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CASE MANAGEMENT IN JORDAN: AN ASSESMENT AND RECOMMENDATIONS

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Ernie Friesen

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USAID Rule of Law Program
Sweifieh – McDonalds Building, 1st Floor
Abdel Rahim Al-Haj Mohamad Street
Amman, Jordan 11193



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EXECUTIVE SUMMARY

Case management is not just another tool in the scheme of judicial administration. It is the heart of judicial administration. Cases are the business of courts and their prompt and just resolution is the basic purpose for which courts exist. Courts are the instrument by which the rule of law is delivered to the people. To leave that instrument unmanaged is to allow the application of law to proceed aimlessly uncontrolled to an unsure end.

Perhaps more important to the rule of law than consistent application is that the courts be perceived to be effective. If the courts are perceived to be ineffective because they can be delayed or manipulated by clever participants the rule of law loses its acceptance as an instrument of order. Case management allows the courts to apply the law fairly and impartially. Court systems that allow manipulations of case processing are not credible.

Case management is early, continuous control of the process of defining the issues, facts, and laws related to a dispute and the process of presentation of facts and evidence to arrive at a judgment according to a schedule defined based on the specific needs of the case. This requires that the judge become knowledgeable of the case at the time of filing of the complaint and answer and defines the parameters and schedule appropriate for him to receive sufficient information to make his judgment. This is a process that has been proven to be effective in both common law and civil law systems elsewhere in the world. More specific information on how case management is practiced in Germany is provided later in this report.

In 2008 two closed case studies were conducted by the project in Jordan to identify (1) variables that indicate complexity and (2) systemic problems that need attention beyond the individual courtroom. The results of these studies revealed significant delay problems in the management of Jordan's court's caseloads.

In the studies the researchers found that large percentages of the old cases were not complex; they were simply neglected. Hundreds of hearings were held without any progress being made toward disposition. In one case there were 21 adjournments to produce an expert report which was not used. In another case there were 9 different judges who presided over the trial that lasted 3 years with 63 hearings. Recent review of the 50 oldest cases in the sample revealed that more than half were simple matters that were repeatedly postponed by decisions that could have been avoided by a judge reading the file before a hearing.

In a program recently initiated by Chief Judge Jammalieh in the New Palace 475 of the oldest cases were given to a select group of judges. After 13 months all but 80 were closed. This is a classic example of a case management program made possible by having information available and a judge who wants the system to work.

As I observed on several previous occasions case management practices in Jordan are minimal.

A minor attempt was made about eight years ago to introduce case management concepts to Jordan. Based on observations by a group of lawyers and judges who journeyed to San Francisco, a model was proposed that attempted (1) to make the process of notification more effective at the commencement of a case (2) provide for the organization of the file by a judge, (3) attempt to define the issues at dispute by listing the points of agreement and disagreement, (4) provide for an attempt at early settlement by an initial judge, (5) provide for reference to mediator if the parties agreed to the reference, and (6) if no settlement was possible then hand the case fully prepared to a hearing judge for evidence and witness presentation hearings.

This original proposal became Article 59 bis of the Jordanian Code of Procedure. Though the original recommendation included a requirement that the lawyers in the case be required to attend an initial hearing to accomplish (2) through (5) of the proposal the parliament rejected this part of the proposal. Subsequent practice under the rule led to a further dilution of the proposal that made the practice only marginally effective. The judges to whom the case was transferred for trial gave no regard to the proceedings before the Case Management Judge so that the attempt to provide an early definition of the case by finding the points of agreement and disagreement of limited value beyond the early attempt at settlement.

I was asked to do a scientific evaluation of the case management when it had been in effect for about four years. Surprisingly, the results were positive. When a sample of the number of hearings and time delays of a sample of cases that were processed before case management was instituted were compared with cases that had undergone case management, the case managed cases were more expeditiously processed (and therefore less costly to the system) than those that did not receive the process. And, this was true despite the fact that the limits on amount in controversy had been raised between the two periods making the case management cases potentially more difficult to process.

During the life of case management the number of lawyers attending the hearing has decreased from an initial rate of 95% to a present rate of about 35% (which has persisted for several years). Each time the case management process has been reviewed the reviewers have noted that without mandatory attendance the process will be less effective than its potential. The rate of successful notification initially increased when case management was introduced and supported, but has also since decreased.

It is important to note that in my opinion ‘case management’ as defined below has never been really tried in Jordan

II. BASIC CONCEPTS

The basic tenets of case management are that the case must be subject to



1. Early judicial control
2. Continuous judicial control
3. Short-scheduling
4. Reasonable accommodation of lawyers
5. Expectation that hearings will accomplish what they are scheduled for.

Jordan has partially attempted only the first of the concepts.

It has been noted from the beginning that effective case management is best accomplished in civil cases when the judge who will try the case receives an assignment of the case when it is filed. Since good case management depends on an early definition of the issues the earlier the trial judge gets the case the more effective will be the process.

Eight years ago when the initial attempts to establish case management were begun there was much discussion concerning the question of when cases should be assigned to the trial judge; advocates (including myself) of early assignment of the case to the trial judge were told (and accepted) that the ability of the judges was not uniform and that the judicial skills, roles and responsibilities required for case management could not be expected from a large numbers of the judges. This led to the concept of a Case Management Department which would be staffed by capable judges who would be specially trained in their duties. This attitude toward the capabilities of the judges persists to this day. As the infrastructure of more capable judges increases it can be imagined that the better system of case assignment without a specialized case management department assignment may be implemented.

Aware that the concepts described here draw heavily on experience in the 56 US jurisdictions and in nations with a common law history the project asked for help from a judge and administrator in the German system that has many organizational and procedural similarities to Jordan. The report of the German Judge and Administrator is attached as Attachment C. It suffices here to note that each of the concepts mentioned here is represented by the practices in Germany.

III. SUPPORT FOR CASE MANAGEMENT IN JORDAN

The development of an information system within MIZAN that will provide information and statistics important to case management is complete. Both the reason for adjournments and the purpose for each hearing is being recorded and is recoverable in individual cases as well as statistically to provide system information.

JIJ has gone through major changes to increase its capacity to deliver continuing education courses to strengthen the knowledge and skills of the judges. Computer labs are functioning and the curriculum has been revised to include courses in the use of information. Case management is now in the curriculum for new judges and continuing education courses are being offered on the subject.



IV. IMPEDIMENTS TO CASE MANAGEMENT IN JORDAN

1. Tradition of Passive Judging

The main impediment to the implementation of case management in Jordan is the tradition of passive judging. The role of the judge is seen as an accumulator of evidence to be weighed and considered at a future date. Transfers from one judge to another are deemed unimportant since the record will be available to whoever decides the outcome of the case. To the passive judge adjournments are unimportant because they do not impact the final review and judgment; repetitive unproductive hearings are acceptable.

Passive judges are not concerned that evidence based on human testimony decreases in reliability with time; that demeanor evidence is lost; that people's lives are often held in abeyance and that costs to individuals and to the Kingdom increase with time. Perhaps the most significant consequence of passivity is that the reputation of the courts as ineffective administrators of the rule of law because they are vulnerable to manipulated delays.

Recommendation 1

If case management is to be implemented in Jordan there will need to be a policy decision made to change the judges role from passive to active.

2. Lack of Belief in Early and Continuous Judicial Control of Procedure

Judges at the highest level are not convinced that early and continuous control of judicial procedures by the judge is necessary to an effective and credible judiciary.

There is a consistent belief among the First Instance judges who are inclined to manage their cases that if they undertake early and continuous judicial control then their efforts will be held to be unauthorized on appeal. There is a reticence on their part to put the issue to a test.

Recommendation 2

The purposes and values of early and continuous control by the trial judges together with the authority to accomplish it must be conveyed to the appellate level of the Jordan judiciary.

3. Lack of Experience Based Training in Case Management

First Instance Judges in Jordan have had little or no exposure to early and continuous control of cases and do not have the skill to plan and schedule a case for a fair and prompt disposition.

Judges who have little or no practice experience and no experience based training feel insecure about identifying the issues in a case and working with the lawyers to design a schedule for the resolution of issues genuinely in dispute. They accept the passive role handed down to them from past generations and perpetuate the attitudes and values of passivity that have prevailed in Jordan for many years.



Recommendation 3

Experience based training in the values and techniques of case management must be carried out for all trial level judges.

4. Lawyers May Find Judicial Passivity Beneficial

Lawyers, for many reasons, find judicial passivity to be beneficial to their clients and are not interested in losing the control they have over the pace of litigation.

Throughout the world as in Jordan it is often to a client's advantage to delay the disposition of a case. Evidence contrary to their interest may be lost or compromised; postponement of payment may keep a floundering business alive, inappropriate possession of property beyond legal limits may benefit a client. An uncontrolled judicial process is sometimes in their client's interest.

Recommendation 4

Discussion and consultation with experienced trial lawyers should be continuing

5. Lacking Authorization and Definition of Case Management in Civil Procedure Law

The current authorization and definition of case management under Article 59 bis of the Civil Procedure Law does not provide the authority necessary to support a proactive judge. There is no requirement that the lawyers participate in the hearing where disagreements and agreements are to be defined and there is no requirement that if the issues are agreed upon that the judge to whom the case is transferred for trial will respect the efforts made to find the issues.

These inadequacies in the present rule have resulted in the case management judge performing far below the potential of the limited present system. For the most part they are performing clerical functions that could better be left to court staff.

Recommendation 5

Article 59 bis should be eliminated as soon as all of the judges have undergone substantial training in case management techniques. In the interim, the case management departments should be given authority supported by sanctions to require lawyer attendance and trial judges receiving cases should be required to honor the analysis of the case.

6. Rigid Civil Procedure Code With Respect to Timing

Without regard to case management, the rigidity of the civil procedure code with respect to filing the answer in 30 days is dysfunctional in complex cases.

The plaintiff who has had the entire period of limitations to prepare a case is



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handicapped by not having sufficient time to prepare an answer which contains the evidence. This leads to ambiguous answers and to the listing of every possible evidentiary item which make it hard to identify the issues. This limitation on pleading results in prolonging the trial process because large amounts of time and redundant hearings are required to find out what the case is really about. By combining authority in the case management judge to allow more time to plead in complex cases and applying well established methods of planning and scheduling to the case complex cases could be disposed of more effectively.

Recommendation 6

The rigid provision of the Civil Procedure allowing a maximum of 45 days to answer should be amended to allow more time to answer on demonstration by the defendant that 30 days is not sufficient.

7. Well-Functioning Case Management Procedures Have Yet to Be Demonstrated

Judges and lawyers don't trust new procedures that have never been tried in their community

Experience in other countries has shown that well focused demonstration of new and innovative procedures help the legal community to understand and accept them. Many jurisdictions have accepted case management in broad terms after experiencing it applied to complex cases.

Recommendation 7

A demonstration of the effectiveness of early and continuous control should be conducted in the New Palace of Justice using experienced judges on potentially complex cases. (Details of the pilot project are attached, infra Attachment B)



Appendix A.

AUTHORITY FOR CASE MANAGEMENT

Proposed Changes in the Jordan Law

Article 59 should be repealed and a new law adopted that gives the judge to whom a case is assigned authority to conduct trial scheduling conferences and to issue a scheduling order to accomplish the following:

(Based on Rule 16 of the US Federal Rules of Civil Procedure)

(a) Purposes of a Trial Scheduling Conference

- (1) Expediting disposition of the action
- (2) Establishing early and continuous control so that the case will not be protracted because of lack of management
- (3) Discouraging wasteful trial practices
- (4) Improving the quality of the trial
- (5) Facilitating settlement

(b) Scheduling [Details Omitted]

(1) Scheduling Order

Except in summary actions where exempt from pleading the judge shall hold a scheduling conference within 30 days of the filing of an answer and after consulting with the lawyers issue a scheduling order.

(2) Time to issue

The Judge must issue the scheduling order within 30 days after any defendant is served with the complaint unless the time to answer has been extended and in such cases within 30 days of the extended time for answer.

(3) Contents of the order

The order must provide a schedule for the completion of the receipt of all evidences identified at the conference as necessary for the completion of the evidences in the case.



(4) Modifying a Schedule

The schedule in the order may only be modified for good cause, and, with the judges consent.

(c) Attendance and Matters for Consideration at a Trial Scheduling Conference.

(1) Attendance.

A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a trial scheduling conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) Matters for consideration

- a. Formulating and simplifying the issues and eliminating frivolous claims and defenses
- b. Amending the pleadings if desirable
- c. Obtaining admissions and stipulations about facts and documents to avoid unnecessary proof and rule in advance on the admissibility of evidence
- d. Avoiding unnecessary proof and cumulative evidence and limit the use of testimony under Jordanian law
- e. Determining the appropriateness and timing of summary adjudication.
- f. [Omitted discovery controls]
- g. Identifying witnesses and documents, schedule the filing and exchange of any trial briefs, and set dates for further conferences and hearings
- h. [Omitted referral to magistrates]
- i. Setting the case, using special procedures to assist in resolving disputes when authorized by law
- j. Determining the form and content of the trial scheduling order
- k. Disposing of pending motions
- l. Adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems
- m. Ordering a separate trial, under Jordan law, of a claim, counterclaim, cross-claim, third-party claim, or particular issue
- n. Ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Jordan rules of civil procedure
- o. Establish a reasonable limit on the time allowed to present evidence
- p. Facilitate in other ways the just, speedy and inexpensive disposition of the action.



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On motion or on its own, the court may issue any just orders including those authorized by Jordan law (see Federal Rule 37(b)(2)(A)(ii)-(vii) [Dismiss, preclude, default, fine, impose costs etc.] if a party or its attorney

- a. fails to appear at a scheduling or other trial conference
- b. is substantially unprepared to participate – or does not participate in good faith – in the conference;
- c. fails to obey a scheduling or other trial order.



Appendix B

PROPOSED PILOT PROJECT

Objective: To demonstrate to all concerned the effectiveness of case management when applied to the process from filing to judgment.

Complex Case Management Program

- (1) Create a panel of 9 competent judges with specialties
 - Banking, letters of credit, overdrafts, Guarantees
 - Company Law, accountings, dissolutions
 - Marine
 - Liquidation and Bankruptcy
 - Intellectual Property
 - Commercial, Distributor agreements
 - Construction Contracts

- (2) Identify the potential complex cases
 - Point system with preparation by a Judicial Researcher or Judicial intern

 - 2 - Government is a party
 - 5 - Amount in controversy exceeds JD 200,000
 - 3 - Case classification from specialized list
 - 2 - Number of parties greater than 2 [Total of 4]
 - 3 - Number of claims greater than 1 [Total of 3]
 - 8 - Number of witnesses
 - 1 - Number of experts
 - 4 - Number of attorneys (to indicate adverseness of parties)
 - 2 - Number of documents in the possession of third parties
 - 2 - Existence of any related judicial proceeding
 - 2 - Motions addressed to the pleadings
 - 3 - Foreign witnesses, parties, evidence

Total 37



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Arbitrarily decide that 15 points would be sufficient to require that a case be sent to the panel for case management. Based on experience with the first 50 cases processed to the panel revise the number required at a meeting of the panel judges.

- (3) Refer cases classified by staff to a panel judge for case management review
- (4) Conduct case management review. CM judge reviews the case and decides whether it is complex. CM judge conducts conference with the lawyers on the issues and prepares a memorandum for the trial judge. If appropriate the judge discusses settlement or by agreement sends it to Mediation.
- (5) If determined to be complex refer the case to a second specialty judge for trial. If not case is returned to the Case Management Department for processing. The first appearance before the judge will be a trial management hearing for which the lawyers will be prepared to tell the court of scheduling problems. A List of potential problems collected from the minutes of the Case Management hearings or from preparation by the trial judge is illustrated as follows:

- Out of country witnesses
- Out of country parties
- Out of district parties or witnesses
- Documents in hands of third parties
- Witnesses to be summoned by the court
- Any additional parties necessary
- Government documents needed
- Government a party
- Expert reports needed
- Type of expert
- Motions anticipated
- Probable amendments to the pleadings
- Do the lawyers have any planned activity, vacations, operations, etc

Based on the judges advance review of the pleadings and evidence the judge might ask,

You have the list of problems, are there any of these in this case?

What are the disputes as to fact?

What are the legal issues?

Are there any points of law you would like to argue in writing to the court?

Each hearing would be planned to find the real dispute and identify the evidence that would be necessary to resolve the dispute. Once the differences are identified the court would then negotiate a reasonable schedule of hearings to accomplish the necessary tasks to complete the file for decision. Out of country witnesses would be scheduled, all of the documents in the hands of third parties would be ordered, the identification of experts would begin and the



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schedules of witnesses, parties and lawyers necessary for their accommodation will be recorded. Etc, etc.

Product of the trial management conference – a scheduling order which sets dates for the taking of items of evidence and for submitting any written arguments on the issues defined. Dates would also be set for the lawyers to produce and get into the record all the necessary materials. There would be an understanding that as soon as any of the participants in the case knows that a date set cannot be met they will inform the court and the date will be reset in a way that does not affect the other dates already set.

Assessment of the Project

During the early stages of the project assessment will have to be made on the basis of input measures such as the following:

1. Number of hearings adjourned
2. Number of hearings with multiple accomplishments based on reports of multiple objects achieved
3. The number of settings and re-settings of less than two weeks.
4. Number of scheduling orders entered
5. Number of deviations from scheduling orders
6. Number of settlements

When judgments are entered

1. Number of hearings
2. Age at the time of judgment
3. Compare with a baseline of cases by category from research and from data since the research was completed.



Appendix C

THE GERMAN CASE MANAGEMENT SYSTEM

To assist in the analysis of case management systems the project invited a team of judge and administrator to visit Jordan to examine the Jordan case management procedures in Jordan and provide an appropriate evaluation of the Jordan system of case management based on their own experience. After spending several days discussing the Jordan experience and discussing it with experienced judges in Jordan the team was able to compare and contrast the German and the Jordan systems.

Though the structure of the two court systems is similar there appear to be dramatic differences in the way they are operated. In particular the German Judges have rules of procedure that permit them to dismiss, default or otherwise sanction a party who does not participate in their processes. All scheduled hearings are attended by counsel.

Unlike the Jordan case management judge, the German judges examine the pleadings as soon as they are filed, notes deficiencies in the pleadings and writes directly to the party providing time to correct the deficiency. At the outset the German judges are actively evaluating the pleadings to discover the issues and advising the parties as to what they believe the issues to be. Since, as in Jordan, a description of the evidence is included with the pleadings, the court is able to come to tentative conclusions about which proofs will be necessary to resolve the case. By either oral or written exchanges the proofs necessary are prescribed by the judges and a main hearing is set to take the evidences the judge has decided are needed. Though most cases are resolved without taking any evidence the one main hearing in most cases provides a sufficient basis for decision and judgment.

The average case in the German court equivalent to the First Instance Court in Jordan takes 8 months to judgment while the average time in Jordan is 14 months. While the German court has 3-5 hearings the average case in Jordan takes 24 hearings. The cost difference as well as the time difference is dramatic.

The German team noted that it viewed the work of the Jordan judge, in their brief exposure, as basically clerical, presiding over an accumulation of paper on which a future exercise of judgment might be based. By contrast the administrator of the German system acts as a complete support system where the substance of the case is not involved.



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While the system in Germany is similar in structure the role of the judge is a complete contrast to the Jordan system. The main lesson learned may be that with an active early identification of the issues it is possible to schedule the taking of evidence for speedy and fair disposition.

The Germans noted that they were fully supported in their approach by the appellate courts.