiatives and activities include:

- Renew activities related to judicial case management with strategic planning and consensus building sessions with the Judicial Council, Ministry of Justice, the ACJLS, and the community of practicing lawyers.
- Assist the ACJLS define and promote judicial case management as a means to improve judicial and court performance as an end result of developing performance indicators and targets.
- Develop and conduct public awareness campaigns to promote the advantages to the rule of

law for case management.

- Develop and conduct training programs for attorneys to achieve understanding and buy-in for case management improvements.
- Assist Law schools to develop course content related to case management principles and practices.

Building on the modernization tools established under ROLP to date including through development of performance indicators and reducing judges' involvement in administrative tasks in the litigation and execution phases. ROLP has provided a grant to the Arab Council for Judicial and Legal Studies (ACJLS) to establish indicators and targets for monitoring the performance of the judiciary and use those standards to strengthen the management of the judiciary in Jordan.

In addition to continued training and technical assistance to strengthen case management, recommended initiative and activities include:

- Provide follow up grant funding to ACJLS to institutionalize judicial sector performance monitoring and information based management in the judiciary. The initial ACJLS goals are to identify preliminary monitoring indicators and to build judicial consensus or at least strengthen their confidence in the credibility of the data and the usefulness of information based management decisions.
- Follow up activities to promote an improved management culture. A continuing need will exist at the conclusion of this grant to encourage and manage change to establish a culture of management and proactive strategic thinking in the judiciary. This will have a significant critical impact to any future initiatives to introduce judicial case management at the executive and judicial levels of the judiciary.

Promoting customer service, access, and continuous improvement. Interviews with system users indicated many Jordanian courts, despite having improved their efficiency, continue to lack a customer service culture. ROLP should undertake efforts to promote vision and buy-in for the need to improve court service and accessibility and establish a culture and processes for continuous improvement. Specific activities could include:

- Conduct working groups with Judicial Council and MOJ officials and court leadership and staff to build support for implementing customer service and access improvements and to develop a plan for moving forward
- Provide enhanced customer service training to court staff
- Implement a regular (e.g., 10 question) court user survey in the courts to provide court

leadership and staff feedback data required to identify areas for improvement in court customer service, access, fairness, efficiency, and related areas

- Promote courts to establish internal committees focused on continuous improvement and enhancing service delivery
- Work with the Judicial Council and courts to use the survey results to design targeted improvement programs on a continuous basis
- Develop a database in MIZAN to track court user survey data system wide
- Support the Judicial Council to publish an annual report with the results of the court user survey and actions undertaken as a result of survey responses

Improving legal research services at the Court of Cassation. Since mid-2010, the ROLP has assisted the Judicial Council to implement the “Cassation Court Technical Office Regulation of 2010” which creates an organizational framework for legal research services to the Court of Cassation. The Technical Office recently moved to a new facility. The Chief Justice requested the ROLP’s support for appointing additional judges to positions in the Technical Office to provide legal research support services, to improve legal interpretation and judicial decision making. ROLP supported the Director of the Technical Office to perform a study trip to Cairo and prepare recommendations for developing and implementing legal research functions and is now supporting a Planning and Coordination Committee under Article 8 of the regulation.

Support going forward should include:

- Develop organizational plan, staffing plan, job descriptions and qualifications, work flows, recurring work tasks, and deliverables and schedules
- Assist with drafting internal instructions and regulations
- Secure approval by the Council (Article 9) of the internal regulations and the recommendations
- Implement and support startup and operations of technical office and legal research support to initially a pilot panel and then to other panels progressively
- Implement MIZAN for the Technical Office.
- Provide some furnishings; office machines; and regional legal research databases
- Support publication of a Quarterly Journal of Cassation Court Judgments
- Procure and install private-sector electronic legal research software, as available, for Jordanian and other regional laws and case precedent.
- Ongoing technical assistance to ensure the Technical Office provides effective legal research support to Jordanian judges

Strengthen the Work of the Office of Prosecutor and Attorney General. The Office of the Public Prosecutor is flawed by a lack of continuity in its prosecutorial ranks. Judges assigned to be public prosecutors are assigned for short-term periods up to two years. The appointment process is currently in the purview of the Judicial Council. The appointed prosecutors generally lack sufficient prosecutorial and investigation training or adequate experience to develop genuine specialized skills. Skill development is necessary in areas of criminal investigations, writing of indictments, specialized cases, cross-examination and prosecuting human rights violations, among others.

The number of prosecutors is woefully inadequate to accomplish the tasks at hand. The Attorney General's office is charged with the responsibility of pursuing the enforcement of criminal court judgments and orders. The team has been informed that there are close to 50,000 such cases unresolved in Amman alone.

The temporary "Public Prosecutor Law of 2010" to reform and streamline the Public Prosecutors Office and offer a career path was recently rejected by the Parliament. Despite the rejection of the law there are opportunities to improve processes and procedures. These include opportunities to: enhance the automated systems to enable better case management and access to management information; open and strengthen lines of communication and information between the attorneys general and prosecutors and the police and prosecutors; improve knowledge and skills of judicial and non-judicial staff; discover better prosecutor office models and develop and propose legal framework amendments supporting reform of the Public Prosecutor Office.

There is an opportunity for immediate support for some reforms within the existing legal framework in the person of the Amman Attorney General while parallel support and encouragement for new legislation replacing the temporary law can be developed. Support for developing a more effective, specialized and well-trained prosecution department will enhance the independence and effectiveness of prosecutors. This, in turn, will help to protect defendants' rights and support the principles of fairness and effectiveness of the rule of law in Jordan.

Recommended interventions with immediate impact include:

- Develop and conduct case type specialization training programs in coordination with the Judicial Institute to improve knowledge, skills and professionalism of prosecutors.
- Introduce and implement criminal investigative and forensic protocols consistent with international standards with the help from international experts.
- Develop criminal investigative and forensic manuals; provide related training to improve

results and consistency.

- Strengthen internal and interagency communications and information between the attorney generals and prosecutors and police and prosecutors.
- Enhance the Attorney General MIZAN automated system to improve case management of prosecution cases, access to management information by attorney generals to activities of the prosecutors, and the transfer of cases between prosecutors office and the courts and criminal execution departments.
- Develop a “Caseload Reduction Program” in cooperation with the Execution Departments to reduce the number of un-enforced criminal judgments and judicial orders.
- Strengthen public awareness of the public prosecutor’s office roles and responsibilities and processes.
- Extend and enhance the functionality of the MIZAN Attorney General Application Module. The attorney general offices reported to the assessment team that they desire greater capacity to monitor prosecution cases and performance of prosecutors throughout the country. An enhanced Attorney General application would facilitate access to case and performance information for improved oversight of prosecutors and would improve the communications and transfer of information and data between the office of the prosecutor to the courts and to the criminal execution of judgment departments.

Interventions with longer-term impact include:

- Sending experts to Jordan to help in drafting a stronger prosecution law for consideration by Parliament. The experts could help in presenting various other international models and best practices for a separate prosecution function and to assist the law drafting committee in reviewing the prosecution law. The passage of the prosecution law is the first crucial step in being able to create an independent prosecution function.
- Assist the Ministry of Justice to implement a revised Public Prosecutor Law, if and when it passes.
- Assist Judicial Council to internally establish prosecution as a serious career path rather than a short-term rotation for judges.

5.2.2 Recommended New Activity Areas

New areas of reform focus by ROLP or others should target areas where there is identified need and prospects for success are favorable due to expressions of support from relevant counterparts. Organized by the themes in the USAID Rule of Law Strategic Framework, potential areas of focus include:

Order and Security

The USAID Rule of Law Strategic Framework provides “Rule of law cannot flourish in crime-ridden environments or where public order breaks down and citizens fear for their safety. The executive branch has immediate responsibility for order and security, but the judiciary has an important role as well in protecting rights and providing for the peaceful resolution of disputes.” The Team identified the following feasible and appropriate activities to address the weaknesses previously identified in the area of order and security.

Develop a program to help reduce excessive pre-trial detention as a means to reduce violations of basic human rights and reduce delay in criminal case processing. Potential areas for assistance include creation of regional multi-agency task forces dedicated to reducing pre-trial detention times, developing tickler systems in the courts to alert judges of excessive detention situations, developing procedures for courts and prosecutors to review cases of individuals that have been detained for excessive periods, making pre-trial detention related case data public to support media and civil society monitoring, and developing sustainable NGO-led programs to monitor pre-trial detention and to provide legal assistance to detainees.

Support implementation of human rights reforms in the area of juvenile justice. The laws relating to Juvenile Justice in Jordan cause great concern; they are beset with inefficiency and unfairness. Laws should be designed first and foremost to protect human rights and civil liberties. The laws pertaining to the investigation, detention, hearings, incarceration and lack of rehabilitation programs for children are in serious need of revision. In Jordan, children as young as seven years of age can be prosecuted as adults under the current law.

This weakness of the justice sector was touched upon by several interviewees and was highlighted by a visit to the Juvenile Court in Amman. Judge Iman Qatarneh spoke passionately about the need for reform, particularly in the area of rehabilitation. The emphasis in Jordan is on punishment and few resources are available to provide for rehabilitation. The judges do not have legal authority for the needed interventions.

The laws addressing juvenile justice and the practical application of those laws in Jordan exposes children to physiological and, in some cases, physical harm. The “best interests of the child” is not generally considered under the law and the numbers in detention at the pre-adjudication stage threaten the concept of fairness and equal justice. The system may be imposing long-term harm on a large number of the upcoming generation.

Recognizing this, the Ministry of Social Development and Women Affairs (MoSD) brought together key players in the juvenile justice community on January 31, 2011. The MoSD seems committed to reform of juvenile justice in Jordan. Judged by their successes with recent initiatives, they seem to be a willing partner in reform.

The MoSD has identified a number of challenges to reform. A major finding addresses the perceived cause of the relatively recent changes of social behavior of children –changes of social and economic conditions. Challenges that can be readily addressed abound, however. There is a high resistance to change within the juvenile justice system, which encompasses many players and several disciplines. There are a high percentage of untrained or under-trained participants who serve with low government salaries. There are limited financial resources to provide interventions, which leads to a lack of motivation.

The MoSD has taken a number of initiatives some of which are embraced in a proposed new law, which is now under consideration. If it passes as proposed, the law will provide a huge step forward for juvenile justice in the Kingdom of Jordan, *provided* there is the impetus and the resources to implement it. The MoSD has also adopted a Juvenile Delinquent’s Strategy 2011-2013 with a vision of participatory approach by the major players. It has also attempted to standardize the process and procedures for juvenile cases. The ministry’s model is “Family-Like Care” in Juvenile Centers.

In addition to the MoSD, the opportunities to reform juvenile justice include reform in the following institutions:

- CSOs
- Police
- Courts
- Juvenile Offices
- Probation Officers
- Detention Centers

CSOs have supported Juvenile Justice with training programs and other technical support. It appears, however, that there is minimal coordination of the efforts and no real oversight. Especially in light of the proposed new law, it is imperative that the diverse efforts be brought under a coordinating umbrella.

The Penal Reform Project (PRI) has supported the efforts of the MoSD but lacks the resources for a more robust effort. The regional director, Taghreed Jaber Alqadi oversees reform issues throughout the entire Middle East and North Africa which limits the Jordanian effort since the PRI resources are spread throughout the region.

Ms Alqadi pointed out that there is resistance among judges to the far-reaching reforms necessary and that training and change management is required to change the mentality and the mind-set of many. Studies and practices in Europe and the US need to be examined and showcased in an effort to modify the local legal culture.

The team was told that the juvenile detention facilities, are physically appropriate and the food is reasonable. The problems lie in the lack of services (e.g. rehabilitation, counseling, legal, etc.) and resources available. It should be mentioned that it was reported that there are occasional cases of maltreatment, which, should be monitored and addressed on a systematic basis.

The Ministry of Social Development and Women has advanced a new law that will essentially revolutionize the Juvenile Justice System in Jordan, if passed and properly implemented. Under the new law the age of accountability will rise from seven to twelve years and adds community service and alternatives to incarceration to the options available to judges. This includes diversion. It establishes specialized police, courts and prosecutors for juvenile offenders and introduces the concept of reconciliation.

A major, coordinated effort should be undertaken by ROLP and others to lobby for the passage of this law and implement targeted reforms:

- Conduct public information forums to educate the community on merits of the proposed law and the long-term cost effectiveness.
- Engage journalists and the media in juvenile justice issues.
- Support the establishment of specialized judges, police, social workers etc.
- Develop educational programs that begin to develop the concept of “best interests of the child”.
- Train police to be specialists in areas of juvenile justice, particularly in the concepts of reconciliation and diversion.
- Conduct a study and gather empirical data supporting the social benefits and the cost benefits of the major (and controversial) reform.
- Support the institutionalization of mandatory legal aid for children starting at the police phase.

- Support a study of juvenile facilities including overcrowding, environment and maltreatment. (6,800 juveniles currently in detention).
- Establish and implement measures for pre-trial release of juveniles (of 6,800 detainees, 500 are convicted) and separation of facilities for post and pre-detention juveniles.
- Support efforts to bring rehabilitation into the detention centers.
- Establish protocol and support for re-integration of juveniles back into society.
- Study needs of repeat offenders and ways to avoid recidivism.
- Analyze mental health issues as they relate to Juvenile offenders; conduct training for judges and social workers in understanding and dealing with juvenile offenders.
- Support organized inspections of the juvenile detention facilities by judges who handle juvenile cases (group day trips with presentations by detention administrators, lunch etc.).
- Support the efforts to train specialized police in reconciliation and diversion solving issues before reaching court.
- Develop mechanisms to provide for non-custodial sentences (perhaps through grant process).
- Support the coordination of players by developing an information system with harmonized databases (as proposed by MoSD).
- Study causes of juvenile offender behavior and violence and recommend programs to modify anti-social juvenile conduct.
- Prepare to assist in the implementation of the range of issues that will be presented by the passage of the new law; develop tools to facilitate implementation.
- Organize numerous efforts under one coordinating body under a GOJ body such as the MoSD.

Legitimacy

The Rule of Law Strategic Framework states “Laws are legitimate when they represent societal consensus. Legitimacy addresses both the substance of the law and the process by which it is developed. This process must be open and democratic.” Above we have described the need for legal and regulatory reforms to promote justice sector legitimacy and efficiency. Additional areas that will enhance the legitimacy of the justice sector in the eyes of the public are as follows.

Promote use of data driven management throughout justice sector institutions. Activities can include publication of data from the automated case management system (*MIZAN*) to increase judicial transparency and accountability and enhance public support for the work of the justice sector, greater use of program budgeting, and cost-benefit analysis in resource allocations

Develop judge and court manager organizations dedicated to improve professionalism among judges and court managers, establish continuing education standards, advocate for appropriate salaries and benefits for judges and court personnel, and generally enhance the status of judges and court personnel in Jordan. Activities can include support to strategic planning sessions to create a mission statement and a strategic plan; support for organizational development including membership meetings, staffing, job descriptions, staff hiring and training, and drafting of internal regulations, policies, and procedures; and providing technical assistance to the organization(s) in carrying out their mandates and programs.

Checks and Balances

Strengthen Judicial Inspections. There is a need to improve the integrity of the judicial system by reducing conflicts of interest, improper influence on judges, and lack of transparency by improving use of codes of ethics, clarifying conflict laws, improving judicial inspections systems, engaging civil society in judicial watchdog activities, and increasing engagement with the media.

The Inspections Directorate of the Ministry of Justice and the judicial conduct complaints processes of the Judicial Council are key functions ensuring competent judges and public perception of the quality and fairness of the justice sector. The current regulations and procedures related to judicial inspections do not effectively, efficiently, or transparently evaluate judicial performance or capability, investigate complaints, identify needs for professional development, or provide adequate information for judicial promotions and assignments. The current procedure casts a shadow over the competency of judges and therefore public trust. Further, it does not provide a sufficient level of transparency and accountability. Regulatory and legal frameworks need revisions. To promote judicial independence the evaluation and inspection functions need to be transferred to the judiciary from the Ministry of Justice. Evaluation criteria need to be expanded beyond the current limited scope of administrative compliance. The institutional capacity of the evaluation and inspection entity needs to be strengthened with additional staff, reorganization, training, and process re-engineering and automated tools.

Regulation 47, dated July 17, 2005, establishes the Inspection Directorate. The regulation requires that all first instance court judges, execution judges, appeals court judges, attorneys general, and prosecuting judges be evaluated at least once a year; an impossibility at this time using the current processes and procedures. Evaluation criteria need to be expanded to include items relating to the judges courtroom behavior such as starting court on time, being prepared for

each case, control of the courtroom during hearings, treatment of litigants and lawyers with respect, appearing neutral in all his comments, conducting proceedings in the courtroom in a transparent manner. Criteria related to judge's ethical behavior should also be included, for example, does the judge project an image of favoritism for some lawyers over others, is the judge demeaning to women or minorities (even if unintentionally), does the judge engage in inappropriate *ex-parte* communications etc. CSO 'watch-dog' input into the evaluation process could potentially be an important tool. Many of these points were made in a report prepared by the prior USAID MASAQ - Rule of Law Project. Several of the observations and recommendations are still valid and are incorporated in the Team's observations and recommendations.

The inspections directorate currently resides within the Ministry of Justice; it should be moved to a judicial department of the Judicial Council. While amending the law might be difficult at this time, a review should be part of a comprehensive review of all laws pertaining to the independence of the judiciary. However, at this time the physical operations can be moved to the Judicial Council and the Ministry of Justice informed of the outcome of the directorate's work *through* the Judicial Council. This would, to a large degree, enhance the perception of independence.

The inspection of judges theoretically should have large impact on the promotion of judges as well. Judges promoted to higher courts or those appointed as chief judges in the first instance and appellate courts are promoted by seniority with little or no account of their judicial administrative or adjudicative record as provided by the directorate. There is also a three-year review required before a judicial appointment is made permanent. This makes the integrity of the inspection process even more important to the public. However, virtually all of the temporary appointments are made permanent which suggests that the evaluations are not considered seriously or that they are so superficially done, given the volume of work and the personnel available to complete them, that they are not considered compelling.

The same inspectors are also required to inspect the functioning of the courts. They are charged with inspecting various courts and reporting on the courts' physical, organizational, and administrative functioning. In addition, judicial members of the directorate are required to perform a number of mundane and clerical duties that can be performed as effectively by clerical personnel. The directorate functions with very limited staff so that the number of clerical workers to assist the judges is limited.

In short, the Directorate of Inspections has an enormous mandate. What is expected of it has proved to be well beyond its capacity, structurally and organizationally. In theory, it is a good plan but without proper resources it cannot function as required. The recent increase in the number of judges to more than 800 has made the directorate's mandate to inspect judges once a year untenable. As a result, the process has lost its credibility among judges, lawyers and the public resulting in the diminution of public confidence in the judiciary.

There are a number of challenges to reforming the system. Foremost among them is bringing together and building consensus among the assortment of necessary players required to provide a viable alternative within the existing framework or amended framework. A true team effort of the Judicial Council and its departments, chief justices of all of the courts, lawyers, and civil society entities is required. Reform in this area is urgent and will positively affect the independence and quality of the judiciary of Jordan.

Recommended initiatives and activities include:

- Advocate for physically moving the Directorate of Inspections from the premises of the Ministry of Justice to the Judicial Council offices. The Judicial Council should do this administratively.
- Include in the directorate's protocol a system of reporting to the Ministry of Justice through the Judicial Council and not directly.
- Establish an inspection protocol which will provide a more comprehensive review of judges activities, conduct and suitability for service which should include:
 - Involve the chief judges of the courts in the inspection protocol with the support of the appropriate department of the Judicial Council.
 - Establish a procedure requiring each chief judge to be accountable to the judicial council and to be prepared, once a year, to assess and report on the judges judicial reputation for starting court on time, being prepared for each case, control of the courtroom during hearings, respect shown to litigants and lawyers, appearing neutral in all comments, conducting proceedings in a transparent manner, the judge's ethical behavior, minor ethical breaches, case processing and backlog reduction efforts, etc.
 - Protocol should include standardized forms for a chief judge's assessment of each judge in the chief judge's jurisdiction.
 - Involve civil society/good government groups in the assessment process by inviting "court watchers" to independently monitor court operations on a regular basis.
 - Assist in establishing "court watcher" procedures and etiquette for formalized court monitoring.

- Assist court monitors in developing standardized monitoring and reporting.
- Develop procedures for communication with chief judges and representatives of the Judicial Council.
- Support the directorate and Judicial Council in securing adequate staff to provide meaningful evaluations of all of the judges of the Kingdom on a yearly basis with on-time delivery of results.
- Conduct organizational diagnostic analysis of the entire inspectorate operations and inform the directorate of an array of challenges and tasks designed to streamline and modernize operations and develop organizational strategies.
- Prepare a strategic human resources plan aligning strategy with operations
- Devise practices whereby the judge members of the directorate conduct the portions of the inspections that pertain to legal matters and judgments and non-judicial staff perform the inspection of the clerical tasks that do not require judicial training.
- Support leadership training for senior managers as well as clerical and IT staff; training in communications for senior managers, chief judges, and the bar, and assuring transparency of the process.
- After the establishment of streamlined operations with standardized forms and inspection criteria, automation should be updated and adequate software, hardware and training provided.
- Lawyer input should be studied and adopted if procedures are found which are fair to the judge (avoiding political considerations) and protect the lawyer as well.

Strengthen accountability and transparency of Judicial Council operations. The Judicial Council consists only of judges, and currently consists of senior judges, many of whom are resistant to internal reform. This restricted composition limits the transparency of its operations. There are currently few transparent procedures, reporting, or accountability for decisions made by the Judicial Council or its president. The lack of transparency in the decision-making procedures of the Judicial Council enables the president of the council to have a great deal of power in influencing all decisions under the Judicial Council's authority. Undertaking such reform becomes virtually impossible if the president opposes internal reform. Lack of transparency is a particular problem related to the current judicial evaluation process and decision generated from the process. The absence of a practical means for the public to oversee the judiciary on all levels further undermines public confidence in its capacity to act independently or impartially.

Recommendations include:

- Advocate for modifying the membership of the Judicial Council to include representation from the ranks of lawyers, law professors, and other relevant groups can improve the transparency and enhance public perception of the independence of the judiciary.
- Analyze the decision making process of the Judicial Council and support a program to streamline and enhance the process making it more open and transparent.
- Strengthen transparency mechanisms in all Judicial Council meetings, discussions, and decisions.
- The judicial inspection and evaluation process should be more transparent and protocol should be developed to establish a more transparent process.
- Encourage CSOs, media, and other interested parties to observe and report on Judicial Council proceedings.

Promote merit-based personnel systems to promote quality and professional conduct by justice sector officials, with a focus on the judiciary. Through a working committee(s) dedicated to enhancing systems of judicial and non-judicial personnel evaluations, promotion, and discipline including:

- Build support among leadership for effective implementation of meaningful merit-based system reforms
- Support design of system improvements that integrate performance standards already under development and that enhance utilization of data automatically generated by the MIZAN system
- Circulate draft design of system reforms for comment from judges, non-judicial staff, and other stakeholders to ensure reforms reflect wide input and to increase buy-in
- Assist in development of transparent and accountable procedures for disciplinary processes and decision making
- Support preparation of internal regulations, protocols, and manuals for conducting evaluations, promotions, and discipline based on international best practices;
- Provide technical assistance for the adjustment of job descriptions as needed and training of assigned officials to carry out evaluations, promotions, and discipline procedures
- Assist in development and implementation of a communications and change management campaign to promote conditions for success of the personnel system reforms
- Support publication of annual reports on evaluation, promotion, and discipline to enhance transparency and accountability; and engagement of the media and NGOs to monitor the judiciary's performance in these areas.

Build consensus for and assist in the creation of a Constitutional Court or other alternative to promote uniformity of judicial decision making. A Constitutional Court or other high appellate mechanism is needed in Jordan to improve uniformity of legal interpretation and judicial decision making. The 1952 Constitution of Jordan provides for three powers of government, and requires that all judgments of the judicial power be pronounced in the name of the King. The Law on the Independence of the Judiciary, 2001 and the Law on the Establishment of the Regular Courts, 2001, are the two fundamental laws affecting the justice system. There are additional laws that regulate Special Courts and Religious Courts, *Shari'a* courts, and the Tribunals of Other Religious Communities.

The jurisdiction of the conciliation courts involves small civil claims, and small fines with a maximum prison sentence of one year in criminal cases. The courts of first instance exercise general jurisdiction over all civil and criminal matters not covered by the conciliation courts, and exercise limited appellate jurisdiction over certain conciliation court judgments. Depending upon the type of case, a single judge, two judges, or a panel of three judges hears cases in the court of first instance.

The three courts of appeals, which are located in Amman, Irbid, and Ma'an, hear appeals by a panel of three judges. The Court of Cassation, situated in Amman, hears appeals from the courts of appeals and other courts under specific conditions by a panel of five judges. There are also the *Shari'a* Courts and Religious Tribunals with specialized jurisdiction under the law.

Consistent with legal reforms adopted by the Ottoman Empire in the 19th century, Jordan's legal system largely follows the French civil code tradition. Given British tutelage of Jordan during the Mandate period following World War I, Jordan's legal system also contains elements of British common law, particularly with regards to civil and criminal procedures. The system is not one of *stare decisis*. There is no tradition of precedent and no judge or court in the Kingdom is bound to follow the decision of another court or judge even if the decision is that of a higher court – including the Court of Cassation.

Debate abounds in Jordan regarding the necessity of a Constitutional Court. During the Team's interview and consultation process a majority of lawyers and non-lawyers alike tended to support the establishment of a Constitutional Court which would provide the public and private sectors with a forum to decide constitutional questions – decisions that could nullify the provisions of governmental action whether it be a statute rule or other state action. Those opposed – among them a prominent lawyer and the a number of members of the Judicial Council – opine that any

judge at any stage of the regular court process can address the issue of constitutionality, provided it is properly and timely raised.

The current system provides for judges of first instance courts, courts of appeal as well as the Court of Cassation to rule on properly and timely raised constitutional issues. Accordingly, even within the Court of Cassation, there may be different decisions by different panels on the same issues. Since there is no tradition of precedent, lower courts and panels within the same court sometimes issue conflicting decisions. Since a court cannot nullify a law there is no guidance for citizens or lawyers on very important constitutional issues. The perception and reality is that there is no finality. This is corrosive to the trust of the public in the rule of law. Our interviews have shown that its fairness and effective application is legitimately questioned.

A contributing factor in increasing skepticism, particularly by lawyers, is the quality of decisions that address constitutional issues. There are few specialists in constitutional law among the Jordanian judiciary. The Court of Cassation, due to the volume of cases, has a large number of judges and a number of panels. The chances of an erudite decision on constitutional issues are slim.

The discussions with interviewees were somewhat circular since there was no common definition for a constitutional court and the concept is blurred without it. There is a need for a focused dialogue to define a constitutional court's potential jurisdiction and define those with access. A contributing factor to the cynicism and distrust is an executive branch tribunal that ostensibly examines laws and decides on their constitutionality. This body examines individual laws but not as "matters in controversy" addressing actual grievances and providing remedies and redress. Instead of vouchsafing individual rights, as an executive branch entity, it compromises judicial independence and degrades confidence in the rule of law.

The uncertainty of resolving constitutional issues destabilizes the trust that citizens have in their judicial system and in the rule of law. It is fundamental to the rule of law and some high level judicial forum must have the last word on primary issues. This objective of this initiative is to expand and guarantee access to the judicial system in Jordan. Without a trusted forum of last resort on the Constitution, access to justice is at best limited and at worst denied.

The subject of a constitutional court will undoubtedly generate spirited debate and controversy. It is the Team's recommendation, however, that the public dialogue begins expeditiously. The entire Middle East region is awash with insistence for meaningful reform. What reform can be

more meaningful than one that guarantees the citizens of a democracy their rights under their most fundamental of laws—their Constitution?

The Team is not necessarily advocating for a constitutional court. We advocate for an institutionalized method of resolving constitutional issues, whether within the current court system or through a new court structure if certain changes cannot be made within the current court system. There are a number of models around the world and those constitutional courts have varying jurisdictions, some with limited or no access by private citizens. The call is for dialogue and a commitment to address this important concern.

The major challenge to this initiative will be getting support from decision makers to allow the issue to go to public debate. The chief justice and several members of the Judicial Council may oppose open debate. The resistance may be mitigated by the prospect that the reform may lie within the Court of Cassation, if it were restructured.

Specific recommendations include:

- Form a task force including lawyers, judges, MOJ, journalists, civil society and other interested persons to conduct a study of the various methods used to resolve constitutional issues in several regions of the world.
- Provide a comparative analysis with positive and negative aspects of various types of constitutional courts.
- Gather support from top policy and decision makers.
- Organize and conduct a number of informational forums throughout the Kingdom to present the findings and initiate public dialogue with international experts on constitutional courts.
- Focus media attention on the issue and support a media campaign to stimulate discussion.
- Collate and synthesize the comments at public forums and workshops.
- Obtain policy maker consensus on the remedy; type of court? Jurisdiction? Etc.
- Assist in developing the legal framework necessary to implement the remedy.
- Support the new court, or restructured Court of Cassation, if approved, e.g., organization, training, and automation
- Train current judges on constitutional law issues to improve quality and uniformity of decisions invoking constitutional issues.

Strengthen the Opinion and Legislative Bureau of the Prime Ministry through technical assistance for organizational development and training on legislative drafting, rendering of legal opinions, and providing counsel and various legal services to the members and committees of the

Parliament. Activities could include:

Build the Administrative capacity of the OLB.

- Review and revise the organizational structure and position qualifications.
- Develop and provide training to OLB researchers and legal counsel on methodologies and knowledge related to (for example):
 - Drafting bills, constitutional amendments, resolutions, and proposed amendments
 - Rendering legal opinions on issues of constitutionality, statutory interpretation, and other legal matters
 - Providing counsel and various legal services to the members and committees of the Parliament and representing Parliament in litigation
 - Preparing contracts for services to the Parliament
 - Preparing amended bills for printing, and compilation and indexing of statutes and codes.
 - Preparing an index of pending bills and tables identifying sections of existing law affected by pending measures.
 - Maintaining computer information and Internet site for public information on legislation.
 - Participating in developing legislations, preparing study papers and research, holding seminars and lectures
 - Providing legal opinions in issues presented to the LOB directly by ministries and other governmental bodies and local authorities
 - Drafting decisions and other regulatory instructions issued by the Cabinet
 - Any other responsibilities that are related to legislation or legal issues.
- Upgrade OLB library facility including:
 - Classification, cataloguing, indexing and automation of OLB library facility
 - Procure relevant books, periodicals and other legal or research tools
- Perform an assessment of the computerized capacity of the OLB and develop recommendations (including requests to USAID for funding) for enhancement.

Provide technical assistance and training to build capacity of judges and managers to assume the administrative, budgeting, and policy making responsibilities relating to having an independent judicial branch. Linked to efforts to develop the Judicial Council's management and administrative capacities in line with international best practice, support will be required to prepare judges and non-judicial staff to effectively fulfill any new functions that will be required of court level personnel. Without such capacity development, the Judicial Council will find it difficult to carry out its new policy making, management, and administrative mandates effectively. Training and technical assistance for court personnel will be driven by the reforms at the Judicial Council and will generally include:

- Program-based budget preparation
- Management and administrative reporting
- New statistical and recordkeeping requirements
- Personnel policy management and reporting e.g., performance evaluation, promotions
- Facilities management and property inventory

Promote Judicial Review of Elections Matters. It is axiomatic to say that the cornerstone of any democracy is the popular election and the integrity of the electoral process. It is the expression of the collective will. Rigged electoral laws undermine integrity of the democracy and a society's judicial system. One distinguishing characteristic of democracies is that law is the means by which the collective will of the people is expressed. An end result of the political process is laws that determine the allocation of public resources, empower public officials to act on behalf of society, and set norms of acceptable and prohibited behavior. If laws are ultimately meaningless due to inadequate adjudication, enforcement, or compliance, then the purpose of holding elections and forming representative bodies to enact those laws fails to be realized.

In most countries, the constitution is the highest-level expression of this process. The constitution reflects the collective will of the people with respect to the organization and powers of their government and enshrines the basic human and civil rights that the people want protected. The first priority is democratic legal authority that guarantees order and security and gives legitimacy to the governing authority. This is followed by the guarantee of rights and the democratic process, providing checks and balances, as well as fairness. The justice system is the last element that provides for effective application of law.

The Election Law of Jordan is antiquated by modern standards and has been criticized by many of the Team's interviewees. It is seen as unfair and not representative. The saying "one-man-one-vote" is purely lip service and is questionably applied. By the method of political gerrymandering, an unfair manipulation of electoral areas for political advantage occurs. A large number of people in urban areas, including Amman, are underrepresented by disproportionate representation. The result is a Parliament that is weighted heavily in favor of East Bank Jordanians and tribal populations at the political expense of others.

The National Centre for Human Rights of Jordan and others have studied the issues and have offered important recommendations, ripe for public dialogue, particularly at the time of this writing when the outcry for meaningful reform in the region resonates clearly. These include:

- Reconsidering and amending the electoral system and the division of constituencies

- Commonality of election and candidature
- Neutral commission to supervise all stages of the electoral process
- Guaranteeing the safety of the electoral process and the operations of balloting and vote counting
- Minimum educational credentials for candidates for membership in the House of Deputies
- Allowing civil society associations to monitor the electoral process

In addition to the flaws of the election law the role of the Jordanian judiciary in the electoral process is also inadequate. In many democracies the courts are charged with resolving disputes that arise during and at the end of the electoral process. This is not the case in Jordan where judges are relegated to be essentially pole watches, without authority to rule on disputes. A judge is assigned to each polling place but without actual adjudicative authority. Possible areas of dispute abound, from the eligibility of a person to vote, invalid ballots, proper party registration, obvious ballot box stuffing, etc. Without judicial oversight and review the entire electoral process becomes ripe for distrust and contempt thus threatening the people's confidence in the rule of law.

Judicial oversight and review has become an international standard that should apply to Jordan should it emerge as a full-fledged democracy. The Assessment Team believes that expanding judicial review in a number of areas under Jordanian law is required. No reform, however, is more urgent than judicial review of the electoral process. As the entire region clamors for reform it is a truly needed safeguard. Confidence in the electoral system will become more important as the region's people question unchecked executive authority over the electoral process.

Reform in this area will depend on the strong will of policy makers and decision makers. They should accept that this is a major step that will help to preserve the democracy. The major challenge, of course, will be the old guard who have benefited from the current but outmoded system. A series of steps should be taken which will both educate and convince the policy makers that judicial review should be made available at every step of the electoral process. This reform will strengthen the rule of law and the independence of the judiciary by the guarantee of rights and the democratic process, providing checks and balances, separation of powers, as well as fairness.

Recommendations include:

- Policy and decision makers should be approached with the concept of judicial review and an attempt made to instigate support for review of the current law.

- Form an Action Committee and provide technical and material support The National Centre for Human Rights of Jordan and other entities for a complete study of all Jordanian laws pertaining to elections both local and national. The committee to include a cross-section of Jordanian society.
- Conduct a comparative analysis of judicial review legislation from the US, Europe and the Middle East.
- Sponsor a study tour to two or more selected emerging or transitional democracies to observe judicial review in progress and understand the development and implementation process.
- Prepare a “White Paper” containing a number of options with lessons learned from other countries.
- Conduct forums for policy and decision makers to present various option and best practices for a comprehensive judicial review law or amendments to current law.
- Support public forums across Jordan to present various option and best practices for a comprehensive judicial review (perhaps in collaboration with the National Centre for Human Rights).
- Support final drafting of law to implement judicial review of the election process.
- Assist in law implementation with training, manuals and publicity.
- Promote a judicial strategy to better monitor elections under the current law (as interim step to real reform).
- Develop a Judicial Monitoring Manual and training for of judges assigned to electoral monitoring under the present system.

Fairness

Focus on improving public outreach, communications, customer service, and access to services and information by justice sector institutions and provide support for specific customer service improvement and access to information efforts. There is a need for courts to improve their public outreach and communicate progress in justice sector reform and to improve awareness of the law, how to exercise one’s rights through the courts, and citizens’ responsibilities as participants in a democratic, rule of law based society.

With respect to access to information, automation has brought much greater efficiency to the courts and their processes. It has revolutionized the way that information is gathered and distributed. It now should be brought to scale by making more information available to lawyers and the general public. Automation is a major element in transparency and accountability of the judicial sector. There can be no judicial independence without judicial accountability.

Recommendations include:

- Conduct training of court staff on public information and outreach including media relations
- Help courts develop communications plans and public outreach programs
- There should be a thorough review of the information now captured by the technology within the courts and judicial management to determine what data and information is public record under the law and then make that information available through the court's kiosks and the Internet portal.
- At the very least significantly more case information should be available through security protocols validating queries for information to the lawyers who are attorneys-of-record in cases.
- Work with the MOJ and Judicial Council to develop incentives programs for courts to improve customer service, linked to use of the Q10 Court User Survey ROLP is helping to implement in courts
- Expand access to legal assistance for women and other vulnerable groups.
- Support the construction of a state-of-the art judicial branch website which should include:
 - Names and locations of each court and the locations
 - Links to each court in the Kingdom to include:
 - Description of the court and jurisdiction
 - Map and directions, including a picture of the courthouse
 - Names of judges and senior court staff with phone number and email address
 - Rules pertaining to the court
 - Guide for assistance of self-represented litigants
 - Evaluate the forms now made available to general public and enhance and expand, as indicated
 - Support electronic access to all reported decisions (redacted as required)
 - Training of Judicial branch web-master
- Provide access to all written decisions of all courts (transparency)
- Audit of, and enhancement where required, of courthouse directional signage
- Improve access to practical knowledge of rights, responsibilities and remedies to the vulnerable and disadvantaged citizens
- Develop an Access to Justice Guide advising the public of rights, responsibilities and remedies
- Develop targeted guides for specific populations (i.e. domestic workers, poor, physically challenged, those without family or tribal support, etc.)
- Support creation of brochures explaining substantive legal principles (e.g. My Rights if

Arrested, Inheritance Laws Explained, My Rights as a Domestic Worker, Domestic Violence –Rights and Remedies) Expanding Legal Aid to the Poor

- Support public presentation of an Annual State of the Judiciary presented by the Chief Justice to increase accountability, arranged for Law Day or other suitable day to include:
 - Accurate statistics of filings and dispositions in all areas
 - Accomplishments in access to justice and other initiatives
 - New initiatives and goals for the year, etc.
- Examine current rules and policies for open court hearings, trials and records; make recommendations for revisions and enforcement especially for journalists and human rights advocates and watches.

Help improve access to justice for historically disadvantaged groups including women, displaced persons, disabled, and rural poor. Such improved access will go a long way toward addressing public dissatisfaction with the courts and improving cultural attitudes towards equal treatment of all citizens regardless of their situation. Potential activities will include:

- Targeted public awareness campaigns to empower citizens
- Training for judges, prosecutors, and administrative staff on handling matters involving disadvantaged groups (e.g., gender based violence)
- Assist stakeholder committees to identify promote positive linkages between *Sharia* and formal courts in family law cases
- Conduct an analysis of women lawyers, court staff to identify areas where there needs to be improvement in treatment of women in justice processes
- Develop a plan of action to respond to these concerns

Support provision of counsel for indigent defendants through support for public defender and legal aid programs by the bar association(s), law schools, and NGOs. The project can work with a the Judicial Council, MOJ, and other Ministries, and stakeholders to:

- Assess demand for public defense and legal aid services and existing services
- Develop a strategic plan for developing public and private sector programs that collectively meet public need
- Design a package of technical assistance and training to upgrade the quality and reach of services already in place
- Work with the MOJ to develop a pilot public defender program consistent with regional and international best practice models, including conducting a study tour to develop a vision for how a public defense system can work in Jordan
- Provide funding and technical support to law schools, bar associations, and NGOs interested

in developing legal aid programs and clinics

Support civic education programming. Civic education is required to build civil society awareness and for society to demand democracy, judicial independence, the rule of law and human rights. Law school students should take part in this civic education initiative at the pre-university schools and for university students not studying law. Civic education plays a significant role in shaping students personalities and preparing them to become active citizens of the future. Recommended initiatives include:

- Develop and implement a rule of law course for non-law students to including curriculum, course plan, materials, teaching strategies and methodologies. The object of this course is to raise awareness among school students about judicial institutions and the legal system. A series of targeted lessons can be developed and presented to selected groups. The project would recruit Jordanian law students to teach a civics component to school children, with multiple benefits. In addition to raising the students' awareness, the law students will increase their own understanding of the legal system and its real-life implications.
- Work with the Ministry of Education, as opportunities present, to develop a program enhancing civic education learning.
- The website discussed in the section above can have links provided for programs including an overview of rule of law and access and rights issues. Entire curricula can be provided in multi-media format on DVDs and the web, for teachers engaged in secondary school teaching. A more sophisticated version could provide civic lessons syllabi for grade schools and high school students, which can be downloaded from the web or sent, by DVD to teachers. The production of such a product by law school students would, at the same time, provide them with an exhaustive knowledge of the topics.
- Assist in preparation and delivery of topics to school children on the grade school level through a Speakers Bureau comprised of volunteer judges and lawyers. This would be in cooperation and support of the Ministry of Education. The Speakers Bureau would deliver lectures and interactive programs in:
 - Principles of a democracy and the role of civil society
 - Role of the courts, and other branches under Jordanian Law
 - Citizens rights and responsibilities
 - Develop essay and creative writing contests featuring Democracy and Governance and Rule of Law

Effective Application

Launch initiatives to build consensus and implement criminal and civil judgment execution reforms taking into account ROLP's automation of execution departments and pilot program work with the Amman First Instance Court's Execution Department. Fundamental to the administration of justice and the rule of law is the expectation that justice is available and that the courts are the means of achieving the necessary results. Nothing erodes confidence in a judicial system and in courts more than unreasonable delay. The judicial system provides the means of vindicating individual or societal rights and, if not expeditious, is seen as a denial of justice. No judicial system can afford to become irrelevant since alternative justice often results in violence and instability in a society.

The Jordanian model of enforcement of civil and criminal judgments is essentially court driven through the courts' Enforcement Departments. Litigants who obtain favorable judgments, decrees or orders from a court are destined to another round of litigation that brings them back to court for the "enforcement round" –essentially another phase of litigation. The cases are managed by the judges and in many cases become adversarial with debtors or, in criminal cases, defendants able to prompt significant delays. The organization and design of the process lends itself to delay and abuse of the procedure. Being a successful litigant in Jordan is extremely difficult.

In the series of interviews conducted by the assessment team, the enforcement system was universally identified as a major weakness of the justice sector. Of special note is that there are about 50,000 criminal court judgments that have eluded satisfaction. The perception of the practicing lawyers interviewed is that the current enforcement of judgment system can add years to the finalization of a case in the Jordanian courts. This condition adversely affects the business environment.

Since the 2008 assessment and before, the DPK/Rule of Law Projects have re-engineered, automated, and renovated the Execution Department as a pilot program in Amman First Instance Court. These efforts have improved workflow, access to records and information, and environmental issues; however significant structural and legal framework issues remain resulting in unnecessary delay.

Some of the obvious weaknesses include:

- The delay inherent in the system of judgment execution in Jordan erodes the confidence of the society and diminishes the respect for the rule of law.

- Inefficiency of the system imposes an additional cost on litigants and lawyers due to unnecessary appearances, paperwork and lost employment time.
- With few exceptions, “collection judges” are not motivated to pursue the rather mundane collection matters.
- Jordanian judges are heavily involved in multiple stages of the process wasting judicial resources better utilized in more important judicial roles.
- Judges become deeply involved in “administering” and tracking cases rather than addressing substantive issues with more intellectually stimulating issues.
- Churning cases without results increases the cost to the state.
- Fiscal accountability of the judiciary is diminished in the eyes of the courts’ funding sources due to the reputation of delay.
- Material resources may not be forthcoming from the funding source of the courts due to its status as “a collection” court.
- A flawed structure encourages lack of enthusiasm in providing efficient service to creditors by court staff.
- Many creditors are unaware of their rights and/or reluctant to exercise them.
- The process encourages litigants and attorneys to seek delay, which is always to the benefit of the debtor at the expense of the “successful” party.
- Delay encourages alternative methods outside of the judicial system
- The present system of public auction to satisfy judgments has its procedural flaws with resulting delays in that phase of enforcement.
- Specialized training of judges and court employees of the Execution Departments is lacking.

It is impossible, at this point, for the assessment team to recommend a particular model of an enforcement practice in Jordan. The team recommends a process that will result in options for the policy makers to consider. The flaws in the enforcement process require extensive modification, which may involve statutory and perhaps even constitutional modifications.

Internationally there is no consensus on the best model. A growing number of states are opting for the private system of professional, specially trained and professional enforcement agents. This system has been praised as cost effective, efficient and expeditious for the creditor. Any system should exist to serve the parties (creditor/debtor) and the public. This requires that the old paradigm be re-examined.

It should be noted that generally the options are between four basic models differentiated by the degree of control over the enforcement process. They are:

- Court Controlled Enforcement
- Multi-Institutional Controlled Enforcement
- Private or Quasi-private Sector Enforcement
- Executive Branch Enforcement through Specialized Civil Servants

The Execution Department is not current in its caseload and the number of cases unresolved in both the criminal and civil area continues to rise. This negatively impacts the perceptions of internal and foreign investors. Mounting annual caseloads will put additional pressure on the current inefficient and ineffective execution of judgment processes and further increase delay and backlog.

It is recommended a multifaceted feasibility study be conducted to include the following steps:

- Consultation with Counterparts and Stakeholders
- Study of Current Laws, Rules and Regulations
- Research and Comparative Analysis of Laws and Practices
- Study Tour for Jordanian Policy and Decision Makers
- Comparative Analysis of Key Countries Studied
- Workshop for Soliciting Views and Building Consensus
- Development of a Comprehensive Recommendation Package
- Implementation of the Reform Approved: Prepare work plan and implement the system alternative chosen.

Improve access to justice through introduction of fast tracking by the judiciary of appeals of administrative agency decisions involving citizen access to legal remedies and government services. There are more cases affecting the citizenry in the area of administrative law than the traditional justice system. A key source of public discontent with government in many countries including Jordan is the inability of citizens to timely and reliably secure government service and legal remedies to which they are entitled. Improving the speed and quality of judicial review of appeals from administrative agency decisions can enhance accountability of public sector agencies and officials and also provide guidance to agency officials as to how to interpret legal provisions and what is expected from them with respect to timely response to citizen applications, requests, disputes, or other matters. More effective judicial review can also provide citizens a sense of justice and empowerment in dealing with the government that is often lacking. For these reasons, judicial review of administrative decisions should be given higher priority. To support this result, assistance can include:

- Work with the MOJ, Chief Justice, and Judicial Council to understand the benefit of prioritizing judicial review of administrative matters
- Assist in design and communication of policies and procedures to achieve this result
- Work with the JIJ to develop training for judges and court staff on administrative law and other subjects to give effect to the new policies
- Work with the Judicial Council, judicial inspectors, and civil society organizations to monitor the implementation of the new policies

Assist strengthening of interagency cooperation (police, prosecutors, attorney generals, and execution departments) to improve application of the law and case outcomes. In building the strengths of the various institutions within the judiciary what cannot be neglected are the communication mechanisms within each entity. Interaction and communication must be “institutionalized” with identifiable protocols for formal interaction. In addition, a tradition of openness to informal communication should be fostered. Often the informal communications are the most powerful tools of interaction both for inter and intra agency cooperation.

Not to be overlooked is the necessity for communications with the judiciary’s partners in government. Dependence on the executive and legislative branches of government is the paradox faced by almost all independent judiciaries. In reality, judiciaries must depend on their partners in government for their funding and for the laws, which the judiciary is mandated, to interpret and apply. Other branches must respect the independent judiciary as truly a self-governing and separate, not subservient, branch of government. Too often the executive or legislative branches begin to see the judiciary as another agency and the lines become blurred. The leaders of the judicial branch are charged with the responsibility of maintaining the distinction and defending independence, not only from a blatant incursion, but from a subtle drift in thinking which, over time, will have the same result – a diminution of the judiciary’s relevancy and the erosion of the trust and confidence of the people it serves.

The best remedy is open communication with other branches and their agencies touching the judiciary in some way. Open and regular formalized avenues of communications are required to be established and then maintained. Judicial leaders must continue to communicate their accountability. The funding source, for instance, has a right to know how taxpayer money is being spent. It has right to know whether the judiciary has efficiently used the funds it has been allotted and whether the people are served well by it. This is one of the reciprocal responsibilities. The judiciary must be a good partner in government and should transparently exploit its accomplishments and successes as well as its fiscal integrity and acumen.

This area requires vigilance and resolve since it is easy to permit the best plans for communications to lapse into disuse when time is of the essence and it is expeditious to ignore the protocol.

Recommendations include:

- Imbed into all trainings a segment on inter-agency and intra-agency communications, where appropriate.
- Provide experts on communications methods and skills at training sessions.
- Assist in providing a formalized method of exchanging important information between the Judicial Council and its departments and between the departments and the council.
- Assist the chief justice in recognizing his role in communicating the “State of the Judiciary” to the other branches as well as the public.
- Assist in the preparation of a formal presentation (in booklet form and through oral presentation) by the chief justice on an annual basis with extensive media coverage.
- Assist in developing a Judicial/Agency Communications Committee. The committee should consist of mid-level managers from the major disciplines within the courts as well as mid-level managers from relevant agencies within the executive and legislative branches with whom the courts must interact. (Judges and court administrators, Ministry of Justice, Ministry of Finance, Legislative Drafting Bureau, IT specialists etc.) A high-level court representative should facilitate the committee and it should meet regularly (perhaps 4 times a year) to discuss matters of mutual concern. The meetings should be used to establish methods and schedules for regular communications with subordinates between meetings. It is important to establish a membership that will be at an operational management level.
- Support development of inter-agency standard operating procedures, information sharing protocols, and coordinating committees to improve efficiency and case outcomes.

Promote judge referral and litigant use of mediation. The establishment and encouragement of the use of Mediation programs have been objectives of USAID funded programs with ABA and ROLP with the goal to establish mediation as an alternative dispute resolution option to court proceedings and to resolve disputes more quickly, inexpensively, and equitably. To date seven First Instance court facilities (also housing Conciliation courts) were renovated to create Mediation Centers; 91 judges were trained as mediators (18 of those received advanced training); and numerous other training programs were conducted with Conciliation and First Instance hearing judges and Chief Judges to build awareness about mediation, its availability in Jordanian courts, and to encourage judges and Case Management Departments to refer cases to mediation

as an alternative to the hearing litigation process. During the first two years after introduction of mediation programs the success rate of cases referred to mediation and settled in mediation reached a high of 71 percent in conciliation courts and 81 percent in first instance courts. However, the number of cases referred to mediation as a percentage of the total number of cases filed in conciliation and first instance courts was 1 percent and 2 percent respectively.

The demonstrated quality of mediation services provides an opportunity to expand its usage. The remaining challenge and opportunity to establishing mediation as a viable alternative dispute resolution option is to encourage referral to and use of mediation. There is a risk that the investment in mediation to date will be lost without a substantial increase in demand for mediation in the near future. The assessment team's interviews with attorneys revealed that there is a lack of understanding about the processes and advantages of mediation, the need to improve the perception of attorneys that the mediation judges are competent mediators, and the need to help attorneys identify ways in which they can recommendation use of mediation to their clients without suffering a negative impact on their billable services. The interviewees recommended strong public awareness programs for mediation's benefits, and training programs for practicing attorneys and education courses in law school programs. Additionally, mediation could be made mandatory for certain case types through legal framework amendments. Currently the ROLP has ceased all activities related to mediation based on USAID's instructions at the request of a former minister of justice.

Recommended initiatives and activities include:

- Restart activities related to mediation with strategic planning and consensus building sessions with the Judicial Council, Ministry of Justice.
- Develop and conduct public awareness campaigns to promote the use of mediation.
- Develop and conduct training programs for attorneys.
- Assist Law schools develop course content for alternative dispute resolution options.
- Assist the Judicial Council or Ministry of Justice research and draft legal framework amendments to propose mandatory mediation for certain case types.
- Support legal amendments to make mediation mandatory in appropriate cases.

Explore a program of cooperation with law schools to strengthen the knowledge and practical skills of future lawyers, judges, and prosecutors including introducing modern teaching approaches into the curriculum and developing practice clinics. The quality of legal education is bedrock to effective lawyering skills and advocacy. It provides the educational foundation for future judges and other legal professionals within the judicial sector. Poor quality legal education

affects the entire judicial system by raising questions of fairness of legal proceedings and misgivings about unequal representation. Likewise civil education for the public provides an understanding of citizens' rights and responsibilities and engenders perceptions of fair and effective justice.

During the assessment teams many interviews with lawyers, stakeholders and various participants and users of the justice sector, a consistent concern was the competency of lawyers and judges within the Jordanian judicial system. The need to improve the quality of the law schools is acute and ripe for change. The Dean of the Jordanian University Law School communicated a strong willingness to take part in assistance programs and identified the need for reforming curriculum content and methods of delivery. The most desired curricula are those that will strengthen the practical skills of the new attorneys especially in areas such as legal research and writing. New and complex global law issues and complicated litigation are challenging the modern-day legal community and will overwhelm the legal community of the future if they enter their profession unprepared. There are matters of intellectual property rights, international trade, and information technology copyright infringement, etc.

Local council is not guaranteed to the poor in Jordan except for cases with the potential of the death penalty or life in prison. Those without means are therefore placed at unequal risk. This, of course, threatens the concepts of fairness and equal application of the law and it provides yet another challenge to the legal community.

Law schools are in a unique position to provide much needed legal assistance to local communities while at the same time serving as a vital link with the rest of the world. Through the work of its faculty and students, law school should be committed to using its valuable resources to serve local citizens.

Recommended initiatives and activities to strengthen the quality of law schools include:

- Insure a broad range of law school courses emphasizing practical skills, to give students the knowledge and skills they need to participate in the legal career of their choice.
- Strengthen the emphasis on practical lawyering skills. Provide practical training to include ethics, legal research and writing, oral and written advocacy, interviewing and advising skills, drafting letters, pleadings, legal documents and memoranda, negotiation strategies, preparing contracts for local and international transactions, trial practice, mediation and settlement skills.
- Conduct a mandatory workshop on modern teaching methodologies, including interactive

and experiential strategies, for all faculty members in order to improve the quality of teaching.

- Create syllabi and course plans for all classes and post them on-line at least one month prior to the beginning of classes so that students can select their classes in an informed manner.
- Enhance the computer laboratories by providing mandatory training to the faculty and students in legal information technology and provide the needed equipment.
- Expand special programs such as practical skills courses and moot court to all law school students (currently available to a few students).
- Expand and improve the law library. Strengthen on-line research capacity by adding computers, subscribing to on-line legal research services and providing training to faculty and students in conducting on-line research.
- Strengthen and improve the moot court syllabus and make it an integral part of the law schools' programs. It is most important to expand the moot court program to a larger number of students. Where available, it seems to be done well but reaches relatively few law students. ABA-ROLI has been engaged in this support but it appears that the resources for Moot Court and training are rather limited.
- Develop a Women and Law Program and introduce courses relating to women and law as part of the general curriculum. Such courses will help to overcome the unequal justice for women compared to men, which has been endemic in Jordanian Society.
- Initiate a Legal Aid Clinic. This clinic presents an excellent opportunity to provide law students with concrete learning opportunities while delivering much-needed legal services to the local community. There are a number of non-governmental organizations that try to fill that void. Their impact is minimal however, due to few resources. Such legal clinics will assist in filling the gaps and help bolster the practical skills of lawyers. It will also begin the long process of changing the local legal culture to embrace the concept of equal justice and the right to counsel more fully, particularly when a citizen's liberty is at stake.
- Create stronger administrative structure that effectively supports work of the law schools. A law school should be committed to engaging, supporting, training and retaining faculty and staff that will allow it to meet its goals, enhancing professionalism and high ethical standards. The assessment team suggests that these objectives can be met with the following activities.
 - Create a formal written management plan and administrative framework
 - Create an interim-rotating plan, whereby those in charge of administration are relieved of teaching duties during the time they have administrative responsibilities.
 - Create an Administrative Handbook, setting out administrative protocols and guidelines.
 - Create a Faculty Handbook, setting out guidelines and information on issues such as academic policies and procedures, class scheduling and registration, examination policies

- and procedures, and course evaluations.
- Create a filing and archiving system so that law school documents are properly stored and can be easily located.
 - Analyze teaching responsibilities and determine whether additional faculty is needed and whether resources are sufficient to hire them. If so, create hiring protocols. Consider creating a hiring committee to review applications.
 - Work with student representatives to create a student honor code to enhance self-discipline and ethics.
 - Devise and institutionalize a program, in collaboration with faculty and student representatives that will prepare administration and faculty for accreditation visits. The preparation will provide a ‘self-audit’ of key academic activities and facilities and further provide for the assurance of a high ranking result.
 - Review the accreditation criteria and process to assure fairness and academic excellence.
 - Engage in the enhancement and modernization of law school accreditation criteria, if a study indicates the need.
- Improve communication within the law school and between the law school and outside communities, including website development.

Cross-cutting Issues

Strengthen the Anti-Corruption Commission. The Government of Jordan has taken a number of steps to fight official corruption. King Abdullah has directed past and current governments to undertake anticorruption reforms. Several laws have been approved by parliament including the establishment of the Anti-Corruption Commission (ACC) early in 2007. USAID/Jordan commissioned an anti-corruption assessment whose findings of increased corruption risks and recommendations were submitted in September of 2007.

Notwithstanding the array of laws addressing the issue, the Assessment Team did not find robust anti-corruption activity.

There are weaknesses in the law forming the ACC. The Anticorruption Commission Law of 2006 does not provide a strong basis for the Jordanian ACC to play the most effective role in fighting corruption. The two key weaknesses are 1) the provision that members of the Commission will be appointed by the King, upon recommendation of the Prime Minister, and report to the Prime Minister; and 2) the provision that complaints that are proven to be false or “vexatious” may result in the complainant being referred to judicial authorities. The first undermines the principle

of independence of the commission, while the second is a strong disincentive for people to register complaints, particularly where there is already a perception of official impunity and bias for the government in most judicial proceedings, as well as an atmosphere of fear of authority. In addition there is a significant risk that the process can be used for political purposes.

While the King appears reformist and has spoken forcefully on the subject, many of the figures around him may not be as committed and reform-minded. Despite rhetoric, new legal and organizational infrastructure, and limited success in the enforcement of cases, political will for implementation of anticorruption reforms remains elusive.

Time appears to have shown that the assistance needed now is for substantive, structural and legal framework reforms to be followed by re-engineering and modernization types of institutional development. The demands for reform throughout the entire region including demands to eliminate corruption make the time right for substantive reforms and legal framework changes.

As the 2007 Anti-Corruption Report made clear, substantive and structural reform will be difficult. Comprehensive approaches are necessary to leverage broader “public-will” in place of select elite interest groups and the diminished “political will”. Strategic approaches that engage the public sector as one of a number of constituencies in reform are necessary. Due to the current frame of mind of the body politic around the region, a window of opportunity may have now opened for this public sector approach.

Recommendations include:

- Develop, encourage and support private sector participation in corruption reform activities.
- Seek support from the highest governmental levels and assist as needed in the reform agenda.
- Promote analysis and research from non-governmental, academic and professional organizations supporting the strengthening the Anti-Corruption law and related laws affecting public officials.
- Conduct a comparative analysis of current anti-corruption laws and proposed laws from the region and Europe and Eastern Europe.
- Support and facilitate a working group to address and propose amendments to the Anti-Corruption Law and related laws.
- Develop and support media engagement through long-term and substantive reporting on reform efforts.
- Address lack of transparency issues in corruption enforcement cases and support media

reporting.

- Support citizen and non-governmental organization advocacy for reform.
- Coordinate joint efforts of relevant civil society organizations institutional and capacity strengthening.

5.3 Civil Society Engagement

ROLP grants activities to promote NGOs working in access to justice for women and youth and promotion of gender equality should be continued. Additional activities should be undertaken with civil society to advance legal empowerment and advocate for needed reforms. Such activities should be carefully designed to promote development of legitimate NGOs and sustainability of activities. Focus of expanded work with civil society should include:

Engage civil society to provide legal aid services through grants and other means. In Jordan legal aid is guaranteed only for defendants who are accused of a capital offense and subject to the death penalty or to life in prison. There are only a few CSOs that provide legal assistance but large numbers of people who can ill-afford legal representation are destined to defend themselves or initiate complaints in the courts unassisted. Women, juveniles and other vulnerable segments of the population are most at risk. The 2008 Assessment Report clearly outlined the shortcomings of legal aid programs and stated:

“Assistance will expand legal assistance and other services for vulnerable populations especially women that enable them to protect and apply their rights. Rather than small-scale legal aid programs, activities should seek to institutionalize legal aid programs through public institutions. Opportunities include supporting a pilot legal aid program in the Amman Municipality, instituting a legal aid program in the Department of Family Affairs and Human Rights in the Ministry of Justice, supporting legal aid as a means to fulfill entrance requirements for the Jordan Bar Association, and creating volunteer opportunities for law students and legal professionals. Support should also be provided to community- based organizations that inform women of their rights and provide legal aid and mediation services to ensure those rights are protected”.

The Team believes the 2008 recommendations are still valid. Legal assistance should be mandatory at least to those charged with serious offenses for which the probable penalty will be incarceration. Though some progress has been made in the area of legal assistance in Jordan by CSOs since the 2008 Assessment, Legal Aid it is still underdeveloped and grossly underfunded. The resulting phenomenon is a series of small discrete interventions by different CSOs which are

not coordinated into a larger program. . The need for a larger comprehensive program is great and will require fundamental change in the attitude of policy makers.

We recommend that a comprehensive and institutionalized legal aid system be developed. However, this is a large undertaking so it is important that interim assistance should be provided to CSO's legal aid efforts. Additional assistance should be provided with a longer-term goal to develop a comprehensive national strategy and to institutionalize legal aid programs through public institutions such as the MOJ, judiciary and Bar Association.

The assessment team recommends developing a comprehensive and institutionalized legal aid system:

- Providing grant funding to existing CSO legal aid programs.
- Supporting ongoing research projects and legal aid analysis to present the needs and cost analysis for a national system to appropriate Jordanian Government departments (currently being conducted by one CSO).
- Supporting pilot programs with municipalities.
- Supporting legal aid as a means to fulfill entrance requirements for the Jordan Bar Association.
- Creating volunteer opportunities for law students and legal professionals through law school interventions.

Support development of broad based NGO network and coalitions to advocate for rule of law and justice sector reforms. The assessment team sees great advantage in the *design* and implementation of a grants program to promote activities addressing rule of law and judicial awareness/education, as well as encouraging public oversight of the judiciary in Jordan. Grants program should be awarded to Civil Society Organizations (CSOs) ranging from youth organizations, to advocacy groups, to research organizations, to media entities.

Building a culture of the rule of law is a long-term undertaking. If youth, women, journalists, and other citizens are educated on concepts of rule of law and international models and experiences, there will be much-improved prospects for positive reforms in the coming years.

Grants should aim at promoting the rule of law among youth and include creative programs targeted for children ages 12 to 15. The programs should strive to enhance concepts of the rule of law and public oversight and focus on the right to a fair trial, equality and accountability before the law. Grants should also aim at promoting the rule of law and citizenship among the public

through specialized media training and coordination.

Coalitions of NGOs to achieve concrete results can leverage the resources of individual NGOs and promote sustainable civil society development. It is recommended for that the foregoing areas should be supported by USAID and other donors.

Strengthen NGO justice sector monitoring activities. Structured justice monitoring practice typically includes selecting and mentoring an NGO, developing monitoring priorities, and a systematized monitoring approach involving key steps – data collection, analysis, reporting, and sharing of monitoring results with stakeholders. Then, the system should be re-monitored to determine whether there is any improvement in performance. The process should be collaborative and participatory – such that stakeholders support the monitoring and view it as a means to improve the system. The following chart outlines the monitoring process:



Specific activities for trial monitoring can include:

- Seek to engage one or more NGO partners in trial court monitoring activities, that will typically include directly observing several trials per week that meet established priorities (either thematic or issue specific such as criminal procedural rights), analyzing problems in implementing legislation (or need for legislative change), and whether the right to a public trial is respected (i.e., trial schedules are posted and there is adequate court-room space). Experience has shown that trial court monitoring is a powerful tool to support the process of judicial reform consistent with such domestic and international guarantees as the right to a fair trial. Potential areas for monitoring include interethnic crime and interethnic civil cases, pre-trial detention, access to justice, prosecutor performance, property cases, domestic violence crimes, trafficking cases, and corruption and economic crimes,

- Provide training for justice system monitors, particularly on fair trial standards under Article 6 of the European Convention of Human Rights and Article 14 of the International Convention on Civil and Political Rights, and domestic procedural law that incorporate these standards.
- Train monitors on important trial monitoring “best practices”, such as non-interference in individual cases, the duty of confidentiality (not to disclose data gathered except through NGO reporting), and the importance of impartiality and professionalism. Right of access is typically based on the right to a public trial, and we will assist the NGO to enter into a MOU with the relevant entity (Ministry of Justice or Judicial Council) that supports the monitoring program and aims.

Other potential areas for monitoring including **collecting data on the justice system and monitoring of court operations** to analyze important issues such as bias or discrimination against specific ethnic groups and compare case processing times among different courts and prosecutors offices. For example, the NGO may compare the treatment by the courts of different gender or ethnic groups for common indicators such as average sentences or punishments for similar crimes. Similarly, the NGO could gather data and compare case processing times for similar cases (i.e., property) in different courts, to see if some courts are more efficient than others. The NGO may also collect data such as hours of operation, and posting of trial schedules with a goal of creating a users handbook to the courts. Finally, the NGO could develop a court user survey to gather information about the public’s experience in the justice system—such as whether the trial schedule was posted, public information officers helped them, the case was delayed, or the professionalism of the judge.

Other areas for monitoring may include:

- Review of justice sector budgets for adequacy and focus, and analysis of access to public information on trial status.
- Monitoring whether there is appropriate court signage, public information kiosks, a public information officer, a website, and the extent the public uses these services.
- Analyzing whether there are sufficient resources (both staffing and infrastructure) for courts and prosecution offices to perform their duties. The NGO could also monitor indicators of efficiency of courts staff, prosecutors and judges, such as working hours.
- Monitoring of judicial selection and promotion processes, including reviewing the vacancies and evaluating the qualifications of the prospective candidates, and disseminating their findings. This could include assigning ratings to the candidate as highly qualified, qualified,

or unqualified. If the appropriate authority agrees, a request can be made to allow the NGO to observe the selection process as a neutral observer and provide comments on interview questions or any entrance exam. The NGO can provide assistance or commentary various aspects of judicial selection—including the development of a written exam for prosecutor and judge candidates, and monitoring the giving and subsequent scoring of the exam. For promotion, a link can be provided with the trial monitoring program in that the NGO will rank judicial candidates for promotion based on observed performance in the courts.

For each monitoring area, an assistance program can sponsor roundtables with the NGO and members of the justice system—such as judges, prosecutors, and attorneys to obtain feedback on monitoring reports and recommendations such as training needs and legislative changes. In addition, prior to the release of monitoring reports, courtesy drafts should be sent to high-level justice officials for their review and comment. The program should not be adversarial or seek to punish judges or prosecutors for isolated mistakes, but rather aim to identify systematic problems in the justice system to target future judicial reform. Re-monitoring will be crucial to determine whether identified concerns have been addressed.

Analysis should focus not only on the problems, but also the causes, such as insufficient training, legislative gaps, the failure to attract top judges or prosecutors due to low salaries, or insufficient human and physical resources. A project can help the monitoring NGO establish contacts with the JIJ and bar association, to provide input in continuing education courses for judges, prosecutors, and attorneys.

Strengthen the Bar Association. In democratic countries, professional bar associations are catalysts for change by encouraging legal reforms, human rights awareness, access to justice, and an independent judiciary. The Jordan Bar Association, which is currently an association that is used as a platform for the political expressions of its leadership, has in the past expressed reluctance to receive assistance from and work with the American community. A frank and productive meeting took place between Team members and representatives of the leadership of the association including the president, Sameer Kherfan. Discussed were the types of possible assistance that could be provided to enhance the professional role and services of the Jordan Bar Association.

There are a number of goals that could be achieved with support to the Jordan Bar Association. These include assisting it to operate effectively, promoting the ethics of its members and enhancing the quality of the two-year internship program for all potential bar members, offering

educational and training opportunities to its members to ensure a competent legal profession, creating a mandatory continuing legal education program for all attorneys, and providing *pro bono* legal services to the poor and disadvantaged.

During the discussion on February 9th there was a sense that there may be a softening of the attitude regarding acceptance of US assistance for some limited initiatives. This, of course, requires consideration of the Board of Directors. However, there was a modicum of interest mainly in three areas; building the capacity of the administration and financial systems of the Bar; support for training and continuing legal education (CLE) and automation development to assist in communications with members.

The Team feels that there is a chance, however slight, that this important entity may, on a limited basis, accept USAID assistance. Every effort should be made to co-op this important entity. The relationship should be strengthened through outreach and information sharing.

Enhancing the capacity of the Bar to better serve its members serves the community. The objectives are to promote better access to justice as well as fundamental fairness. Better lawyers, (advocates who know how to advocate), are the backbone of a court system and of a free and democratic society. In countries around the world it has been lawyers and judges who have stepped up to demand independence for the judicial branch when an independent judiciary was threatened by the other branches or by despots.

The needs of the organized bar are obvious and most in the organization would readily agree on what those needs are. Individual members to whom the Team has spoken suggest that the leadership does not speak for all and that enhancements to the organization and reform is needed. The challenge lies with some members of the Board of Directors who have deep disagreements with some US policies in the Middle East. The limited goal of assistance is to create a better organization to better serve the public in accordance with Jordanian principles and values.

The Assessment Team recommends the following initiatives and activities. It does so well aware that success in obtaining agreement with the Jordanian Bar Association is questionable and the prerequisite is trust. If there is a successful intervention, however, the benefits are great.

Recommended initiative and activities include:

- Request that ROLP be invited to make a formal presentation to the Board of Directors of the Jordanian Bar Association. The presenter must be prepared to answer questions about

American “motives” for the aid and be prepared to demonstrate the importance of a strong bar and an educated cadre of lawyers within Jordan. The presentation should be by an Arabic speaker presenting a limited agenda of modernization initiatives to included:

- Organizational capacity building activities.
- Training and support for continuing legal education.
- Automation to support the administration and training components of the bar
- Automation to support lawyer’s access to case information.

Longer-term initiatives may include:

- Strengthen administration, finance and budgeting functions.
- Expand available members’ professional information including reported cases.
- Institutionalize within the bar a method to review and comment on all legislation or rules affecting its members, or the rule of law.
- Establish a method of formal advocacy for or against proposed law and rules.
- Support a Gender Fairness Committee of the bar.
- Assess the status of rules covering lawyer ethics and discipline, the current applicable codes and their enforcement.
- Recommend and support changes as needed in both substantive and procedurals areas of lawyer discipline.
- Encourage and support outreach efforts including members’ presentations to schools on issues of rule of law and citizens rights and responsibilities; sponsor essay contests for schools on rule of law and democracy.
- Educate the public on the legal profession and its role in a democracy.
- Expand a Jordanian Bar Association website to include list of lawyer members, specialties, contact information etc.
- Conduct forums to assist attorneys in establishing and running law offices especially for newly admitted attorneys, including registration requirements, tax records etc.
- Institutionalize pro-bono activities by members who wish to participate in expanding the representation of vulnerable litigants especially domestic violence victims and issues surrounding domestic workers.

Strengthen civil society’s role in promoting public awareness, legal empowerment, and improved culture of respect for the law and justice sector. The Jordanian public and users of the court system are not generally aware of administrative and other changes of the laws affecting the judicial system. Jordanians have a low level of awareness of their legal rights and proper legal processes. Rule of law and human rights education is limited or, in some cases, non-existent in

the Jordanian curriculum at any level. Very few journalists in Jordan have specialized knowledge of the legal system that would allow for informed journalism on the judiciary. Journalists have little access to the judicial process since case files are closed and hearing rooms are small. There have been small-scale public awareness campaigns and journalists training in covering judicial issues, but there is a great deal of work still to be done. The low (and uneven) level of awareness of the law, especially combined with the often-poor legal representation clients might get, cast doubt on the basic fairness of the legal system, and on the ability of the public to use the justice system, to undertake oversight of the judiciary, and to help ensure the effective application of the law.

Recommendations include:

- Following passage of any major law involving citizens' rights and access to justice there should be a Kingdom-wide public media campaign.
- Public information forums highlighting rule of law, democracy and people's rights and responsibilities should be conducted in a coordinated manner using universities, (especially law faculty and students) as well as judges, and the bar association. (See also section 7.7 below).
- Expand public knowledge of human rights and the rule of law by incorporating these concepts into the primary and secondary school curricula.
- Support provided to non-governmental organizations to train teachers and civic leaders on implementing rule of law education.
- Support the building of multi-media educational tools to be used as syllabi by teachers at different levels.
- Support an effort to encourage law student to present rule of law and democracy presentations at primary and secondary schools.

States' Lawyer. A temporary law, "State's Cases Directorate Law of 2010", establishing a State's Cases Directorate in the Ministry of Justice was subsequently struck down by the parliament in February 2011. The primary function of the Directorate is to represent the Government of Jordan's departments in legal cases (disputes), whether such cases are brought by the government or against it, including treasury cases. The Directorate will represent the government before all courts regardless of their type or level and before any mediation panels or other bodies which have been given judicial jurisdiction located inside or outside of the Kingdom. The Directorate will also serve as a legal advisor to the government. The establishment of such a directorate encourages separation of the executive branch's legal counsel and representation requirements from the judiciary responsible for providing a neutral venue for

litigation of such cases. This furthers the independence of the judiciary.

Recommendations include:

- If the temporary law is amended and passed as a permanent law, assist the executive branch establish a State's Cases Directorate.

APPENDIX 1. – List of Interviewees

Amman, Jordan February 7 – February 21, 2011

USAID Mission Jordan	
Dana Mansuri	Deputy Mission Director/Acting Mission Director
George Kara'a	Project Management Specialist, Democracy/Rule of Law Office
Mark Parkison	Social Sector Director
Civil Society Organizations	
Rajaá Hiyari	Partners Jordan
H. E Judge Mohammad Al-Ghazou	Arab Council for Judicial Legal Studies; Former Secretary General-MOJ
H.E Muhi El-Deen Tok	Chief Commissioner National Center for Human Rights
H.E Mohammad Al-Hammouri	Hammouri Law Office
H.E. Asma Khader	Secretary General, The Jordanian National Commission for Women
Samar Muhareb	Legal Aid
Fateh Mansour	Program Manager, Center for Defending Freedom of Journalists
Hadeel Abdel Aziz	Executive Director, Justice Center for Legal Aid
Eva Abu Halaweh	Executive Director, Mizan
Taghreed Jaber	Regional Director, Penal Reform International
Donors / Projects	
Jacinta Barrins & Sawsan Gharaibeh	United Nations Development Program (UNDP) – Jordan
Francis abu Zaid	Chief of Party USAID funded AED Jordan Civil Society Program
Maha Al-Shomali	ABA Project Director
Haitham Al-Zoubi	Project Manager-Tdh Juvenile Justice project
Francesca Sawalha	Chief of Party, Irex – Media Project
Fadi Al-Qadi	Irex – Media Project
Tetra Tech-DPK - Rule of Law Project	
Walter Kuencer	Chief of Party
Diala Khamra	Deputy Chief of Party
Qais Jabareen	Component Leader
Jordan Bar Association	
Sameer Kherfan	
Ministry of Justice	
Judge Ammar Al-Husseini	
Judge Mohammad Al-Naser	

Law Schools	
Dr.Ghazi Abu Orabi	Dean-Faculty of Law; Jordan University- Faculty of Law
Judiciary	
Chief Judge Iman Qatarneh	Juvenile Court
Judge Ihsan Barakat	Amman Attorney General
Members of Judicial Council	
Judge Ratem Al Wazani	Chief Justice
Judge Fuad Sweidan	Deputy Chief
Judge Nayef Ibrahim	Cassation Court Judge
Judge Mohammad Al Mahameed	Chief Judge of Maan Appeals Court
Judge Ghazi Azar	Chief Judge of Amman Appeals Court
Judge Krayyem Tarawneh	Chief Inspector
Judge Ibrahim Abu Taleb	Chief Judge of Irbid Appeals Court
Judge Nassim Nasrawi	Cassation Court Judge
Judge Mahmood Al Rshdan	Cassation Court Judge
Judge Mohammad Hawamdeh	Secretarty General at MOJ
Judge Ahmad Jammaliyyeh	Chief Judge of Amman First Instance Court
Other Government Entities	
H.E Mohammad Al-Zoubi	Brigadier General, Family Protection Directorate
H.E Abdel Ilah Al-Kurdi	Jordanian Ombudsman Bureau
Dr. Ahmad Zyadat	Head of Legislative Bureau, Legislation and Opinion Bureau
Attorneys	
H. E Ayman Odeh	Odeh Law Firm, Former Minister of Justice
H. E Dr. Salah Al-Bashir	IBLAW, Former Minister of Justice
H.E Mohammad Al-Hammouri	Hammouri Law Office
Iyad Hamarneh	
Tamer Khrais	
Saed Karajeh	
Firas Sharaiha	
Dr.Bassam Al-Talhouni	

**APPENDIX B. - Jordanian Rule of Law Assessment and Evaluation of
USAID Interventions, January 2008**



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FROM THE AMERICAN PEOPLE

JORDAN RULE OF LAW ASSESSMENT AND EVALUATION OF USAID JUDICIAL INTERVENTIONS

FINAL REPORT

JANUARY 11, 2008

This publication was produced for review by the United States Agency for International Development. It was prepared by ARD, Inc.

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DISCLAIMER

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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ACRONYMS AND ABBREVIATIONS

ABA	American Bar Association
ADR	Alternative Dispute Resolution
CLE	Continuing Legal Education
GID	General Intelligence Directorate
EAC	Ethics and Accountability Committee
EC	European Commission
EU	European Union
GOJ	Government of Jordan
IRI	International Republican Institute
IT	Information Technology
JIJ	Judicial Institute of Jordan
JPP	Judicial Preparatory Program
JUST	Judicial Upgrading Strategy
MCC	Millennium Challenge Corporation
MOJ	Ministry of Justice
NDI	National Democratic Institute
NGO	Nongovernmental Organization
ROLI	Rule of Law Initiative (ABA)
SUNY	State University of New York
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

1.0 INTRODUCTION: MODERNIZATION WITHOUT REFORM

Jordan's modernization drive over the past decade reflects a common path among some developing countries: a young, western-educated ruler comes to power and surrounds himself with like-minded modernizers who set out to transform the country. Foreign investment is encouraged, modern systems put in place (sometimes without the human resources to sustain them effectively), and an ideology of progress promoted. Great strides are indeed made, and the country and its institutions change rapidly. Conservative and traditional elements that resist the modernization program are either placated through patronage or bypassed altogether, depending on their political importance. In order to prevent modernization efforts from getting side-tracked by retrograde political forces, political power is further centralized in the hands of the ruler and his modernizing elite. Thus, centralizing modernization becomes the enemy of political reform, as the later requires pluralism and governmental institutions that check and balance each other.

As with other sectors in Jordan, the judicial sector has undergone significant modernization since King Abdullah assumed power in 1999. In 2000, he issued a royal decree appointing a committee tasked with finding ways to modernize the judicial sector. In 2001, the Law on Judicial Independence was passed by Parliament and, by 2004, a comprehensive Judicial Upgrading Strategy (JUST) was adopted. The JUST strategy aimed to automate the courts, create a modern case management system, overhaul human resource management, promote transparency through e-government, and improve the overall integrity of the judicial system.¹

While most of the JUST goals remain unrealized as yet, there have been significant strides. During 2007, appreciable court automation was achieved, with more to be put in place before the current USAID assistance package expires in August 2008. After a large influx of unqualified judges into the judiciary, standards have been significantly raised at the Judicial Institute of Jordan (JIJ); the class poised to graduate next will be the most qualified crop of judges in many years.² Likewise, criteria and processes for judicial evaluation and promotion have been noticeably systematized, although still in their infancy. Law schools have recently tightened their standards as well, no longer admitting students who barely passed out of secondary school. Court Mediation Centers have also recently opened in all Amman courts with some success.

Steps to modernize the judicial system by increasing efficiency and the quality of judicial personnel have not been matched by meaningful judicial independence and empowerment. The judicial branch of

1

<http://eng.moj.gov.jo/MinistryofJustice/JudicialUpgradingStrategyJUST/JudicialUpgradingStrategyComponents/tabid/68/Default.aspx>

2 The "ifad" program that allowed unqualified – but well connected – individuals to become judges has been suspended, but not eliminated by law. Approximately 200 of Jordan's 700 judges are beneficiaries of the "ifad" system, all of them appointed since 2000 because of their ties to powerful individuals. The system of *wasta*, or powerful connections, is deeply corrupting to meritocratic institutions in Jordan, as elsewhere.

government is neither playing its Constitutional role as an equal branch of government, nor is it playing a role commensurate with the needs of a modern state. An effective and empowered judiciary is essential for a modern economy to run successfully, for example, and Jordan ranks rather low in this regard. For example, the World Bank ranks Jordan 80th out of 178 countries for its ease of doing business, and two categories that drop Jordan down the rankings pertain to the rule of law: Jordan ranks 107th in protecting investors, and a miserable 128th on enforcing contracts.³

Much of the focus in recent years has been on the issue of financial and administrative independence for the judiciary. Currently, the executive branch of government, through the Ministry of Justice (MOJ), controls all financial and administrative matters in the running of the judicial sector. The MOJ has committed to granting the judiciary financial and administrative independence, which is a positive step. However, the judiciary, through the Judicial Council, is simply unprepared currently to assume the responsibility of running 73 courts and 3,500 employees. Of equal concern is the judiciary's tepid view toward needed steps to enhance internal accountability and transparency in the evaluation, promotion, and disciplining of judges. ***Judicial independence and empowerment must be accompanied by internal accountability and transparent processes.***

Herein lies the thrust of the challenge facing Jordan and USAID's program of assistance in promoting the rule of law, and in our recommendations for moving forward: to continue with the effort to modernize the judicial sector, but at the same time to promote reform. ***Modernization will continue to reap benefits of efficiency and transparency in court operations, and to ensure that endemic delays in processing cases will subside.*** Modernization can also pave the way for real reform as it may create powerful constituencies that embrace reform. Reform alone is a more delicate issue than modernization, and constitutes two sides of one coin. On one side is the independence and empowerment of the judiciary, a needed step that will be embraced by the judiciary. On the other side of the reform coin is the enhancement of accountability and transparency within the judiciary, a step we believe may be resisted by judicial leadership. ***A winning strategy will be to package these elements into a seamless whole, balancing the pains of greater transparency with the gains of real empowerment for the judiciary.*** Our recommendations to USAID represent our attempt to strike that balance in order to help promote the rule of law in Jordan in the coming years.

³ <http://www.doingbusiness.org/economyrankings/>.

2.0 METHODOLOGY

Fieldwork in Jordan for this evaluation and assessment was conducted from 2-21 December 2007. The team interviewed 73 individuals, including representatives from the Ministry of Justice, Judicial Council, Judicial Institute, the judiciary, lawyers and law professors, civil society, business, other donors, and U.S. Embassy personnel (see Appendix 2 for the complete list of interviews). Several key individuals, such as Judge Ali al-Masri (who oversees the judicial modernization program for the Ministry of Justice as liaison to donors) and Saleh Armouti (the head of the Jordan Bar Association), were interviewed more than once. For the evaluation element of this report, the assessment team had full-day sessions with both DPK and the American Bar Association (ABA) teams, follow-up interviews with the leaders of both projects, and interviews with Jordanian partners working with each implementer. In addition, both DPK and ABA teams participated in our 17 December focus group, along with representatives from the Ministry of Justice and USAID.

The assessment team visited a number of courts both to interview key personnel and to observe new automation systems and Alternative Dispute Resolution (ADR) processes in operation. Most of the courts visited are housed in the central Palace of Justice in downtown Amman, but the team also visited the West Amman Courthouse, the Ma'an courthouse, and the Wadi Musa/Petra courthouse. Ma'an is in southern Jordan and is widely seen as the poorest and most troubled city in Jordan, and the assessment team wanted a view of rule of law issues far removed from Amman.

The report itself closely follows the new draft USAID *Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework*.

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3.0 DESCRIPTION OF THE JUSTICE SECTOR: ROLES AND RESPONSIBILITIES

3.1 LEGAL SYSTEM

Consistent with legal reforms adopted by the Ottoman Empire in the 19th century, Jordan's legal system largely follows the French civil code tradition. Given British tutelage of Jordan during the Mandate period following World War I, Jordan's legal system also contains elements of British common law, particularly with regards to civil and criminal procedures. Islamic law (*shari'a*) is also recognized in Jordan with respect to personal status matters, and Shari'a courts continue to function.

The 1952 Constitution of Jordan provides for three powers of government, and requires that all judgments of the judicial power be pronounced in the name of the King. The Law on the Independence of the Judiciary, 2001, and the Law on the Establishment of the Regular Courts, 2001, are the two fundamental laws affecting the justice system. There are additional laws that regulate Special Courts and Religious Courts, Shari'a courts, and the Tribunals of Other Religious Communities.

3.2 COURT STRUCTURE

The Regular Courts adjudicate all civil and criminal cases not expressly reserved to the Special Courts or the Religious courts. Regular Courts are organized into three levels: conciliation courts and the courts of first instance, courts of appeal, and the Court of Cassation.

3.2.1 Regular Courts

The jurisdiction of the conciliation courts involves small civil claims, and small fines with a maximum prison sentence of one year in criminal cases.

The courts of first instance exercise general jurisdiction over all civil and criminal matters not covered by the conciliation courts, and exercise limited appellate jurisdiction over certain conciliation court judgments. Depending upon the type of case, a single judge, two judges, or a panel of three judges hears cases in the court of first instance.

The three courts of appeals, which are located in Amman, Irbid, and Ma'an, hears appeals by a panel of three judges.

The Court of Cassation, situated in Amman, hears appeals from the courts of appeals and other courts under specific conditions by a panel of five judges.

3.2.2 Religious Courts

The exclusive jurisdiction of the Shari'a Courts includes matters of personal status of Muslims, cases concerning blood money, *Diya*, where the two parties are Muslim or where one of the parties is not a Muslim but both parties consent to the jurisdiction of the Court, and matters pertaining to Islamic endowments, or *awqaf* (singular: *waqf*).

The jurisdiction of the Tribunals of Religious Tribunals encompasses non-Muslim religious communities that have been or will be recognized by the government as established in Jordan and is defined in a separate law.

3.2.3 Special Courts

There are several Special Courts with varying jurisdictions and accountability to the judiciary. The Tax and Customs Court, High Tribunal (for serious felonies), and High Court of Justice (the administrative court in the civil code tradition) are part of the judiciary and governed by separate law. There are also special courts for the military, police, GID (intelligence), and Civil Defense, which are not part of the judiciary. The State Security Court has its own special jurisdiction, and is partly accountable to the judiciary via the appeals process.

3.3 JUDICIAL COUNCIL

The Judicial Council has jurisdiction over the appointment and discipline of judges, although the Council's decision to appoint a judge is based upon the recommendation of the Ministry of Justice, and subject to a Royal mandate. In practice, the president of the Judicial Council exercises greatest influence in both the judicial selection and discipline processes.

The Judicial Council consists of the following members, all of whom are judges: the President and two senior judges of the Court of Cassation; the President of the High Court of Justice; the President of the Public Prosecutors of the Court of Cassation, the Presidents of the three Courts of Appeals, the President of the Court of First Instance in Amman, the Chief Inspector of the Ministry of Justice, and the Secretary General of the Ministry of Justice.

3.4 MINISTRY OF JUSTICE

The Ministry of Justice exercises administrative and financial control over the courts, controls staffing of the courts, recommends judicial candidates for appointment to the Judicial Council, exercises influence on promotion of judges through its Inspectorate, and manages the court mediation program.

The Ministry of Justice has developed the Judicial Upgrading Strategy (JUST) for 2007-2009 with the vision of developing a fair, effective, and timely justice for all in Jordan, guaranteed by a judicial system that operates with efficiency, transparency, accountability, and independence. The eight interrelated goals in JUST may be found at the website noted above.

3.5 ELIGIBILITY AND TRAINING REQUIREMENTS FOR JUDGES

To qualify as a judge, a candidate must be of Jordanian nationality; be at least 27 years of age; have received a university degree in law; and must have worked as a lawyer, a clerk in the courts, or have obtained a diploma from the Judicial Institute of Jordan.

3.6 JUDICIAL INSTITUTE OF JORDAN (JIJ)

The JIJ was established in 1988 in order to prepare aspirant judges for the judicial profession. It operated as an independent entity having financial and administrative control over its operations until 2001, when the law was changed to remove its administrative and financial authorities and link the JIJ directly with the Ministry of Justice. The major functions of the JIJ are to prepare candidates for the judiciary, upgrade the capacity of sitting judges, and train court staff within the Ministry of Justice. The budget of the JIJ is allocated under a dedicated line-item budget within the MOJ's budget.

The JIJ is governed by a Board of Directors which consist of the Minister of Justice as President; President of the High Court of Justice as Vice-President; President of the Public Prosecution Department; Secretary General of the MOJ, Director of the JIJ; President of the Jordan Bar Association; two judges of no less than "Special" rank; and two law professors from official Jordanian universities.

The JIJ is currently the main entry point into the judiciary. In order to meet the requirements of admission into the JIJ, which conducts a two-year Judicial Preparatory Program (JPP), one must be a Jordanian national who does not exceed 35 years of age, has passed *Tawjihi* (secondary school graduation test) with an average not less than 75 percent, holds a university degree in law attained through a full-time study program, holds an average of not less than "good" from a Jordanian university law school or its equivalent from a foreign law school, and either has specified work experience or was among the top 10 ranking graduates of law schools. Further 70 percent of JIJ annual admissions are allocated to the top law school graduates with a minimum of 15 percent reserved for female students.

3.7 IFAD PROGRAM

Ifad is an alternative to the two-year JPP for entering the judiciary created by law in 2001 (see Article 10 of the Independence of the Judiciary Law) purportedly designed to meet the increasing need for additional judges. *Ifad* is administered solely at the discretion of the Judicial Council and is available to court clerks who are hand-picked and given a fast-track training course at the JIJ. In practice, it enabled unqualified—but well connected—individuals to become judges. Although Article 10 requires a one-year course for *ifad* judicial applicants, in reality, the *ifad* course is for seven months and up to three hours per day. Approximately 200 of Jordan's 700 judges are beneficiaries of the *ifad* system, all of them appointed since 2000 because of their ties to powerful individuals. The *ifad* program is currently suspended, but not eliminated by law.

3.8 TERM OF JUDGES

Judges are appointed for a probationary period of three years at the end of which their service terminates, unless the Judicial Council affirmatively retains them as judges. If retained, their term is until retirement, currently defined at the age of 68 years for all judges, except those who serve on the Court of Cassation and the High Court of Justice who retire at the age of 74 years.

4.0 KEY CHALLENGES TO THE RULE OF LAW: ASSESSING THE ESSENTIAL ELEMENTS OF THE RULE OF LAW

Consistent with USAID’s *Strategic Framework*, we examine the five elements that comprise rule of law: security, legitimacy, fairness, checks & balances, and the effective application of law. Each must be present for rule of law to prevail. We describe issues, or challenges, within each element that detract from the rule of law in Jordan. We also describe a number of “cross cutting” issues that pertain to more than one element.

4.1 ORDER AND SECURITY

Personal security is paramount to most people. In countries where public order breaks down or crime becomes epidemic, citizens may lose faith in their government. Public security and order in Jordan have been achieved without excessive authoritarian measures. This feat is noteworthy given the neighborhood in which Jordan is located. Iraq’s troubles on Jordan’s eastern border have spilled over into Jordan in the form of hundreds of thousands of refugees, war profiteering (*tujjar al-harb*), and money-laundering via Jordanian real estate. The Israeli-Palestinian conflict has a long history of direct spillover into Jordan, and it continues to impact political life in Jordan in myriad ways. The rise of al-Qa’ida and jihadist violence in the Middle East have not left Jordan unscathed, most notably in the November 2005 terror bombings of three hotels in Jordan that left 60 people dead, most of whom were attending a wedding celebration. Ongoing turbulence in Lebanon is also close by.

In spite of this extensive regional violence and instability, Jordan has been able to maintain order and personal security for its citizens without resort to draconian measures. Police and the court system continue to function reasonably well, minimizing resorts to vigilantism. A sort of vigilantism is common among tribal groups throughout the Arab world, and does occur in Jordan as well, but should not be seen as caused by a breakdown of legal institutions.

As discussed in more detail below, the assessment team is concerned that security issues are increasingly being used by the state to justify non-security measures. We do not minimize Jordan’s genuine security challenges. Rather, we fear that there is a drift in some official circles to misuse the rubric of security for political or other non-security reasons. The proliferation of Special Courts that are not part of the formal judicial framework and their expanding range of cases are of particular concern. In addition, security concerns are increasingly being used to justify the curtailment of freedom of expression and association. These issues are addressed under the “legitimacy” element below.

4.2 LEGITIMACY

The perception of law as legitimate and worthy of adherence underpins the rule of law. Laws and legal processes of questionable legitimacy undermine the rule of law. In general, we believe there is a high level of legitimacy of the legal system in Jordan. However, we note that there are three particular challenges that undercut the rule of law in Jordan: an abundance of Special Courts that exist outside of the legal framework of the judiciary; the process and number of “temporary laws” of dubious constitutionality; and, to a lesser degree, inefficiencies within the court system so severe that they raise doubts about the system’s legitimacy. We treat each in turn:

- **Special Courts.** Using the model of military courts, two types of non-judicial courts have been constructed in Jordan in recent decades: the police, the GID intelligence service, the civil defense force are each subject to their own courts outside the judiciary system that function much like the military justice system; and the state security court functions as an entirely separate jurisdiction. The police, GID, and civil defense courts all follow similar rules: if a member of their service is accused of any crime, he will be tried in the relevant in-house court. The judges who try the cases do not come from the judiciary, but are officials from that service. Often, we were told, these officials have no formal legal training. Only cases that have a potential sentence of three years or more can be appealed to the Court of Cassation; otherwise, they are untouched by the regular courts. However, it is up to officials in each service to define the crime. A serious crime could be “defined down” to a less serious offense in order to avoid any possibility for an appeal to the Court of Cassation. The possibility for abuse in this system is enormous as each of these civilian services could choose to protect its own members. The lack of real judicial oversight is an ongoing problem. The State Security Court is constructed somewhat differently, but suffers from similar legal deficiencies. One of the three judges may come from the judiciary, and all decisions are subject to appeal to the Court of Cassation. The prime minister may refer any case to the state security court, and many of the cases involve economic crimes, not security issues. Since all of these special courts reside outside of the judiciary and have rules that fall far short of accepted legal minimums, they undermine the legitimacy of the rule of law in Jordan. We recommend that the Government of Jordan (GOJ) immediately begin to dismantle these special courts and incorporate all their cases into the regular judicial framework.
- **Temporary Laws.** Under Jordanian law, the government may enact a temporary law during a period of emergency. Any temporary law must be reviewed and passed by parliament during its first session following the government’s adoption of the law. This legal loophole, designed to apply only during emergencies, has been abused by the GOJ. At the beginning of the decade, while parliamentary elections were suspended for two years, the GOJ passed approximately 240 temporary laws—the large majority of which still have not been reviewed and passed by parliament, but are considered to be in effect. We do not take issue with the merits of many of these temporary laws as some were clearly beneficial, such as greater legal protections for women and economic reforms necessary for ascension to the World Trade Organization. However, the process by which such laws are promulgated is clearly designed to bypass normal parliamentary procedure, and therefore undermines the broader legitimacy of the rule of law. In addition, since the Court of Cassation does not practice judicial review, there is no formal judicial process to exercise oversight over the constitutionality of these laws. We recommend that the GOJ resist the use of temporary laws except for in times of actual emergency. We also recommend that the Government of Jordan establish a Constitutional Court to provide for judicial review over both executive actions and parliamentary law-making.
- **Gross inefficiencies.** We are concerned that inefficiencies in processing cases sometimes reach a level that undermines the legitimacy of the system. We heard from lawyers and business representatives how they often avoid using the courts because of endemic delays, high caseloads per judge, inefficient procedures, and the prevalence of judges unqualified to hear complicated cases. Not

only does this raise questions for some about the legitimacy of the system, but it can also deter needed investment and economic activity. At least in some sectors, there appears to be declining public confidence in the judiciary, even though overall public confidence is still relatively good. Our recommendations pertaining to enhanced performance address this issue.

These three challenges undermine the legitimacy of the Jordanian justice system as an institution that can successfully uphold the rule of law. While the first two issues, which involve structures outside the justice system, cannot easily be addressed through a standard rule of law program, overcoming them is critical to promoting the rule of law. The third challenge involving the gross inefficiencies of the justice system should be a central component of rule of law programming.

4.3 FAIRNESS

Laws must apply equally to all, must protect basic human rights and civil liberties, must have fair procedures in their implementation, and there must be access to justice for all citizens. Although Jordanian judges are generally reputed to be fair and impartial, the inability of certain populations, particularly women, to access the justice system undermines the overall fairness of the system. While the difficulty for women to protect their legal rights stems from a variety of social, cultural, and economic factors, four specific fairness issues exacerbate the difficulty for women and other vulnerable populations to access the justice system.

- **Access to Justice for Women.** Women in Jordan have unequal access to justice compared to men due to cultural reasons, not formal rules. Only a tiny fraction of judges in Jordan are women, diminishing women's ability to receive an equal hearing in some cases. *Wasta* is overwhelmingly a male-utilized custom, also hindering equal justice for women. Further, women pursuing cases against their own husbands or other close male relatives are likely to be cut off from family funds and will also have no legal aid available to them. Surprisingly, access to justice for Jordanians of Palestinian ethnicity does not appear to be a serious problem.⁴ Nonetheless, the fact that the judiciary is overwhelmingly dominated by men of East Bank origin suggests that women, as well as other people lacking sufficient connections, may be discouraged from using the justice system to protect their rights.
- **Telephone Justice.** Interference by senior judges in cases being heard by junior judges appears to be a widespread and continuing problem that undermines expectations of equal application of the law. The perception that telephone justice occurs weakens confidence in the system for those lacking the necessary connection, while sometimes prejudicing the outcomes of cases against them. There is no formal procedural mechanism for junior judges to report such inappropriate interventions without risking serious repercussions for their own careers.
- **Underqualified, underpaid court staff.** Court staff is often poorly trained and, as civil servants, poorly paid as well. Petty corruption at the staff level appears to be fairly common, with staff sometimes supplementing their meager incomes by "losing" files or delaying processing paperwork. Both incompetence and petty corruption by court staff interfere with the equal application of the laws,

⁴ Jordan has two primary ethnic groups, Palestinian and East Banker (or Transjordanian), although the ethnic markers are historical and political, not linguistic, religious, or cultural. Palestinian refers to those Jordanian citizens that came from Palestine after 1947 as a result of the Israeli-Palestinian conflict. East Banker refers to those Jordanian citizens whose families are native to Jordan, came in earlier generations from Syria or the Hijaz, or came from Palestine prior to 1947. The exact percentage of each ethnic group has not been released by the GOJ, but it is thought that Palestinians constitute 55-60 percent of the total population. Palestinians are concentrated in the Amman-Zarqa metropolitan area, and predominate in the private sector. State employees are overwhelmingly East Banker, including in the judiciary.

especially since they tend to disproportionately affect those lacking the necessary funds or connections.

- **Absence of legal aid/public defense.** Legal counsel is not guaranteed to the poor in Jordan except for cases involving the death penalty or potential life imprisonment. Thus, citizens with few financial means have unequal access to justice and their civil liberties are put at unequal risk. Several nongovernmental organizations (NGOs) have formed around the issue of providing legal aid to vulnerable populations, especially women, but these services remain limited and insufficient as a substitute for a formal system of public defense.

4.4 CHECKS & BALANCES

This element contains the biggest challenges for Jordan because its judicial branch of government is neither independent nor does it have internal mechanisms in place to promote accountability. Control by the executive branch over virtually all aspects of judicial functioning enable the government at the national and local levels to influence judicial decisions and allow arbitrary exercise of power. Although the government may not always choose to exercise this power, its authority over judges and judicial staff undermine their confidence and ability to resist all forms of pressure. At the same time, the lack of transparency in the operations of the courts and the judicial council undermine the confidence of the executive branch, as well as Jordanian society, that judges are capable of controlling their own affairs and maintaining high ethical standards. Such secrecy also raises doubts about the legitimacy of judicial processes, the fairness of court decisions, and the ability of the judiciary to effectively apply the law.

- **Independence**
 - *No administrative or financial independence.* The executive branch of government, through the MOJ, has administrative and financial control over the judiciary, including the budget of the entire judiciary, and the hiring, promotion appointment, and training of all of the court staff. There is a plan, albeit soft, to transfer these powers to the judiciary, starting by providing staff for a small technical secretariat within the judicial council. There is some discussion of transferring control of budgets and court operations to the judicial council, however there is no clear consensus on whether and when to move forward on this aspect.
 - *Selection of Judges.* Although the Judicial Council appoints judges to specific positions and controls their promotion, no judge may be appointed to the bench by the Judicial Council who is not first nominated by the MOJ.
 - *Judicial Inspection.* Because the MOJ controls the judicial inspection function (although not the power to act on data produced through inspection), the potential for abuse is present.
 - *No Judicial Review.* The Court of Cassation (the highest court) does not practice judicial review, nor is there a Constitutional Court, thus there is no formal judicial process to exercise oversight over the constitutionality of executive actions and parliamentary law-making. Jordan's National Agenda accepts the need for a Constitutional Court, but does not support its timely creation.
 - *Low self-confidence of judges.* Judges are hindered in playing their constitutional role by a lack of confidence. Relatively low salaries, lack of sufficient skills to deal with a variety of complex cases, numerous unqualified judges, overarching executive authority, some ethical problems (e.g., telephone justice), and a lack of institutions to promote judicial interests and standards (e.g., no judicial association or judges' club) all contribute to low institutional confidence. As a result, judges are often unable to resist pressure, and are not perceived to be capable of playing a central role in upholding the rule of law.

- **Transparency and Accountability**

- *Composition of Judicial Council.* The Judicial Council consists only of judges, and currently consists of senior judges, many of whom are resistant to internal reform. This restricted composition limits the transparency of its operations. Including members of the judicial council from the ranks of lawyers, law professors, and other relevant groups can improve the transparency and enhance public perception of the independence of the judiciary.
- *No Transparency in Judicial Council Decision-Making.* There are currently no transparent procedures, reporting, or accountability for decisions made by the Judicial Council or its president. The absence of transparent decision-making procedures by the Judicial Council enables the president of the Judicial Council to have a great deal of power in influencing all decisions under the Judicial Council's authority, while undermining the participation of other voices within and outside the judiciary. If the president opposes internal reform, undertaking such reform becomes virtually impossible. Having an empowered Judicial Council with more transparent decision-making procedures and operational processes would enhance public and executive confidence that the Judicial Council is making its decisions impartially, ethically, and responsibly.
- *Judicial Evaluation.* The judicial evaluation process, even with its new and improved processes, is not sufficiently transparent. While new procedures may have improved the objectivity of inspection procedures, the data from this process is not used for making transparent or objective decisions. Of the nearly 130 judges recently up for promotion, only 4 were deemed undeserving of promotion in the inspection process. All four appealed to the Judicial Council with only one denial upheld and two still pending. None of the decision-making processes was transparent.
- *Lack of Oversight of Judiciary.* The absence of means for the public to oversee the judiciary further undermines public confidence in its capacity to act independently or impartially.
 - Asset declaration. While senior judges must fill out the new asset declaration, there is no transparency in the system (the declarations are not publicly disclosed), rendering the system virtually useless.
 - Parliamentary oversight. Jordan's parliament plays no meaningful oversight role of the judiciary, nor can it, given the financial control of the judiciary by the MOJ.
 - Public oversight. Judicial decisions in virtually all matters are not transparent, except for decisions by the Court of Cassation, which are published in hard copy. No other court decisions are published or otherwise accessible to the public, nor are the files of court cases in the public domain. Basic data concerning the number of cases a judge hears, how many of his/her decisions were reversed on appeal, etc., are also kept from the public. Journalists have little practical access to the courts and court records, so cannot play a meaningful oversight role of the judiciary. Given the lack of transparency and public information about judicial decisions, the public plays no meaningful oversight role of the judiciary.

4.5 EFFECTIVE APPLICATION

There cannot be rule of law without effective application and enforcement of laws. To the extent that inefficiencies and delays in processing cases undermine public confidence in the system and persuade people to avoid using courts altogether, they rise to the level of legitimacy issues as addressed above. In addition, Jordan has several challenges to the effective application of the rule of law which may not undermine confidence to as significant an extent, yet still undermine the establishment of the rule of law.

- *High and Inconsistent Case Load.* Jordanian judges tend to have high case loads by comparative standards, and that case load among courts is inconsistently shared. As noted above, high caseload

contributes to the inefficiency and lack of confidence in the system. While the court-annexed ADR system is intended to reduce caseload by diverting cases out of the judiciary, ADR judges have significantly fewer cases than judges in the regular courts, limiting the impact of the system on caseload. Such high case load undermines judges' ability to apply the law effectively.

- *Ineffective enforcement of judgments.* The enforcement of judgments is weak and inefficient. One lawyer referred to the Execution Department as the place “where cases that had been won are then lost.”
- *Lack of Timely Access to New Laws.* New laws recently promulgated are distributed through a Gazette, in hard copy only. It takes considerable time for such laws to be added to a searchable electronic database.
- *Competency and Independence of Prosecution.* Prosecutors are part of the judiciary, not the executive branch of government. As a result, a jurist may go back and forth between being a prosecutor and a judge, a condition that raises appropriateness questions. As a practical matter, most prosecutors are young, right out of the Judicial Institute, which also raises questions about institutional competency to pursue effective prosecution.

4.6 CROSS-CUTTING ISSUES

There are a number of issues that impact multiple elements in the rule of law. Included among these cross-cutting issues are the following:

- *Weak Legal Education.* Until recently, Jordanian law schools accepted students who barely passed the high school graduation examination, or *tawjihi*. Those with a passing score of 55 percent could be accepted into the law program. That has now been raised to a 70 percent minimum, which still means only average students can enter law school. As well, credit hours in law school had dropped to 128 for graduation, including general requirement classes. The current goal is to have all law schools require 142 credit hours to graduate, but that is not yet implemented. Nor do students get any practical skills training prior to practicing law. In short, the quality of lawyers and young judges entering the profession is quite low (although now improving). A formal program of Continuing Legal Education does not exist, although the JIJ has just started to make CLE available to judges. The generally poor quality of legal professionals has reverberations throughout the system: poor and/or unequal legal representation raises questions about the fairness of legal proceedings; a generally low-quality professional corps cannot adequately play its constitutional oversight role, nor can it effectively self-police; likewise, effective application of the rule of law is compromised in the hands of poorly educated legal professionals.
- *Low Qualifications of Judges.* Judges are often poorly qualified to serve on the bench in Jordan. Weak legal education and the virtual absence of continuing education for all legal professionals has been noted above. The lack of specialized training for judges is an especially glaring problem given the nature of highly technical cases in today's globalized world (in intellectual property rights, commercial law, biotechnology, etc.). The recent dumping of about 200 unqualified *ifad* judges onto the bench in Jordan—who now represent over one-quarter of all judges in Jordan—has badly damaged the credibility of the judiciary. A recent pay increase (although still quite low), along with now-tighter standards at both law schools and the Judicial Institute should attract a higher caliber of judge in the years ahead, but much damage has already been done. How to both weed out poor judges and better train qualified judges is a major task challenge facing the rule of law in Jordan. Poorly qualified judges impact multiple elements, including the fairness of the system, the ability to provide an effective check and balance to executive authority, and the competence to effectively apply the law.

- *Poorly qualified court staff.* Court staff are regular civil servants employed by the MOJ. Often low qualifications and competence of court staff negatively impact the rule of law in Jordan across several elements. The temptation of poorly paid court staff to accept bribes is a real problem. As it is, it has become custom for lawyers to pay court clerks 5 JDs per month as a gratuity, raising further questions about the fairness of proceedings (what happens to cases of lawyers who do not pay?), and the ability of court staff to effectively process and implement court decisions. We found it common for information technology (IT) staff assigned to courthouses to be poorly trained and unable to effectively address problems that arose with automation. It is a common perception (outside of our ability to verify) that court IT staff was assigned via *wasta*, not qualifications.
- *Low Public Awareness of Law.* Jordanians have a low level of awareness of their legal rights and proper legal processes. Rule of law or human rights education is not part of the Jordanian curriculum at any level. Very few journalists in Jordan have specialized knowledge of the legal system that would allow for informed journalism on the judiciary. Even those journalists that have such training or would acquire it, have little access to the judicial process since case files are closed and hearing rooms are small. Several NGOs have tried to address this problem through small-scale public awareness campaigns, and by training journalists in covering judicial issues, but there is a great deal of work still to be done. The low (and uneven) level of awareness of the law, especially combined with the often-poor legal representation clients might get, cast doubt on the basic fairness of the legal system, and on the ability of the public to use the justice system, to undertake oversight of the judiciary, and to help ensure the effective application of the law.
- *Lack of Institutionalized Leadership.* Steps to either modernize or reform the judiciary are overly reliant on individual personalities, and are not sufficiently institutionalized to withstand personnel changes. This is most apparent with the revolving Ministers of Justice, who have averaged a term of duty of only about one year since 2000. Modernizing steps taken by some ministers do not get institutionalized sufficiently, so tend to wither on the branch when the next minister comes in. The non-transparent power of the president of the Judicial Council is likewise entirely personality-based, and not institutionalized (a step that would likely make decision making more transparent and accountable). The lack of institutionalization of processes raises questions about the legitimacy and fairness of the system, the ability of the judiciary to check and balance other authorities, and to effectively apply the law in a consistent manner.

4.7 DISTILLING THE RULE OF LAW CHALLENGES

While there are challenges in all five of the rule of law elements, the most significant concerns lie in the areas of **checks and balances** and **legitimacy** of the rule of law. It is important to achieve a justice system that is capable of upholding the law fairly and impartially without being subject to outside influence, and is perceived as such. *Reforming* the judiciary to enhance its independence and empowerment while increasing its transparency and accountability, is crucial to achieving such a system. At the same time, overcoming the gross inefficiencies and delays that undermine the legitimacy of the system through *modernization* efforts is critical to building a system that is respected—and used—by all segments of the population. A secondary set of issues affect the **fairness** of the system in ensuring access to justice for all segments of the population, particularly women who are generally unable to ensure their rights are protected. While the lack of access to justice does not undermine widespread respect for the rule of law, it is crucial in promoting the rule of law for the entire Jordanian population. Finally, making progress on all of these elements will require significant investments in enhancing the qualifications of judges, lawyers, and court staff, while raising public awareness of the law.

5.0 POLITICAL WILL FOR REFORM AND THE MAJOR PLAYERS

5.1 BOTTOM LINE UPFRONT

No significant political actors in Jordan oppose efforts to modernize courts and other rule of law institutions, and many have embraced the modernization efforts. By contrast, judicial reform has powerful proponents and opponents, and, indeed, support and opposition is cross-cutting among some actors, depending on the type of reform in question. Based on our assessment, we believe that there are significant opportunities for USAID to assist in judicial modernization efforts, and that those efforts will likely be successful. Opportunities for reform do exist, but are more limited. However, we believe that by investing in modernization efforts, as well as those areas for reform that do exist, USAID may assist Jordan in creating greater constituencies for serious reform and thus build a better foundation for a professional and empowered judiciary in the years ahead.

5.2 THE MODERNIZERS

There are four main groups inside Jordan most responsible for pushing a modernization agenda for the judiciary. First, King Abdullah has made clear on numerous occasions his support for modernizing the rule of law in Jordan. Indeed, more than others, he has also voiced support for judicial reform—an independent and empowered judiciary. As recently as December 2007 at the opening of the 15th Parliament, the monarch again expressed support for “enhancing the independence of the judiciary.”

Second, and most notably, judicial modernizers are concentrated in the Ministry of Justice, which is within the executive branch of government. The modernization agenda has been carried out most clearly by the MOJ, which continues to have financial and administrative control over the judiciary. The most prominent modernizer and the man most responsible for launching court automation was Salah al-Bashir, the minister of justice from 2003-2005. After a brief respite, Bashir’s modernizing efforts were continued under Sharif al-Zu’bi, the immediate past minister of justice, and are expected to continue under the current minister of justice, Ayman Odeh. Other modernizers are concentrated in the MOJ as well, even those, like Judge Ali al-Masri, who came to the MOJ from the judiciary.

The private sector is increasingly a voice for the modernization of the justice sector. Long delays in processing cases in the courts, as well as non-specialized judges unqualified to hear technical cases, has prompted the private sector increasingly to seek legal redress outside the courts, most commonly through specialized arbitration. Lawyers who represent business clients commonly advise their clients to avoid the courts.

Young professionals in the legal sector—both lawyers and judges—have also embraced the modernization drive. In addition to having greater affinity for automated systems, such young professionals have also shown a greater willingness to venture into alternative dispute resolution venues.

The recent success of mediation has been attributed, in part, to the fact that it occurs in the lower courts and does not impact the senior judiciary.

Among these modernizers are to be found some reformers. This is especially true among the young legal professionals. While overly politicized, the Jordan Bar Association is also a strong proponent of reform. Integral to the strategy we are recommending is the notion that continued modernization efforts will expand the ranks of reformers as well, so that modernization may help drive the reform agenda.

Still, most modernizers are skeptical about reform as they believe, with good reason, that the judiciary is not prepared for true independence and empowerment. Not only is the administrative capacity for administering the court system utterly absent in the judiciary, but modernizers point to the resistance by the Judicial Council to embrace modest steps of internal accountability and transparency. To prematurely empower a judiciary led by judges who want the benefits of independence but not the responsibilities associated with accountable governance would be an enormous mistake, argue many modernizers. In order to keep the modernization drive moving forward, modernizers want to continue to monopolize decision-making power in the MOJ over the judiciary.

5.3 THE OLD GUARD

While not opposed to modernization efforts, *per se*, the leadership of the judiciary is the group most skeptical of such steps. The Judicial Council, led by the Chief Justice, tends to view MOJ efforts with a jaundiced eye, seeing most any effort through the lens of continued MOJ control over the judiciary. MOJ authority over the judiciary remains a sore point with the Judicial Council, and colors their view of all MOJ efforts.

Tightening standards for incoming judges was opposed by the Old Guard as it reduced their ability to use their *wasta* to appoint kin and the well-connected to the bench through the anti-meritocratic *ifad* system. The *ifad* program was a secondary channel to the bench that allowed unqualified applicants to essentially bypass the two-year Judicial Institute training program for new judges. In a tense showdown, the MOJ compelled the Judicial Council to suspend the *ifad* program. Serious and consequential judicial inspection in the evaluation, promotion, and disciplining of judges has also not been embraced to date by the Judicial Council, nor has transparency in decision-making processes. By all accounts, interference by senior judges in the cases of junior judges (called ‘telephone justice’ by some) remains an endemic problem that the Judicial Council has not taken seriously. In short, the leadership of the judiciary has not embraced (and has indeed resisted) necessary internal reform that would make external independence and empowerment a more compelling issue.

Thus, the Old Guard has a decidedly mixed record on the issue of reform. When it comes to the issue of meaningful judicial independence and empowerment, the senior judicial leadership has been the main and most vocal proponent of reform. However, when it comes to enhancing accountability and transparency inside the judiciary, the Old Guard is the fiercest critic of reform. Enhancing the rule of law in Jordan will entail not only further modernization efforts, but also linking the carrot of judicial independence to the stick of internal judicial reform.

However, political progress is possible because the judiciary is a decidedly loyal, mostly tribal, institution (as is the parliament). We estimate that East Bankers constitute between 80 percent to 90 percent of all judges in Jordan, and 100 percent of the Judicial Council. Most of these judges come from prominent clans in Jordan. This is a major shift in the ethnic composition of judges from the situation prior to the 1970s, when Palestinians had significant representation in the legal sector, including in the judiciary. Today’s judiciary, in short, is a conservative and highly loyal institution, and poses no political challenge to the monarchy. Thus, holding out the promise of real judicial empowerment (with internal reform) poses no significant political risk. This may make both the monarchy and, especially, the executive branch more

willing to accept judicial independence. However, they should not waste the opportunity to link empowerment with internal judicial reform.

5.4 OPPONENTS TO REFORM

Unlike with modernization, there is real opposition to reform. The primary opponent to internal judicial reform is the judiciary itself, or, more accurately, the senior leadership of the judiciary. Greater accountability and transparency would limit the Judicial Council's ability to simply do as it pleases in the appointment, promotion, and disciplining of judges. Influential tribes and personalities may also oppose internal judicial reform simply because it would limit the importance of *wasta* on both judicial appointments and judicial decisions.

True judicial independence also has powerful opponents beyond well-meaning modernizers at the MOJ. The powerful security establishment inside Jordan would not benefit from enhancing the rule of law in Jordan. Security has become a broad umbrella under which many actions now fall, including those that are not readily apparent to be security-related. There is no doubt that Jordan has real security needs, particularly given the neighborhood in which it lives. The spillover from the Iraq war, including the terror bombings of three hotels in Amman in 2005, is a pressing concern, no less real than potential spillover from the Israeli-Palestinian conflict next door.

However, we are concerned that the rubric of security has grown so large and now includes so many facets of life in Jordan, that real judicial reform and the enhancement of the rule of law may not be possible without serious consideration by Jordanian authorities of the use—and perhaps abuse—of the mantle of security. Not only does the military have its own special court system, which is not unusual, but so does the intelligence service (GID), the police, and the civil defense forces, which is unusual. State Security Courts can hear any case referred by the prime minister, which now often includes fairly petty economic cases. It is reasonable to expect that all of these non-judicial courts, and their home institutions, might be expected to oppose the expansion of real judicial authority in Jordan.

The Ministry of Interior, which runs the police courts (among other things), has become a powerful actor that may oppose judicial empowerment and enhanced rule of law in Jordan. All governors in Jordan, for example, are appointed by the minister of interior, and their primary task is not governance but rather security. Governors routinely use “administrative detention” to jail opponents for relatively brief periods, often for political reasons.⁵

Security, both real and opportunistic, has become an enemy of the rule of law in Jordan.

⁵ Both Jordan and Israel use administrative detention liberally, a practice first introduced in the area by the British during the Mandate period.

6.0 OPTIONS BEYOND THE JUSTICE SECTOR TO ENHANCE RULE OF LAW

In countries where direct investment in the justice sector is not seen to be particularly beneficial because that sector is simply not prepared to effectively absorb assistance, USAID may choose to invest in other sectors that can indirectly promote the rule of law. The assessment team does not believe those conditions apply to Jordan. We believe that the justice sector is ripe for direct investment that will reap dividends; indeed, the investment of the past several years in this sector has produced tangible benefits. Moreover, those areas that would be likely candidates for investment ‘beyond the justice sector’ already have USAID-funded programs ongoing. Those sectors include:

- **Empowerment of the Parliament.** Programs that professionalize and empower the judiciary and the parliament will each help to check unbalanced executive authority, a continuing problem in Jordan. Jordan’s parliament resembles the judiciary in important ways: it is largely East Bank, even tribal, in its ethnic make-up; a largely conservative and fiercely loyal institution; and populated by under-qualified personnel who often hold their position because of *wasta*. The need to professionalize and empower Jordan’s parliament is a pressing one, and USAID currently has a stand-alone project in parliament being implemented by the State University of New York (SUNY).
- **Development of Political Parties.** Jordan currently has very weak political parties. Those that do exist are largely facades for powerful individuals or families. The Islamic Action Front Party, the political wing of the Muslim Brethren in Jordan, is widely considered the only ‘real’ political party in Jordan, but even its popularity appears to be on the decline. Even with the largest representation of any party, the IAF only holds six seats in the current parliament, out of 120. Strengthening political parties so that they may play a useful role in the development of democracy in Jordan is a beneficial way to enhance the rule of law as well. USAID currently has a political parties program administered by the National Democratic Institute (NDI) and the International Republican Institute (IRI).
- **Local Government Empowerment.** In Jordan, as elsewhere, excessive centralization of power by the executive branch has badly weakened municipalities, leaving many common citizens with a feeling of distance and alienation from government. Strengthening local governments is an effective antidote to overly centralized authority, providing a needed check and balance, which can improve conditions for rule of law. The U.S. is currently funding such a program through the Millennium Challenge Corporation (MCC), implemented by ARD.
- **Civil Society Empowerment.** A flourishing civil society is a cornerstone of democracy and the rule of law. USAID is expected to roll out a civil society assistance program shortly. However, recent measures, including proposed legislation before parliament, would place undo and even draconian

restrictions on civil society in Jordan, a development that must be resisted if civil society and the rule of law are to grow in Jordan.⁶

- **Private Sector Development.** As a major consumer of the civil courts, business—with its interests in contract enforcement and the protection of private property—can be a champion of the rule of law. Helping business to aggregate and professionalize its interests can thus help promote the rule of law, an endeavor USAID has assisted through its SABEQ program.
- **Anti-Corruption Initiatives.** More than any other single activity, official corruption undermines the legitimacy of rule of law in any country. USAID/Jordan commissioned an anti-corruption assessment whose findings of increased corruption risks and recommendations were submitted in September 2007. Incorporating those recommendations in all future projects will be important to the promotion of the rule of law in Jordan.

⁶ For more information, see Human Rights Watch, <http://hrw.org/english/docs/2007/12/17/jordan17555.htm>.

7.0 EVALUATION OF EXISTING PROGRAMMING

7.1 COMPETING APPROACHES

The evaluation of ABA and DPK's rule of law program was done with a particular focus on lessons learned for future programming. We found that both implementers used a combination of two approaches for their projects. The first approach we have labeled the direct approach, or direct assistance. This is a top-down approach that seeks to create facts and progress quickly. It is most effective when consensus already exists to move forward and/or no significant resistance to such measures exists. *The direct approach tends to work best for modernization projects.* DPK's court automation program is an example of a successful direct approach.

The second approach is based on consensus-building, and is a bottom-up approach. By its nature, the consensus-building approach takes more time to show results and generally deals with more politically sensitive issues. It is most effectively employed when there is less initial support or agreed direction, or when greater opposition can be expected. *The consensus-building approach tends to work best for reform projects.* ABA's ADR project is an example of successful consensus-building approach.

In general, we found that both ABA and DPK used the right approach for each discrete project, and both ABA and DPK used both approaches for different parts of their overall projects. As a general rule, ABA had an affinity for the consensus-building approach, while DPK tended to more often use the direct approach. When the wrong approach was selected, less success resulted. For example, ABA used a consensus-building approach in its commercial activities when a direct approach would have been more helpful, resulting in less success. Similarly, DPK used a direct approach when developing judicial inspection criteria when there was little consensus between the MOJ and the Judicial Council on the issue, and had less success as a result. This was a case where a consensus-building approach would have likely yielded better results.

The necessity for properly selecting the right approach—direct or consensus-building—for the right project is our major 'lesson learned' from the evaluation, and informs our recommendations for how USAID might proceed in the coming years. What follows below is a synopsis of each major rule of law activity for ABA and DPK.

7.2 ABA: RULE OF LAW INITIATIVE

- **Reducing Demand on Courts: Alternative Dispute Resolution:** In responding to two of the Ministry of Justice's goals set forth in the Judicial Upgrading Strategy of 2004-2006, which are to reduce demand on the courts and to increase public satisfaction with the justice system, ABA ROLI assessed the potential for ADR in Jordan. Given that Jordan had a temporary mediation law, which was finally passed by Parliament in 2006, allowing for the establishment and regulation of court-

referred mediation, and given that Jordan had a mediation tradition of *Wasata*,⁷ ABA ROLI created a pilot mediation project at the court of first instance in the Amman Palace of Justice.

In consultation with a working committee of the Judicial Council, which ABA ROLI encouraged the Judicial Council to create, ABA ROLI identified and implemented the necessary steps to implement the pilot project: training of judges who were envisaged in the temporary mediation law to be the potential mediators, conducting awareness sessions among all sectors in the Jordanian community, including the judiciary and the bar, and tracking all relevant information, including the number and type of cases referred to mediation, the time spent on each case, the number of cases resolved, and the response of the public who utilized the services of court-referred mediation.

ABA ROLI conducted three initial training workshops for judges, a refresher training course for judges, and two trips to the United States for judges to observe the practice and administration of mediation in U.S. courts. Further, in coordination with the Judicial Council working committee, ABA ROLI organized four awareness sessions for the Jordan Bar Association, the Chamber of Commerce, the Insurance Union, and the Banking Association to market the concept of court-referred mediation.

After ABA ROLI constructed the pilot Court Mediation Center in the Palace of Justice, the Minister of Justice formally launched its opening in June 2006. The pilot Court Mediation Center currently has two full-time “Judicial” mediators and six part-time “Judicial” mediators. Due to its success and the interest in court-referred mediation services, additional Court Mediation Centers have recently been opened by the Ministry of Justice.

In evaluating the success of the mediation program, the statistics of the pilot Court Mediation Center and participant surveys for the period June 1, 2006–May 25, 2007 are telling. The strengths include the timeliness in resolution of the cases referred to mediation in that most cases were resolved within a month of referral even though three months are allowed for resolution. Seventy-five percent of cases referred by the conciliation court were settled, while 58 percent of the court of first instance cases (referred by the case management judge) were settled. Public satisfaction was very high, particularly due to the amicable resolution of the case and the competency of the mediator. Yet, the statistics demonstrate that the Court Mediation Center did not reduce the demand on the courts as the number of the cases referred and the caseload of the “Judicial” mediators was low. The challenges include the statutory limitations imposed on the referral of cases to mediation, as only conciliation judges and case management judges are allowed to refer such cases; the ad hoc referral procedures; the absence of qualified “Special” or “Private” mediators; and the ignorance of and lack of trust in the mediation process.

In responding to the interest of the Ministry of Justice to provide mediation services, ABA ROLI successfully built a consensus among legal and judicial professionals to support mediation in the courts, trained a sufficient number of potential mediators to respond to an increase demand generated by the new Court Mediation Centers, and developed an awareness of the benefits of mediation among the legal community and the public. Although there were several delays in starting the program, ABA ROLI has successfully laid the foundation within the legal and judicial community and the Ministry of Justice to ensure its sustainability, provided continued USAID support is available.

- **Upgrading Legal Education:** At the initiation of Dr. Issam Zabalawi, former Minister of Higher Education, ABA ROLI focused one of its major programs on upgrading legal education to produce a cadre of competent law school graduates who receive not only theoretical knowledge of the law, but

⁷ *Wasata*, or mediation, comes from the same root as *wasta*, using one’s connections, but the two words should not be confused.

also cognitive and substantive skills training so that the legal and judicial profession could be better served.

Following an initial assessment of the status of legal education in Jordan, which identified as a fundamental issue the serious gap between theoretical knowledge and practical skills of law students, ABA ROLI assisted in creating a legal education committee that sponsored two annual conferences on legal education, the first in September 2005 and the second in March 2007. In responding to the requests of the stakeholders who articulated their needs in the two legal education conferences, ABA ROLI focused its upgrading legal education program on curriculum development, faculty development and law student legal skills.

Working with three universities, University of Jordan, Philadelphia University, and Yarmouk University, ABA ROLI conducted several faculty training workshops on interactive teaching techniques; conducted two study trips to the U.S. for law professors to learn of the American approach to practical legal skills training; trained law students on practical legal skills; provided a summer practicum, which entailed drafting legal documents and interviewing techniques; introduced public legal education to law students who conducted legal research on substantive laws and developed materials for delivering a presentation at local elementary schools; and conducted the first and subsequent Jordanian Moot Court competitions.

One of the major obstacles in creating the legal education upgrading program, as with the court mediation program, was the lack of communication and cooperation between the legal and judicial communities to collectively resolve issues affecting the rule of law, particularly legal education. ABA ROLI successfully developed a consensus among judges, attorneys, law professors, and ministry officials to develop a strategy to enhance the quality of legal education. One of the major successes of the strategy are the two new requirements that increase the entry score into a law faculty, and the number of credit hours required for graduation from a law faculty. Through the consensus-building process, attorneys, judges, and ministry officials recognize the importance of law faculties in the development of the rule of law, and, as a result, a positive and long-lasting relationship for upgrading legal education has been developed.

By exposing law professors to a broad range of interactive techniques, creating materials that supported use of those techniques in their classes, and building enthusiasm for interactive teaching techniques among professors and law students, ABA ROLI has increased the quality of law students who received the benefit of such techniques in that they are more capable of analyzing legal issues and presenting compelling legal arguments.

By providing law students with the opportunity to participate in the Moot Court competition that challenges students to higher standards of excellence, ABA ROLI helped to enhance their research, writing, and speaking skills. The interest ABA ROLI created in exposing students to the competition has turned into a demand demonstrated by the dramatic increase in the number of law students participating in the second year Moot Court competition.

Although there has been success with upgrading the legal education program, the major challenge is the sustainability of the program without continued USAID funding and support. There is no assurance that the judges, attorneys, law professors, and ministry officials with whom ABA ROLI worked will continue to play an active role in the future implementation of legal education upgrading program. Further, by ABA ROLI's own admission and study, not all professors who had interactive techniques training are utilizing it. Through a survey of law professors, ABA ROLI concluded that the large class size, lack of law professors' time, lack of advanced training for law professors, and lack of institutional commitment to student learning at the universities, contribute to a limited use of interactive teaching techniques. Lastly, it remains to be seen whether the Moot Court competition, successful as it is, can be sustained without USAID support.

- **Judicial Integrity and Independence:** The major component of ABA’s integrity and independence project was the creation of a judicial Code of Ethics. Constructing and promoting such a code was a politically sensitive enterprise. Judges in Jordan, as elsewhere, felt there was no need for such a code because it indirectly cast aspersions on their extant ethical behavior. Others argued that existing legal documents already covered ethical standards. However, the need for greater adherence to ethical standards in Jordan’s judiciary is evident, particularly given the widespread—and unethical—interference by senior judges in cases heard by junior judges (‘telephone justice’). Moreover, the recent entry into the judiciary of about 200 unqualified *ifad* judges makes ethical training an even more pressing matter.

ABA used a consensus-building approach to developing a Code of Ethics, through an Accountability Work Group and, later, an Ethics and Accountability Committee (EAC). In April 2006, at ABA’s request, the EAC was formally approved by the Judicial Council as a standing committee inside the Judicial Council. Given the sensitive nature of the project and the rejection by many judges of any need for a Code of Ethics, the consensus-building approach was the right strategy. The Code of Ethics touches upon intra-judicial reform, not modernization, making the bottom-up approach more appropriate.

The Code of Ethics has been completed, adopted by the Judicial Council, published in both Arabic and English, and distributed to all judges. Elements of the Code of Ethics are taught at the Judicial Institute. ABA is planning to edit the Code by adding more practical commentary. In all these ways, the Code of Ethics must be viewed as a success for ABA’s program.

How the Judicial Council makes use of the Code of Ethics is more problematic. The Code of Ethics is not used in the judicial inspection process, nor is it institutionalized such that alleged violations of the Code of Ethics may be reported and acted upon in a systematic manner. It is clear to us that the president of the Judicial Council opposes any institutionalized manner for dealing with breaches of judicial ethics, preferring instead to handle issues personally and quietly, with no transparency or accountability. Without political will from the head of the judiciary, institutionalizing ethical reform will be impossible.

- **Reducing Demands on Courts: Commercial Initiatives:** A consensus-building, bottom-up approach is not always appropriate, and may actually interfere with the ability to achieve tangible results in some cases. We found this to be true in the two commercial initiatives undertaken by ABA, one concerning bad checks and one on bankruptcy. In both cases ABA wanted to take smaller, more direct action, but was constrained by the committee structure it had set up. The consensus-building committees instead sought major change via legislation, and ended up with little in the way of tangible results.

Prosecuting bad checks takes up an inordinate amount of court time in Jordan, usually not commensurate with the small monetary amounts at stake. In order to reduce demands on courts, ABA was asked by the MOJ to undertake a program that would reduce demands on courts from fraudulent checks. ABA established a committee of judges and banking lawyers, chaired by the MOJ, to examine the issue. ABA supported a check diversion program that would not entail legislative change, and which was loosely based on the U.S. model. The committee, however, sought more far-reaching changes, finally recommending nine procedural and six legislative changes. In the end, only three of the nine procedural recommendations were adopted by the banking industry, and none of the legislative changes were made.

We suspect that had ABA taken direct action with the support of the MOJ to initiate the check diversion program, the chances for success would have been significantly greater. This represented a modernization issue, not a reform issue, and had no substantial opposition. In this case, the consensus-building committee approach was counterproductive.

The same story played out in the bankruptcy initiative, also designed with an eye toward reducing demands on the courts. ABA favored adoption of procedural reforms that could be done rather easily. ABA's bankruptcy committee, by contrast, sought broader legislative changes that are, by definition, much more difficult to achieve. As a result, no significant reforms were achieved, and the project has essentially been handed off to SABEQ. Again, in this case, direct action on procedural reform in consort with the MOJ would likely have achieved greater results. Bankruptcy reform does not touch upon internal judicial reform issues nor does it have significant opposition that would have likely effectively resisted direct action.

7.3 DPK: MASAQ RULE OF LAW PROJECT

- **Improved Judicial, Legal, Procedural, and Professional Knowledge and Skills:** Throughout the four-year project, MASAQ has assisted in developing the capacity of the Judicial Institute of Jordan ("JIJ") and focused on human resource capacity building, curriculum development, faculty training, and continuing education for judges. After an assessment of the services provided by the JIJ concerning the institutional capacity of the JIJ, the subject matter of the courses taught and the pedagogical methods utilized, and a needs assessment of the judges, MASAQ designed its project to respond to the deficiencies of the JIJ. With weak institutional capacity, the JIJ had difficulty responding to and implementing new procedures and processes required for training aspirant and sitting judges.

MASAQ provided continual expert support, international and domestic, to strengthen the administration and management of the JIJ, and its ability to offer training programs that enhance judges' legal, procedural, and professional knowledge and skills. MASAQ greatly supported the JIJ's development of a two-year Judicial Preparatory Program, which includes a transparent and rigorous admission process, a new curricula based upon international norms of 25 subjects that require 63 credit hours over four semesters, mandatory attendance, and course exams and evaluations.

MASAQ assisted in developing a formal system to reduce the hap-hazard manner in which continuing legal education courses for judges were delivered on an ad hoc basis by diverse international and domestic groups. MASAQ also trained numerous judges by conducting several continuing legal education events around the country.

MASAQ provided renovations of the JIJ building, including the computer lab, registration, classrooms, and library, and supported the Judicial Preparatory Program and continuing legal education automation systems.

The JIJ significantly benefited from the consistent presence of a MASAQ international expert, coupled with the expertise of a local consultant, by receiving timely and expert assistance in identifying and solving challenges affecting the management and services of the JIJ. By embedding the international and domestic consultant at the premises of the JIJ, MASAQ successfully achieved its goal of developing a well-functioning, effective judicial training facility. Although there has been a high level of knowledge transfer due to the experts, nevertheless the current level of the JIJ Judicial Preparatory Program and the need to develop a viable continuing legal education program for sitting judges as well as to expand the pool of qualified instructors can not be sustained without continued USAID financial support and technical assistance.

- **Efficient, Transparent, Streamlined Court Operations and Improved Access to Information:** Court automation was the single most visible and tangible modernization step taken under USAID's rule of law program. Most courts had been automated by the time of our field research, with the remaining scheduled to be automated shortly. We viewed the automated systems in various courthouses in central Amman, as well as courts in West Amman, Ma'an, and Wadi Musa/Petra.

When fully automated, court processes will benefit from the elimination of many manual processes, increased accessibility to case information, increased transparency, enhanced statistical output and monitoring ability, and more effective and efficient case management.

Automation was well-designed for direct action: it was strongly supported by the Ministry of Justice, and had no significant political opposition among the judiciary or staff. In all likelihood, senior judges did not, and still do not, fully comprehend the potentially revolutionary impact on judicial processes that automation will bring, particularly if accompanied by a commitment to greater transparency of the data generated. Because of all of its inherent benefits, it is our strong recommendation that court automation continue and expand, with an eye toward ensuring sustainability.

Indeed, the initial automation effort suffered from too much direct action by the Minister of Justice. The MOJ tasked DPK to automate the courts within 90 days. While this proved infeasible, it did create problems in the rush forward. DPK imported from the West Bank automation software, *Mizan 1*, while the MOJ provided much of the hardware. In an attempt to be responsive to different courts, *Mizan 1* ended up with 16 variations, undermining its ability to standardize processes and to efficiently communicate across courthouses. *Mizan 2*, due out in June 2008, will only have two variants, appropriately, one for the courts, one for prosecution.

Mizan 1 has been plagued by a number of bugs, which is to be expected from any new software. It is difficult to tell which bugs were real, and which ‘bugs’ were simply challenges that poorly trained IT personnel in the courts could not figure out. DPK did not manage perceptions particularly well, as court personnel came to expect an enormous change and have been disappointed, at least in part, by the end result. In several courts we visited, cases were being recorded both on *Mizan 1* and by hand in the registrars, thereby doubling the work of staff in this regard. It is hoped that *Mizan 2* will mitigate these problems.

We do have serious questions over sustainability of court automation, for two reasons. First, *Mizan 2* is due to come out only about two months before DPK’s contract expires in August 2008. There will almost certainly be bugs in the new software that need to be addressed, and there is not currently in place a mechanism to address these problems after August. This challenge is fairly easily met through one of several mechanisms, but must be addressed as soon as possible by USAID. Greater use of the local service provider that is developing *Mizan 2* is certainly a good option. In any case, a more streamlined USAID process to get waivers or otherwise allow for easier use of local support is needed. Second, court IT personnel, especially outside of the Palace of Justice, are often not qualified to do their jobs properly. We heard from several sources that such IT personnel are typically hired through *wasta*, not through a meritocratic process. Poorly qualified IT personnel cannot adequately respond to the challenges that will regularly develop with any automation system, and thus threaten its sustainability. What this means in practice is that peripheral courts are likely to disuse most all automation with time, and that all courts will end up using only some of the automation (that which is more easily maintained).

Better institutionalizing the automation process is also needed, so it is not subject to the comings and goings of individual ministers of justice. An automation committee was established earlier, but apparently did not amount to much. A serious oversight committee should be established of tech-savvy judges and other personnel who can keep pushing the automation process forward, regardless of the changing political winds at the top.

Only some elements of the court business process re-engineering were fully implemented, and focusing on improved court administration is a major recommendation for the coming years. The administrative capacity of both the MOJ and, especially, the Judicial Council is still low, limiting the ability of DPK to implement new business practices. It is critically important that the business model

itself be modernized to current international best practices; simply automating a business model which itself is poorly constructed will not do much to advance the rule of law in Jordan.

- **Institutional Development for More Efficient and Effective Administration of the Justice Sector:** DPK also utilized a top-down direct approach for AOJ institutional development. In most cases, this was the best approach. DPK worked with the MOJ to undertake surveys to create baseline public perception data, to second staff to various MOJ directors, to develop the phase 2 (2007-2009) JUST plan, to automate three court libraries, and to develop both an MOJ website (<http://www.moj.gov.jo/>) and a JIJ website (<http://www.jij.gov.jo/>). DPK also worked directly with the Judicial Council to develop a communications strategic plan, including a JC website (<http://www.jc.jo/>). With significant support and no opposition, the direct approach produced excellent results in each of these cases.

DPK was also tasked to create automated judicial inspection criteria. Judicial inspection is a politically sensitive issue in Jordan, as the MOJ has the authority to undertake inspection, but the Judicial Council has the authority to act on the inspection findings. Working with the judicial inspection unit of the MOJ, again utilizing a direct approach, the criteria were “90% complete” (according to the MOJ) when the Minister of Justice stopped the activity under pressure from the Judicial Council. Given its sensitive nature sitting at the crossroads of the MOJ and JC, the development of the inspection criteria was an instance when a consensus-building approach would have made more sense. It would have been more time-consuming, and would not have guaranteed ultimate success, but would have been a better approach given the nature of the problem.

- **Improved Awareness of the Justice Sector through Civil Society, Small Grants, and Media:** This was a discrete program designed to broaden awareness of the rule of law primarily through small grants given to civil society organizations working in relevant areas. DPK had four rounds of granting, for a maximum of six months each. Typically, grants were given in the \$18,000 to \$20,000 range, with a maximum of \$25,000 allowed. In all, 11 grants were given to programs that focused on building public awareness of the judicial sector, individual rights under the law, ADR techniques, and youth programs designed to enhance the understanding of the rule of law.

We found this to be a worthwhile activity that planted valuable seeds for the future. In addition to its direct benefits, the grants program allowed recipient groups to build their own organizational capacities. Our only criticism is that this program was not integrated into other aspects of DPK’s overall activities, and was essentially a stand-alone program.

We recommend that any follow-on project continue this endeavor. In addition, to greater program integration, we also recommend that the program be expanded, that larger grants be utilized, and that time frames greater than six months be employed. This later point applies especially to programs working in rural areas where it takes time to build trust relationships necessary for successful implementation. Year-long grants at higher levels should be contemplated. In addition to the existing targeted areas, we recommend a greater focus on family counseling and mediation. Successful programs in this area will help create mechanisms for solving problems before they become serious issues in the hands of the police and courts.

8.0 OTHER DONOR PROGRAMS IN THE RULE OF LAW

USAID is currently the largest donor in the justice sector. The European Commission (EC) is currently funding a project through June of 2008 aimed at enhancing the capacity of the Ministry of Justice by defining organizational structures, functions, and job descriptions for administrative staff; identifying training needs; and training administrative staff. The EC is planning an additional program starting in late 2008/early 2009 which will support the Ministry of Justice in revising the criminal legal framework in line with European Union (EU) and international standards, and building the capacity of the MOJ and judiciary in the criminal justice sector. An additional EC program will support the UN Office on Drugs and Crimes to develop a database on the juvenile cases, enhance judicial training on juvenile justice issues, and establish legal aid for juvenile justice cases in the Ministry of Justice Department for Family Affairs and Human rights.

Other donor programs include Danish support for protecting the rights of women and children, and establishing an Ombudsman institution, and EC funding through the United Nations Development Programme (UNDP) to the National Center for Human Rights to train judges on human rights issues. Several countries have provided small grants to Jordanian NGOs focused on human rights and protection of the rights of women and children. The U.S. State Department Middle East Partnership Initiative has provided support to the regional Arab Women's Legal Network based in Amman.

9.0 RECOMMENDATIONS

9.1 STRATEGIC APPROACH

To address the primary rule of law challenges in Jordan, progress must be made on increasing the **true independence of the judiciary** along with systematically improving mechanisms for **transparency and accountability**, which would be especially valuable in mitigating popular doubts about the perceived impartiality and competence of judges. Both of these issues must be addressed simultaneously to build support for reform while avoiding abuses of power. Assistance should support the empowerment of the judiciary to play its constitutional role as an independent branch of government, while strengthening transparent checks and balances to bolster public confidence in its impartiality and capacity to function independently. A secondary challenge is the perceived weakness of the judiciary and its delay in resolving increasingly complex cases that erodes the legitimacy of the justice system by undermining public confidence and respect for the law. Addressing this challenge requires improving the professional administration, streamlining procedures, and enhancing the qualifications and competence of the judiciary to deal with modern issues. Third, the lack of public respect for the law, the role of the judiciary, and particularly the rights of women, requires increasing public awareness and reducing barriers for women and other vulnerable populations to protect their rights. Finally, enhancing the quality of legal education and the skills of legal professionals is crucial in enabling and underpinning any improvements in the justice system and the rule of law more broadly.

In prioritizing interventions, the importance of these challenges must be balanced by the political reality and donor assistance landscape. Activities should be prioritized to the extent that they build upon successful USAID assistance to ensure the sustainability of these prior investments; respond to the reform priorities of the Government of Jordan as defined in the JUST strategy, the National Agenda, and the priorities of the Ministry of Justice; present the maximum potential for impact; and respond to new openings or opportunities for change. To achieve sustainable results, activities should incorporate “direct assistance” approaches where a strong consensus or leadership exists, as well as “consensus-building” approaches for issues where support is weaker. Given the strong push for modernization within the Ministry of Justice and the possibility that a change in ministers might weaken this drive in the future, assistance should be prioritized that directly implements current priorities for modernization and ensures sustainability of these improvements. At the same time, activities should build the basis for deeper reform by responding to opportunities for direct assistance in empowering the judiciary, while building consensus among key stakeholders and the general public on the need for an independent, empowered, and accountable judiciary.

In sum, a complete rule of law assistance program would include, in order of priority, activities that 1) enhance judicial performance to reduce delays and increase public confidence; 2) promote a more independent and empowered judiciary balanced by greater accountability and transparency; 3) strengthen the legal profession; and 4) expand access to justice, particularly for women. USAID assistance in each of these areas will only be successful if specific steps are taken by the GOJ. These steps are highlighted beneath each recommendation.

9.2 ENHANCE JUDICIAL PERFORMANCE TO REDUCE DELAYS AND INCREASE PUBLIC CONFIDENCE

The top priority should be to build on prior USAID investments and respond to the priorities of the Ministry of Justice by assisting efforts to modernize and enhance the performance of the justice system. Activities will consolidate prior assistance by ensuring the sustainability of the automation system and using it as a basis for professionalizing court administration, streamlining procedures, enhancing the qualifications and specialization of judges, and institutionalizing mediation as an alternative to formal judicial proceedings.

1) Develop professional case management and court administration systems.

This component should build upon prior assistance by ensuring the sustainability of the *Mizan* court automation system, while enhancing the capacity of court personnel to professionally manage cases and administer courts. Results should focus on reducing case time, enhancing transparency of court proceedings, and improving the capacity of the judiciary to handle complex commercial and criminal cases. Activities should include:

- *Continue and sustain court automation* by ensuring that the *Mizan 2* system is fully implemented in all courts, all departments (including inspection, notification, execution, and notary public systems) are fully linked, and all judges and court personnel are fully trained on its use. The follow-on program should focus on ensuring the system's sustainability by developing a technical support unit within the Ministry of Justice; assisting in recruiting, hiring, and training skilled technical staff; developing quality assurance and technical support services; assisting in the development and implementation of a service contract with the local software provider; and building the capacity of the technical support unit to manage and oversee service contracts with local software and IT support providers.
- *Develop and implement a case management system*, by developing and implementing efficient and transparent procedures for managing case-flow through the courts, using the *Mizan 2* system as a tool to manage data and ensure quality control. Assistance should improve the business processes and procedures for effective management of cases and administration of the courts, to reduce delay and minimize opportunities for corruption. Activities should also create and strengthen technical units within the Ministry of Justice and/or Judicial Council to oversee court administration and case management procedures.
- *Enhance the capacity of court personnel* to manage case management systems and improve the administration of the courts. Training should focus on enabling professional court administrators to supervise court operations and case management, while enhancing the skills of all court staff. Assistance should create a permanent training program for court personnel in the Judicial Institute or other appropriate institution.

Requirements for GOJ action:

- Hire highly skilled technical staff to manage IT needs for the MOJ.
- Implement a direct service contract with the local software provider and technical IT support providers.
- Hire/appoint professional court administrators to supervise court operations and case management.

2) Reform Procedural Codes

Support should assist the Ministry of Justice in revising the civil and criminal procedure codes to reduce case delays, simplify court transactions, and enhance the capacity of the courts to handle modern forms of evidence and manage complex cases. Assistance should be provided to review the existing codes and identify opportunities for streamlining procedures; assist in drafting amendments to the codes (relying on

local experts whenever possible); train judges, lawyers, and court personnel on revised codes after they are adopted; and revise the curricula of the Judicial Institute and law faculties to implement reforms.

Requirement for GOJ Action:

- Amend civil and criminal procedure codes based on the review and analysis.

3) Enhance the specialization of judges.

Activities should enhance the capacity of the judiciary to deal with modern cases by improving the knowledge and skills of judges in complex areas of the law, including complex commercial cases such as intellectual property cases, customs or tax cases; complex criminal cases such as money laundering or terrorism; and cases involving vulnerable populations such as gender-based violence and juvenile cases. The program should support a comparative review of the structure of specialized courts, departments, and chambers within the judiciary to recommend the most effective structure; identify training needs for the specialization of judges; and institute specialized training for new and existing judges through the Judicial Institute.

Requirement for GOJ Action:

- Reform the structure and jurisdiction of specialized courts and chambers based on recommendations from a comparative review.

4) Expand mediation as an alternative to judicial proceedings.

Given the commitment of the Ministry of Justice to support mediation as an alternative to dispute resolution by the establishment of a Mediation Department within the MOJ and the recent creation of five Mediation Centers, continued support by USAID will ensure the sustainability of the Court Mediation Program.

- ***Develop the Management Capacity of the Mediation Department in the MOJ to Regulate Mediation and Increase the Number of Mediation Centers***

Provide assistance in training the professional staff of the Mediation Department to standardize its processes and procedures, data collection, and reporting requirements, and to oversee the Department's operations, certification of mediators, evaluation of the Court Mediation Centers, and creation of additional Court Mediation Centers. Assist in developing a mediation system that meets international standards and practices with formalized guidelines to qualify as a mediator, procedures of accountability for court mediators, and regulations of mediator ethics. Consideration should be given to revising the current procedures for becoming a "Special" Mediator in that currently, the Chair of the Judicial Council may, upon the recommendation of the Ministry of Justice, appoint "Special" Mediators from a list of retired judges, lawyers, professionals, and other experienced persons even though they have not been specifically trained as mediators.

- ***Institutionalize Initial and Advanced Training Courses for Mediators***

Mediation is currently underutilized due to, *inter alia*, the limited number of active, fully qualified mediators, known for their neutrality and integrity, thus support should be given to developing the qualifications and capacity of "Special" and "Private" Mediators in addition to "Judicial" Mediators. Assistance should be provided to amend the law to specify clear and objective qualifications and training requirements for "Special," "Private," and "Judicial" mediators. As the current mediation training and practice opportunities are *ad hoc*, assistance should be provided to not only develop a standardized curriculum for initial and advance mediation training, but also to institutionalize the

training courses. Further, a roster of all qualified mediators should be developed and actively promoted.

- ***Encourage the Use of Court Mediation Centers***

Mediation is also underutilized due to the lack of knowledge of or interest in court mediation among judicial professionals, thus support should be provided in educating case management judges in the benefits of mediation, and in developing criteria and procedures for referral by the case management judge. Consideration should be given to amending the law to require automatic referral of certain cases to mediation, such as labor cases, and to allow any first instance judge to refer cases to mediation rather than only the case management judges.

- ***Develop a Public Awareness and Outreach Program***

Although a culture of resolving disputes by mediation already exists in Jordan, assistance is essential to educate the public and the business and legal communities about the existence and benefits of the Court Mediation Program. The awareness and understanding of mediation within the public must be increased so that a demand for mediation services is created.

- ***Develop a Pre-Court Mediation Program***

In conjunction with the Jordan Bar Association or other NGOs around the country, assistance should be provided to create a pre-court mediation program which will have a genuine impact on the case load within the courts as pre-court mediation services will truly by-pass court operations.

Requirement for GOJ Action:

- As mediators are trained around the country and become qualified as “Judicial.” “Special.” or “Private” mediators, the number of Court Mediation Centers at first instance courts must be increased by the Ministry of Justice to meet the demand.

6) Other Priorities: Support an Independent Prosecution.

The assessment team does *not* recommend prioritizing USAID assistance in developing a more effective and specialized prosecution department. Such support would enhance the independence and effectiveness of prosecutors, help protect defendants’ rights, and respond to a Ministry of Justice priority. However, achieving results in this area would require significant additional investment. Since the upcoming EU program intends to focus specifically on reforming the criminal justice system, including the prosecution, USAID should not make this a primary area of focus. Nonetheless, USAID should be prepared to respond to focused and discrete requests for technical assistance in reviewing roles and responsibilities or incorporating investigation and prosecution skills into specialized training.

9.3 PROMOTE AN INDEPENDENT AND EMPOWERED JUDICIARY THAT IS MORE TRANSPARENT AND ACCOUNTABLE

Activities in this area will build on the growing support for reform within and outside the judiciary, while building consensus on the need for further reforms. Assistance that enhances the capacity, independence, and authorities of the Judicial Council should be balanced by activities that improve the transparency of its procedures and expand public oversight. Further support for independence and accountability should be fostered through the empowerment of the judiciary as a respected and cohesive branch of the state.

1) **Build the Capacity of the Judicial Council**

One of the fundamental remedies to enhance the independence of the judiciary is to improve the governance structure of the judiciary so that it has significant authority, if not control, over the administration and budget of the courts, as well as authority over the appointment, promotion, and discipline process of judges. A judicial council that is democratically composed and adequately supported can advance the independence of the judiciary by being insulated from undue executive influence over its operations which can detrimentally affect the quality of judiciary services.

- ***Develop the Administrative and Technical Capacity of the Judicial Council***

As the executive authority has not provided the Judicial Council with the means to discharge its statutory obligations, assistance should be provided to help empower the professional staff of the Judicial Council to meet current responsibilities, such as the appointment, evaluation, and discipline of judges, and future responsibilities should the administrative and budgetary control over the courts be transferred to the Judicial Council. Assistance should be targeted to developing the job descriptions, salaries, rights and responsibilities, evaluations, and training of the Judicial Council staff. By building the internal capacity and skill sets of the staff of the Judicial Council to perform the myriad of complex tasks on behalf of the judiciary, the transfer of the authorities of administration and budgeting from the Ministry of Justice to the Judicial Council will be efficient and effective. As the staff of the Judicial Council becomes adequately trained to fulfill its existing responsibilities, consideration should be given to returning the control over the Judicial Institute of Jordan from the Ministry of Justice to the Judicial Council.

Requirements for GOJ action:

- Hire/appoint qualified staff to serve on the technical secretariat of the Judicial Council.
- ***Enhance the Appointment, Promotion, and Discipline Procedures of the Judicial Council***

Support should be provided to ensure that the appointment and promotion procedures of judges are transparent and in accordance with international standards of judicial independence, which require that judges are appointed and promoted based on objective criteria and merit, taking into account their education, legal experience, professionalism, and reputation in the legal community. Support should also be provided to the Judicial Council to ensure that disciplinary procedures for judges are systematic and follow a transparent, rigorous, and fair investigatory process. Currently, the President of the Judicial Council personally handles most of the disciplinary cases resulting in many judges voluntarily resigning rather than submitting to a formal disciplinary process. Assistance should be provided to eliminate the personal ad hoc disciplinary procedures by creating a standardized, transparent process for removing judges that carry exacting standards so that judges are not removed from office for anything other than misconduct or incapacity to carry out their functions.
- ***Broaden the Representation on the Judicial Council***

Provide support to ensure that the composition of the Judicial Council fosters democratic and transparent procedures over its operations and decision making. Even though all of the members of the Judicial Council are judges (which is more than envisioned by international standards of judicial independence), a majority are on the Judicial Council by virtue of their appointment to the bench by the President of the Judicial Council whose tenure as Chief Justice of the Court of Cassation is upon a Royal mandate. Activities should include a comparative review of the composition of judicial councils in other democratic countries which will demonstrate that a broader spectrum of judges as well as other legal professionals are traditionally members of judicial councils. Consideration should be given to the membership of the Board of Directors of the Judicial Institute of Jordan as it represents a broad range of legal professionals which could be replicated on the Judicial Council.

Assistance should also be provided to reduce the perception within the legal community that members of the Judicial Council consider their personal preferences over their professional responsibilities by ensuring that the Judicial Council operates as a Board, rather than as a collection of individuals, and builds consensus in its decision-making process.

Requirement for GOJ Action:

- The Ministry of Justice must provide the necessary staffing to the Judicial Council that will allow for the development of an appropriate organization to undertake all the current and potential responsibilities of the Judicial Council.
- According to international standards on judicial independence, a judiciary in a democratic country should have a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches. Once funds are allocated to the judiciary, it should have control over its own budget and how such funds are expended. The JUST strategy contemplates a transfer of responsibilities, which has been reiterated by the Minister of Justice, and should be implemented by the end of 2008.

2) Enhance the transparent evaluation of judges.

Assistance should build upon significant progress in developing clear and transparent mechanisms for the inspection of judges by the MOJ by enhancing access to key data through the *Mizan 2* system. Activities should also promote the effective and transparent use of the inspection system by building awareness within the Judicial Council on the inspection system; developing clear and transparent procedures for the use of inspection data for the evaluation, promotion, and discipline of judges; building consensus within the government and judiciary on the proper organizational siting and use of the Judicial Inspection function; and increasing transparency by publishing to judicial decisions.

3) Empower the judiciary through support to the Judges Club.

Assistance should develop a consensus for the creation of a judges association (or “club”⁸) as a professional voluntary organization of judges so that judges are empowered to enhance their professionalism and demand reforms through a collective voice. Activities to develop a consensus should include organizing regional meetings and annual national conferences of all judges of Jordan as a means to provide educational and networking opportunities for the judges, as well as raise other important issues facing the judiciary, such as gender equality in the judicial profession, the necessity for a vigorously enforced code of ethics, and judicial autonomy in administrative and budgetary matters.

After a consensus for the creation of a judges association has been generated, activities should include supporting the development of the judges association by preparing the legal framework, developing a campaign to encourage judges to join, providing office space and office equipment, and financially supporting the services of a part-time or full-time staff person. Further, activities should assist the judges association to become a vital voice for the judges by supporting workshops and training on the issues affecting the independence of the judiciary in Jordan, and by publishing a newsletter which should be

⁸ When referring to a judges' association, Jordanians tend to use the term *nadi*, or club, instead of the typical *niqab*, usually translated as syndicate (the direct translation of association, *jami'ya*, tends to be saved for charitable organizations). *Niqab* is not used to avoid association with the Egyptian judges' association, or *niqab*, which is seen to be more political in orientation. We use both club and association, but refer to a professional organization, not a politicized one.

distributed to all judges, including non-members, in order to encourage them to become members of the judges association. Consideration should be given to amending Article 40 of the Law on the Independence of the Judiciary which limits gatherings of judges (presumably all judges) to once a year which must occur during the month of July.

Requirement for GOJ Action:

- The Ministry of Justice must sponsor and financially support annual conferences of all judges each year during the term of the project.
- The Ministry of Justice must support the amendment of Article 40 to eliminate any restrictions on the gatherings of judges.

4) Strengthen the Judicial Institute.

In order to enhance the capacity of all judges, aspirant judges as well as sitting judges, and to professionalize the judiciary, assistance should build on USAID's current investment by continuing with the institutional development of the JIJ. This includes a variety of activities.

- ***Support the Administration and Legal Framework of the JIJ***
Strengthen the quality of the administrative staff of the JIJ to improve its operational capacity and efficiency to develop and implement courses for the Judges Preparatory Program and CLE Program. Strengthen the legal framework of the JIJ by institutionalizing the higher admission requirements developed and implemented in 2007, which includes amending applicable bylaws and directives. Support the administrative and financial independence of the JIJ to exercise control over its own administration and funds so that it may apply these funds in accordance with its own priorities and goals.
- ***Sustain the Two-Year Preparatory Program and Develop CLE Courses***
Provide support that will institutionalize and ensure the sustainability of the Two-Year Preparatory Program. Develop the curriculum for the continuing legal education of judges that will provide numerous training opportunities for the professional development of all sitting judges. The curriculum should include courses that emphasize interactive pedagogy, and should respond to an assessment of judges' continuing education needs and a survey of the Inspection Department of the MOJ. Subject matter courses should include, *inter alia*, judicial skills, judicial ethics, comparative law, and courses that enhance the specialization of judges. Provide support that will link the CLE courses to a performance evaluation, which will have the effect of increasing the level of professionalism among judges, particularly those judges who entered the judiciary through the fast-track *ifad* program. Consideration should be given to enhancing the inspection procedures so that those judges who either did not take the required number of CLE courses, or who did not successfully pass the CLE courses are subject to reprimand, or are not qualified to be promoted.
- ***Develop a Corps of Qualified Instructors***
Support should be provided to create full-time faculty members at the JIJ in addition to the existing part-time faculty. Activities should ensure that the faculty is selected according to established criteria and merit, and not by the current selection procedures of connection or nepotism. Since practical expertise in teaching the application of law is essential, support should broaden the categories of acceptable faculty members from the judicial branch to other groups of legal professionals (i.e., attorneys, prosecutors, law professors, notaries, police officers, even social workers and psychologists). Provide support that will ensure that the teaching methodology of the faculty encompasses the learning attributes of adults. Develop a systematic evaluation of instructors on the

delivery of the course content and methodology of presentation, and base continuing use of instructors on their evaluations.

- ***Develop the Scholarly and Literary Services of the JIJ***

Improve the library facilities to encourage frequent use for reflective study and research. Enhance the library's resources by developing a systematic process of evaluating students' needs for resource materials that supplement their course work, and provide materials in response to their needs.

Technical equipment, such as computers with Internet access and printers, should be provided and available to all students in order to broaden their knowledge of and easy access to domestic law, international treaties and practices. Support the JIJ to develop technical and scholarly publications, such as key trial practice manuals that give guidance on commonly confronted procedural issues in trial proceedings, rules of court that provide guidance on the operational interpretation of the codes resulting in uniformity of practice, and benchbooks—all of which are practical tools for use in the daily work of a judge. Consideration should be given to resurrecting the Judicial Journal, a specialized periodical consisting of judicial decisions, legislation, and research papers that was previously published by the JIJ.

Requirement for GOJ Action:

- In order to enhance the competency of the judiciary and protect the integrity of the JIJ program in which USAID has invested a considerable sum, and by this recommendation is urged to continue its investment, Article 10 of the Independence of the Judiciary Law of 2001 must be revised to eliminate the option of the *Ifad* program as it allows for a non-transparent, non-competitive track to the judiciary, based upon connections rather than competency, and undermines the independence of the judiciary and USAID's mission. Given that the need for the full complement of judges is being met by the increased standards of the JIJ, the justification for a fast-track *Ifad* program is no longer valid.
- After identifying staffing requirements of the JIJ, the MOJ must provide sufficient qualified staff to the JIJ.

9.4 ENHANCE THE LEGAL PROFESSION

1) Enhance Accreditation Requirements.

Support the Ministry of Higher Education and the Higher Education Council to enhance the accreditation requirements so that all law faculties provide law student courses that emphasize skills-building, moot court, public legal education programs, and law clinics, which allow students to engage in client representation. Activities should support the expansion to a fifth year of practicum courses to emphasize legal analysis and reasoning, legal research, problem solving, oral communication, and legal writing. As part of the accreditation process, activities should focus on developing a program whereby law professors are trained and encouraged to engage in interactive adult-teaching methodology, and are supported by their law faculties.

2) Institutionalize Practical Skills Courses

Support should be provided to the three existing law faculties currently receiving USAID assistance and, when appropriate, expanded to the other law faculties, to enhance clinical legal education courses which foster analytical and deductive thinking by providing skills-based training on legal drafting, oral advocacy, and client relationship. Activities should include creating clinical legal education centers in the law faculties that encompasses client representation, moot court competition, and a trial observation program. Due to the increased interest shown by law students and, as students are often catalysts for change at the law faculties, support should be provided to the continuation and expansion of the existing nationwide moot court competition.

3) Support Women Legal Professionals.

Assistance should be provided to increase the number of women legal professionals in Jordan by creating and strengthening the capacity, growth, and expansion of women legal organizations (e.g., a Jordanian chapter of the Arab Women's Legal Network). Activities should focus on promoting the role of the woman lawyer and judge in the press and in educational institutions; on exposing women legal professionals in Jordan to successful, dynamic women legal professionals in other countries, particularly in the Middle East, who have suffered the same plight, have overcome similar obstacles, and have emerged as leaders in their country's legal community; and on increasing representation of women lawyers and judges on the governing boards of legal and judicial bodies, such as the Jordan Bar Association, the Judicial Council, and the Judicial Institute of Jordan.

4) Support the Professional Role and Services of the Jordan Bar Association.

If the Jordan Bar Association, which is currently an association that is used as a platform for the political expressions of its leadership, is willing to receive assistance from and work with the American community, assistance should be provided to enhance the professional role and services of the Jordan Bar Association. In democratic countries, professional bar associations are catalysts for change by encouraging legal reforms, human rights awareness, access to justice, and an independent judiciary. These goals could be achieved with support to the Jordan Bar Association by assisting it to operate effectively, promote the ethics of its members and impose sanctions for violations, enhance the quality of the two-year internship program for all potential bar members, offer educational and training opportunities to its members to ensure a competent legal profession, create a mandatory continuing legal education program for all attorneys, and provide *pro bono* legal services to the poor and disadvantaged.

9.5 EXPAND ACCESS TO JUSTICE AND AWARENESS OF THE RULE OF LAW

Activities in this area will respond to a significant need to protect the rights of vulnerable populations, particularly women. Insufficient awareness of the law, particularly human rights, is a significant impediment to the fulfillment of these rights and to general respect for the law. Activities will focus on expanding public awareness of the rule of law, while expanding access to legal assistance for women and other vulnerable groups.

1) Enhance public awareness and respect for the rule of law, especially the rights of women.

Activities should aim to broadly expand public knowledge of human rights and the rule of law by incorporating these concepts into the primary and secondary school curricula. Activities will aim to build consensus for such an approach, and work with a newly appointed royal commission on education to require human rights and rule of law education in the curricula for primary and secondary school students. Additional support should be provided to nongovernmental organizations to train teachers and other civic leaders on implementing rule of law education programs, inform both women and men of the rights of women and other vulnerable groups, create opportunities for law students to educate younger students about the rule of law, and enhance public awareness more broadly through the media. Activities may also support the Ministry of Justice and the Judicial Council to increase outreach and communications, while helping journalists to cover judicial issues.

2) Protect the rights of women through improved access to legal aid.

Assistance will expand legal assistance and other services for vulnerable populations—especially women—that enable them to protect and apply their rights. Rather than small-scale legal aid programs, activities should seek to institutionalize legal aid programs through public institutions. Opportunities include supporting a pilot legal aid program in the Amman Municipality, instituting a legal aid program in the Department of Family Affairs and Human Rights in the Ministry of Justice, supporting legal aid as a

means to fulfill entrance requirements for the Jordan Bar Association, and creating volunteer opportunities for law students and legal professionals. Support should also be provided to community-based organizations that inform women of their rights and provide legal aid and mediation services to ensure those rights are protected.

APPENDIX 1: LIST OF INTERVIEWS

MINISTRY OF JUSTICE AND GOJ OFFICIALS

- Ayman Odeh, Minister of Justice
- Salah Al Bashir, Former Minister of Justice, current Foreign Minister
- Sharif Al Zu'bi, Former Minister of Justice, current lawyer
- Hisham Al Tal, Former Minister of Justice, Former Deputy Prime Minister, Former President of the High Court of Justice, current Senator
- Khalaf Masa'deh, Former Minister of Justice, current lawyer
- Mohammed Al Ghazou, Secretary-General
- Ali Al Masri, Deputy Secretary-General
- Mansour Hadidi, President of the Judicial Training Institute of Jordan (JIJ)
- Reem Abu Hassan, Director of the Family Affairs and Human Rights Departments
- Jihad Al Outaibi, Technical Office Manager
- Mustafa Al Assaf, General Inspector (head of judicial inspection division)
- Taher al-Masri, former Prime Minister, former Foreign Minister, current Deputy President of the Senate

JUDICIARY

- Muhammad Al Raqqad, President of the Judicial Council, President of the Court of Cassation
- Ahmad Jamalieh, President of the Amman Court of First Instance
- Yousef Hmoud, President of the General Prosecution Department
- Ihssan Barakat, President of the West Amman Court of First Instance, vice-president of the Arab Women's Legal Network
- Fouad Swaydan, President of the High (Administrative) Court of Justice
- Abed Al Karim Faro'un, judge
- Walid Kanakrieh, judge
- Abed Allah Al Hamadneh, judge
- Muhammad Al Khawadeh, Chief Judge, Ma'an Court of Appeal
- Marwan Baydeen, Ma'an Court of First Instance
- Ali Abu Hayan, Ma'an Court of Conciliation
- Rakan Thiabat, Petra (Wadi Musa) Court of Conciliation, prosecutor
- Roundtable with 4 judges-in-training at the Judicial Institute

DPK AND ABA PERSONNEL

- Walter Kuencer, DPK Chief of Party
- Diala Khamra, DPK Deputy Chief of Party
- Randy Fox, DPK Chief Technology Advisor
- Qaid Jabareen, DPK Legal Advisor
- Amy Hagan, DPK Small Grants Manager
- Pat Noonan, former US judge seconded by DPK to Judicial Institute
- Kathryn Ainsworth, ABA Senior Regional Director
- Maha E. Shomali, ABA Deputy Director – Jordan Program
- Orouba Qarain, ABA Independence and Integrity specialist, ADR
- Haya Shubailat, ABA legal education
- Ala Al Nasser, ABA ADR
- Itaf Alawawdeh, ABA AWLN
- Hazar Al Khasawneh, ABA legal education, ACJLS

LAWYERS AND LAW PROFESSORS

- Saleh Armouti, President, Jordan Bar Association
- George Hazboun, Dean of the Faculty of Law, University of Jordan
- Thaer Najdawi, lawyer
- Iyad Batayneh, Professor of Law, Philadelphi University
- Fayad Qoudah, Professor of Law
- Nash'at Al Akhras, Professor of Law
- Nancy Fashho, lawyer and consultant to DPK
- Ahmad Najdawi, lawyer
- Muhammad Qitishat, lawyer

BUSINESS/CIVIL SOCIETY

- Asma Khader, The National Committee for Women's Affairs
- Maen Nsour, Executive Director, Jordan Investment Board
- Eva Abu Halaweh, Executive Director, Law Group for Human Rights/Mizan
- Dina Dukhqan, Director, Partners-Jordan
- Raja Huyari, Training Manager, Partners-Jordan
- Shaher Baak, Secretary-General of the National Human Rights Center, former Minister of State for Foreign Affairs
- George Hawatmeh, Chief Editor of al-Ghad Newspaper
- Talal Al Qdah, Coordinator, Community Development Center of Sweileh
- Amer Bani Amer, Director General, Al-Hayat Center for Civil Society Development
- Adaleh Center for Human Rights Studies
 - Taleb Saqqaf, lawyer
 - Lina al-Nobani, lawyer
 - Doha Mikdad, Engineer

DONORS/USPVOS

- Muna Hakooz, European Union Key Expert on Human Resources, seconded to Ministry of Justice
- Sahar Rawas, UN Office on Drugs and Crime
- Dianne Culliname, Freedom House Chief of Party
- Alessandro Campo, Programme Manager for Justice and Home Affairs, European Union delegation to Jordan
- Kenneth Ellison, ARD Local Governance Chief of Party
- Stephen Carpenter, ARD Customs Reform Chief of Party

US EMBASSY/USAID MISSION

- David Greene, Political Counselor
- Ben Ball, Political Officer
- Dana Mansour, Deputy Chief of Mission, USAID
- Kathryn Stevens, Director, Office of Program Management, USAID
- George Kara'a, Democracy/Rule of Law Office, USAID

APPENDIX 2: SCOPE OF WORK

Jordan Rule of Law Assessment and Evaluation of USAID Judicial Interventions Statement of Work

Purpose of Assessment

The purpose of this solicitation is to assist USAID/Jordan to conduct a targeted analysis of the status of rule of law development in Jordan, including an evaluation of existing rule of law programming, and an assessment of the primary opportunities and constraints to the further development of rule of law in Jordan. The assessment will lead directly into a five-year strategy for rule of law assistance in Jordan that includes the priority areas that could benefit from USAID's intervention, and prioritized recommendations for programming.

Background

In 2004, USAID/Jordan initiated a comprehensive program to strengthen the rule of law through the development of a more fair, effective, transparent and efficient judicial system in Jordan. This program was aimed at supporting the Ministry of Justice's (MOJ) Judicial Upgrading Strategy (JUST); an ambitious strategy intended to modernize the judicial system to enhance its performance and credibility while bolstering judicial independence. Working in partnership with DPK and the American Bar Association (ABA), these activities were aimed at achieving balanced improvements in the efficiency and effectiveness of the courts, while supporting efforts to enhance the integrity and independence of the judiciary.

Activities implemented by DPK included:

- Improving legal, procedural and professional knowledge and skills, through support to the Judicial Institute and enhanced criteria for selection of judges;
- Enhancing efficient, transparent and streamlined court operations and improved access to information through the establishment of automated case management systems;
- Promoting institutional development for more efficient and effective administration of the justice sector, through support to MOJ, including assistance in the development and implementation of the JUST strategic plan, enhancing communications and information technology, and developing the Judicial Inspection unit and the Execution Department; and
- Improving awareness of the justice sector through civil society support, small grants and media activities with a focus on building youth understanding of the rule of law.

Activities implemented by the ABA included:

- Conducting targeted assessments to support the strategic planning and program design process;
- Promoting judicial independence, integrity and accountability, through the development of a code of judicial conduct, enhanced ethics education for judges, and support to the Judicial Council's permanent ethics and accountability committee;
- Developing and expanding court mediation and alternative dispute resolution (ADR) to reduce demand on the courts and improve customer satisfaction; and
- Upgrading legal education in partnership with the Jordanian law faculties.

Many of these activities, particularly in the area of court administration, case management, judicial training and ADR, have resulted in a significant impact on the efficiency and effectiveness of the judicial system. These achievements have laid the basis for improved rule of law grounded in a more effective judiciary that enjoys citizen confidence. Nonetheless, additional progress is needed in other areas, notably in enhancing the independence and integrity of the judiciary. The continued centralization of power within the monarchy and the frequent replacements of the minister of justice have hindered substantial progress in developing a truly independent judiciary. A primary focus of this analysis will be to assess the political will for advancing further reforms to promote the independence and accountability of the judiciary, and of the justice sector as a whole.

Statement of Work

The purpose of this assessment is to provide USAID/Jordan with an analysis of the primary challenges in advancing the rule of law in order to develop a strategy for continued programming. It includes three main tasks:

- 1) An analysis of the primary challenges and opportunities in advancing the rule of law in Jordan, including an assessment of political will for judicial reform;
- 2) An objective, external evaluation of the effectiveness and achievements of the existing rule of law program in Jordan; and
- 3) A proposed strategy for follow-on programming over the next five years, including prioritized areas of intervention and program recommendations.

The contractor shall conduct a background review of key documents, as well as on-site research and interviews to develop a report that addresses these three main areas. The assessment will be consistent with the draft *Rule of Law Strategic Framework*, which is designed to synchronize with the Mission's broader DG strategy.

The report will include the following components:

1) Analysis of primary challenges and opportunities in advancing the rule of law:

This section of the report will analyze the current state of the justice sector as a basis for deriving strategic recommendations. Consistent with the draft *Rule of Law Strategic Framework*, the analysis will include the following five steps:

First, the assessment will take into account the political and historic context, including current events. It will briefly outline the political and governance structure of the country as it relates to the current state of the legal framework and justice sector institutions, and identify recent changes that help frame the rule of law problems to be addressed. This section is intended to succinctly situate the rule of law in the broader political economy of the country. The assessment should review the Ministry of Justice 2004 – 2006 Judicial upgrade strategy (JUST) and the results achieved and assess the new 2007-2009 JUST.

Second, the assessment will examine the five key elements that comprise the rule of law, namely: 1) order and security, 2) legitimacy, 3) checks and balances, 4) fairness, 5) effective application. Each of these five elements must be present for rule of law to prevail. This section will identify the principal rule of law problem(s) in Jordan that might be addressed by an assistance program.

Third, to evaluate the roles and interests of the major political actors, and assess the political will for judicial reform. The purpose of this part of the analysis will be to identify who is likely to “win” and “lose” from the enactment of reforms to the rule of law system. Identifying the winners and losers in light of their potential power will be instructive in terms of assessing the level of political will for various types of interventions. Specific attention should be devoted to the role of the monarchy in enabling or constraining rule of law reform, as well as the role of other key players including the judiciary, Parliament, the private sector, the syndicates, non-governmental actors, and other stakeholders.

Forth, to examine program options beyond the justice sector that might have a bearing on the rule of law. Such considerations will include issues such as lack of consensus over governance, lack of competition in political processes, inadequate inclusion of members of society, and inability to govern effectively. The purpose of this section will be to identify other corollary impediments to democratic transition outside the justice sector that condition potential progress in the justice sector.

Fifth, to assess the justice sector itself. This will include consideration of essential elements such as order and security, legitimacy, fairness, checks and balances, and effective application. This section will focus on how these elements are embodied and enacted within the legal framework and justice sector institutions. This section should outline the key features of the justice system, including the framework of laws and the justice sector institutions. The analysis should also address key challenges and opportunities for promoting the essential elements of the rule of law within the legal framework and justice sector institutions. The purpose of this section will be to identify potential points of intervention within the justice system itself that are in need of reform and amenable to change.

2) Evaluation of the existing rule of law program:

This section will provide an objective, external evaluation of the current USAID rule of law program implemented by DPK and the ABA. The analysis will focus on the strengths and weakness of the current program in achieving intended results, as well as whether the original objectives are still valid for addressing the current rule of law challenges. This section will further outline the primary achievements of the current program, the primary reasons for success or failure in achieving results, and suggestions for how success could be built upon in follow-on programming.

Specific questions to be addressed in the evaluation of current programs include:

- **Impact:** What has been the quantitative and qualitative impact of USAID-funded activities on the judiciary? How have the programs made a difference in the development of the institutions where they had access as compared to institutions where their access was limited? What effect did the approaches adopted by DPK and the ABA have on the impact achieved?
- **Relevance:** How relevant have the current programs been in addressing the key rule of law challenges in Jordan? How relevant have the programs been in meeting opportunities for reform and overcoming constraints? How have they complemented, duplicated or interfered with other reform initiatives in the justice sector? What additional activities should be considered to ensure future activities are appropriately targeted to the primary rule of law challenges?
- **Approach:** How have the specific approaches adopted by DPK and the ABA produced results? What have been the weaknesses of these approaches? Are the results being obtained by DPK and the ABA being produced at an acceptable cost compared with alternative approaches to accomplishing the same objectives?

- Sustainability: What have DPK and the ABA done to promote sustainability of judicial and institutional reforms? What follow on activities would be needed to consolidate success and ensure sustainability of achievements after USAID funding ends?

3) Five-year strategy

The final step in the assessment will be the development of a strategy and programmatic options for rule of law interventions. This will be based on the findings from the preceding sections as well as additional considerations such as Mission priorities and resources. It will be designed to focus rule of law activities around the primary challenges in promoting the rule of law in light of the current state of political will, opportunities and constraints for reform, and past successes. The strategy should provide the basis for rule of law programming over the next five years.

The strategy should include the following components:

- Primary rule of law problem(s) framed in terms of the essential element(s) of the rule of law that are most critical to establishing the rule of law in Jordan;
- Primary corruption issues within the Judiciary in addition to problems related to the Judiciary role in dealing with the overall corruption in Jordan.
- Opportunities for intervention, including the specific institutions and laws for which opportunities exist for reform.
- Program recommendations including intended results that should be achieved through follow-on programs to address the primary rule of law problem. Recommendations should be prioritized in order of importance.

Methodology

The contractor shall provide a two-person team to work directly with USAID/Jordan and USAID/DCHA/DG staff to conduct the work in three stages.

Preparation phase: The first phase of the assessment will involve reviewing background materials and key documents; developing assessment and evaluation methodologies that includes primary research questions and interview protocols; and preparing a schedule of interviews for the subsequent field work stage. A pre-trip meeting with relevant USAID staff is required during the preparation phase to review documents, discuss background reviews and come to agreement on the primary research questions, interview protocols and assessment schedule. This meeting will take place preferably at the USAID offices in Washington, DC, but may be conducted via teleconference if necessary. Three working days per team-member are authorized for the preparation phase.

Review of existing information and materials: The team should gather and review all documents on the existing Rule of Law situation in the country. The following will be provided by USAID/Jordan:

1. 2003 DG Assessment;
2. 2004 ABA RoL Assessment;
3. 2007 Carnegie Jordan Political Reform Report by Julia Choucair;
4. ABA SOW, Monthly and Quarterly Reports, PMP, other program documents;
5. DPK SOW, Monthly and Quarterly Reports, Assessments, PMP, etc;
6. Small Grant Project Descriptions, Final Reports.

Field-work phase: The team will conduct 16 days of field research in Jordan, including gathering and reviewing documents, and conducting structured interviews with key informants (and focus groups, if

appropriate) and beneficiaries, including the Judiciary, the Government of Jordan personnel, international and donor personnel, USAID partners, members of Parliament, lawyers, judges, court administrators, mediators, civil society organizations, citizens groups, and other relevant stakeholders. The research should include site visits to USAID rule of law activities. The team will present a list of interviewees to USAID/Jordan for approval prior to conducting interviews. The contractor will be responsible for developing the list of interviewees and arranging meetings, as well as transportation to the meetings. USAID will provide two staff members to participate in the field-work phase of the assessment team, including one staff member from USAID/DCHA/DG in Washington and one staff member from USAID/Jordan.

Report-writing Phase: The Contractor will draft the assessment report, which will include all of the components outlined above. The draft report shall be submitted for formal USAID/Jordan review within 10 working days after departure of the Contractor from the country. The Mission and DCHA have ten working days to provide comments to the Contractor. The final report shall be submitted no more than ten calendar days thereafter. A total of eight working days per team member are authorized for the report-writing phase.

Deliverables

The contractor shall provide the following deliverables to USAID/Jordan:

1. Literature Review and Evaluation/Assessment Methodology

Prior to beginning the interview process, the contractor shall prepare for the assessment by reviewing key documents on the justice sector; background material on Jordan's political situation; and applicable sections of USAID and project documentation. The contractor will also prepare a methodology plan including primary research questions, interview protocols to structure the interviews, and a list of proposed individuals to be interviewed. The methodology plan, interview schedules and interview protocol will be presented to USAID/Jordan and USAID/DCHA/DG staff prior to departure for the field-research phase.

2. Oral Briefings (two)

The contractor will provide two briefings for USAID/Jordan staff, including an introductory briefing within two days of arrival in country, and an exit briefing presenting the team's findings and recommendations to USAID/Jordan prior to departure.

3. Draft Report

The assessment team will present a draft report in English of its findings and recommendations to USAID/Jordan within ten working days from the time of departure from Jordan. A copy shall be provided to USAID/DCHA/DG. The draft report will be no more than 40 pages, and will include all of the components outlined above.

4. Redacted Version

The contractor should be aware throughout the assessment and report writing process that issues of Rule of Law may be politically sensitive. The team should discuss this issue with USAID immediately upon arrival and seek guidance regarding sensitivities that will need to be taken into account during interviews and report writing. Additionally, the team may be requested to prepare a politically sensitive version of the report that can be shared with Government of Jordan and other counterparts and submitted to PPC/CDIE/DI.

5. Final Report

The Final Report will be provided to the USAID/Jordan in electronic format in MS Word and Adobe PDF, within 10 calendar days following receipt of comments from USAID. An electronic copy and 5 hard copies shall be provided to USAID/DCHA/DG. The report shall include all of the components outlined above. The report shall also include an executive summary and not exceed 40 pages (excluding appendices). Appendices should at a minimum include the scope of work for the evaluation; a list of individuals interviewed; a complete description of the methodology used for the evaluation; and any questionnaires used.

The report shall follow USAID branding procedures and shall be in the format of “A General Guide to the Construction of An Evaluation Report,” produced by Richard Blue for Management Systems International and dated August 7, 2004.

The contractor shall also submit a copy of the redacted final report to PPC/CDIE/DI.

Team Composition and Qualifications

The assessment will be carried out by a three person team. The team shall include:

- A team leader (Expatriate) with a professional background in international development work, including rule of law development. This person shall be responsible for coordinating and directing the overall assessment effort, including preparation and submission of the draft and final assessment reports. He/she should have a minimum of 10 years experience in the design, implementation, and/or evaluation of foreign assistance programs including USAID-related rule of law programs. As assessment team leader, the incumbent should be thoroughly familiar with techniques of program impact appraisals and possess good organization and team-building skills. The team leader should have excellent written and oral communication skills in English.
- A team member (Expatriate) with at least 5 years of relevant experience in rule of law development and/or democracy and governance assistance, possessing strong background knowledge of the Middle East region and experience in the design, implementation and/or evaluation of foreign assistance programs. Strong writing and word processing skills are a requirement. Previous overseas experience in the Middle East and knowledge of Arabic language is desirable.
- A Team Member (local): A lawyer, public sector management specialist, or researcher. Minimum degree BA in Law or related field. Good understanding of political dynamics, Rule of Law actor and political actors in Jordan is essential. At least three years’ work experience required. Knowledge of USAID and other donors in Jordan is preferable.

At least one of the two expatriate members must have knowledge and experience relevant to court administration, including experience designing, managing, implementing or overseeing judicial reform and/or court administration programs.

At least one of the two expatriate team members must have previous overseas experience in the Middle East and some knowledge of Arabic language.

USAID will appoint one USAID/DCHA/DG staff member and one USAID/Jordan staff member to participate in the assessment, including in all meetings during the field research stage.

The Contractor will certify that there is no conflict of interest or potential conflict of interest with respect to the performance of this assessment on the part of the contractor and the contractor’s team members. The Contractor will guarantee that substitutions will not be made for individuals proposed as team members without the approval of USAID/Jordan.

Evaluation Criteria

The following criteria serve to set the standard against which all proposals will be evaluated:

- | | |
|------------------------------|-----|
| 1. Personnel | 50% |
| 2. Institutional capacity | 20% |
| 3. Relevant past performance | 15% |
| 4. Cost | 15% |

Period of Performance

The work called for in this scope will start November 26, 2007 and will be completed approximately 10 weeks later. The field work will start on December 2, 2007.

The Mission will respond to the content of the assessment with oral comments at the debriefing and will provide written comments within 3 weeks of receipt of the draft report.

LOGISTICAL SUPPORT

All logistical support will be provided by the Contractor including travel, transportation, secretarial and office support, interpretation, report printing and communication, as appropriate. USAID can provide short list of potential interpreters with rule of law background.

WORKWEEK

A 6-day work week is authorized in the field with no premium pay. Note that the official workweek in Jordan is Sunday through Thursday with Friday and Saturday constituting the weekend. The team will likely be able to arrange some meetings on Saturdays in country.

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