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JORDAN RULE OF LAW AND ANTI-CORRUPTION ASSESSMENT

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ACRONYMS

ABA	American Bar Association
ACC	Anti-Corruption Commission
CC	Constitutional Court
CEDAW	Convention to Eliminate All Forms of Discrimination Against Women
CJP	European Union Criminal Justice Project
CSO	Civil Society Organization
CSS	University of Jordan Centre for Strategic Studies
DG	Democracy & Governance
DI	Democracy International, Inc.
EU	European Union
GI	Global Integrity
GID	General Intelligence Directorate
GOJ	Government of Jordan
IEC	Independent Elections Commission
IMF	International Monetary Fund
JCLA	Justice Center for Legal Aid
JJ	Judicial Institute of Jordan
JIS	Judicial Inspection Service
MOJ	Ministry of Justice
NCHR	National Center for Human Rights
NGO	Non-Governmental Organization
NIC	National Integrity Commission
PSD	Public Security Directorate
ROL	Rule of Law
ROLP	USAID Rule of Law Project
SSC	State Security Court

TI	Transparency International
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Program
USAID	U.S. Agency for International Development
USG	U.S. Government

INTRODUCTION

This report provides a targeted analysis of the status of rule of law and corruption in Jordan. The analysis, findings and prioritized recommendations do not necessarily represent an official position of USAID. Instead, they represent the work of an independent team of experts and are designed to guide the development of a five-year USAID programming strategy for rule of law and anti-corruption. The report includes an assessment of the primary constraints and opportunities for programming in these two areas in an integrated fashion, as well as a review of existing rule of law and anti-corruption programs supported by international donors.

As called for in the contract Statement of Work, the report contains separate analyses for rule of law and anti-corruption, with an effort throughout to demonstrate how an integrated program covering both areas might create synergies that would result in greater overall impact. The report includes a recommendation as to whether a single project covering the two areas or separate projects for rule of law and anti-corruption offers greater promise.

The rule of law analysis follows the USAID Framework for a Rule of Law Assessment and takes into account current USAID/Jordan projects as well as those of other donors. Given the Mission's more than decade-long investment in two consecutive rule of law projects, the report draws on a wealth of programming experience and lessons learned, which also include rule of law assessments done in 2008 and 2011. Developments since 2011, particularly the so-called Arab Spring, made a new analysis timely. As the Mission has already made a strategic decision to continue working on rule of law programs as current projects near their endpoints, the analysis focuses on what activities in those projects merit continuation and what new initiatives should be considered.

The anti-corruption analysis also follows the USAID Framework for an Anti-Corruption Assessment but with a somewhat different focus. As USAID/Jordan does not have any current anti-corruption programming, the analysis spends more time looking at the basic considerations and enabling environment concerning corruption, also taking into consideration the impact of the Arab Spring. This analysis will help USAID to determine whether a new anti-corruption program is warranted at this time and, if so, what would be the parameters and content of such a program.

Following this introductory section, the reader will find a Background section discussing Jordan's unique country context, followed by a Rule of Law section and an Anti-Corruption section, both of which discuss constraints and opportunities. A Findings and Recommendations section synthesizes the analysis and lays out key underlying findings from the investigation that in turn lead to recommendations about what programming choices should be made. Annex A then treats in greater detail the project-level activities proposed, in order of priority and with the supporting rationale and expected results, also as requested in the contract Statement of Work. Gender and youth issues receive specific attention.

BACKGROUND

It is worth remembering that Jordan is a very young nation-state. Still a part of the Ottoman Empire when World War I broke out in 1914, local tribes joined the Great Arab Revolt under the leadership of Mecca-born Hashemite Sherif Hussein bin Ali against Ottoman forces, with support from Britain. After the war, in 1921 Britain exercised a League of Nations Mandate over newly recognized Transjordan, with the Hashemite Emir Abdullah. In 1946, only some 70 years ago, the country gained full independence as a nation-state, with Abdullah I proclaimed by Parliament as its first King. The country officially became the Hashemite Kingdom of Jordan in 1949. The dynasty rules Jordan to this day.

As a reference point, Amman, though one of the oldest continuously inhabited cities in the world, had a population of only some 2,000 people in 1909. In 2010, 100 years later, it numbered 1.9 million, and today probably more than 2 million people, an astounding 1,000% increase. Underlying these numbers is another dramatic demographic transition as well. Fueled by the influx of Palestinians after the 1948 and 1967 wars with Israel, residents of Palestinian origin with Jordanian citizenship are now estimated to represent as much as two-thirds of today's total national population of 6.5 million people. Until recently a predominantly rural country, more than 80% of Jordanians now live in urban areas, with the rural-urban divide to a great extent mirroring the geographic-origin divide.

As a consequence of this history, the basic concept of Jordanian citizenship, felt ties to the monarchy with its tribal foundations, and the self-identity of the Jordanian nation and people itself is still a work in progress. Continued strong tribal loyalties, the demographic divide between so-called East Bankers and those of Palestinian background, and the cultural impact of economic modernization on traditional customs all powerfully define what the democratic "rule of law" principle means in the Jordanian context. This also impacts how it can be strengthened in a powerful but constitutionally-based monarchy with an important symbolic relationship to national identity. Also, corrupt practices, as defined crimes in a modern legal system, still clash with non-transparent government institutions and the widely accepted social custom of favoritism and use of special connections known as *wasta* to influence public decisions and access to benefits.

With practically indefensible borders and a poor natural resource endowment, the desert Kingdom has always been subject to external influences in the turbulent Middle Eastern region. Free-spending fiscal policies constantly in excess of revenues in order to support a certain political model have required significant budget support transfers from other countries to remain viable. A laudable long-term program of economic liberalization, but alongside lower foreign budget support, has constrained the ability to run large fiscal deficits and maintain subsidies on energy and other basic goods. Jordan is in need of an International Monetary Fund (IMF) Agreement to bolster its public finances in spite of the public dissatisfaction the required fiscal austerity program is certain to bring.

Enter also the so-called Arab Spring, the public uprisings beginning in 2008 against autocratic rulers in Arab countries. Jordan, with a political system aptly described as "liberalized authoritarianism," was not immune to this phenomenon. Continued public demonstrations for reforms beginning in 2010 remained largely peaceful, but prompted King Abdullah II in a nationally televised address in 2011 to announce his objective of a political reform path leading ultimately to a democratic, constitutional monarchy structure. However, further steps along that path have been few and halting.

The King appointed a constitutional review committee, which led to 42 constitutional amendments that year, some of which directly affected fundamental elements of the legal system, such as judicial independence and constitutional interpretation by a new Constitutional Court. Earlier felt concerns about public corruption, now

magnified, had led to the creation of the Anti-Corruption Commission (ACC) in 2006; and its work now received greater public attention and pressure for action.

These “drivers” of change, some long-standing and some quite new, prompted USAID to commission a new rule of law and anti-corruption assessment to develop recommendations for future programming in these areas at a time when many of the Mission’s Democracy and Governance (DG) portfolio projects were nearing an end. Critical to this analysis, and taking into account major developments since 2011, is an assessment of “political will” in government to undertake further reforms and “public will” on the part of other political actors, organized civil society, and the broader public to press for reforms in the political system affecting the rule of law and efforts to combat public corruption.

This assessment report on today’s Jordan, covering the programming areas of rule of law and anti-corruption, benefits from a rare opportunity to be able to mine a rich vein of other USAID studies and reporting on these same topics over the past decade, especially as to rule of law. This has allowed the Democracy International (DI) team to present updated analysis and recommendations with benefit of documents from various donors and sources and continuous rule of law programming, which help us present the issues through a ten-year prism. Key USAID documents include:

- 2003 Democracy and Governance Assessment;
- 2004-2013 Rule of Law project reporting;
- 2008 Rule of Law Assessment;
- 2011 Gender Assessment;
- 2011 Rule of Law Assessment;
- 2012 Country Development Cooperation Strategy.

Political systems and legal systems are understandably resistant to rapid change in the best conservative sense. Continuity and predictability serve both social stability and economic activity objectives. Institutions and systems tend to change slowly over time, absent revolutionary upheavals. Thus, even in the rapidly changing Jordanian environment, it should come as no surprise that many of the key findings in these studies relating to rule of law and corruption remain relevant and virtually unchanged in 2013. This is the case particularly as to the near-absolute power of the executive over other branches of government, even after such developments as the recent constitutional amendments and elections for the new parliament.

By accepted standards, Jordan ranks in the upper range of “medium human development” on the international human development index of the United Nations Development Program (UNDP), at 100 of 186 countries listed overall,¹ continuing but at a slower pace its dramatic improvement since 1980. Jordan also ranks somewhat above other countries in the region in this “medium” category and slightly above the grouping of Arab States.²

¹ United Nations Development Program, International Human Development Indicators, Human Development Report, 2012 (UN: New York, 2012).

² Ibid.

However, in the area of political freedoms, Jordan receives poor grades in the annual Freedom House report. It is rated as “Not Free” (using a 1-7 scale with lower scores better), with a freedom rating of 5.5, a civil liberties rating of 5.0, and a political rights rating of 6.0.

One of 70 countries singled out and studied by Freedom House as strategically important “countries at the crossroads” in terms of democratic transition, Jordan scores very low for 2012 on a 0-7 scale (higher is better) for accountability and public voice (2.19); civil liberties (3.18); rule of law (3.16); and anti-corruption and transparency (2.75).³ But 2012 scores show slight improvement over 2010 in all but the first category, which might improve for 2013 due to the recent parliamentary elections.

However, while Jordan still ranks among the less corrupt countries in the Arab world on the 2012 Transparency International index (outranked by Qatar, United Arab Emirates, and Bahrain), its global ranking continued to fall. It now ranks 58th out of 176 countries worldwide, compared to 56th in 2011 and 50th in 2010. It was 43rd in 2003 (out of 133 countries surveyed).⁴

These quantitative indicators show that Jordan still faces challenges in establishing the rule of law and in combating corruption. This assessment report studies those issues and makes findings and recommendations meant to assist USAID in partnering with Jordan on rule of law and anti-corruption programs.

³ Freedom House, *Countries at the Crossroads* (Washington, DC: FH, 2012).

⁴ Transparency International, *Corruption Perception Index 2012, 2011, 2010 & 2003* (Berlin: TI, 2012).

PART I: RULE OF LAW

OVERVIEW

Expedited movement toward strengthened rule of law is an essential element of increasing democratic accountability. Jordan's parliamentary regime with a hereditary monarchy has made some important steps toward putting in place the legal and institutional framework needed for rule of law. However, many structural and cultural blockages must be dealt with to implement and enforce these changes fairly and effectively, as well new measures to achieve further progress.

Given Jordan's precarious financial situation, King Abdullah II recognizes the importance of taking into account donor expectations, in order to receive the funding the country needs. At the same time, he also recognizes that Jordanians, inspired by the Arab Spring, expect more political openness and public services from the government. In his efforts to maintain the stability that has made Jordan an anomaly in the Middle East, the King seeks gradual reform of the legal and institutional framework. It is not clear that such an approach will satisfy the expectations of either the Jordanians or the international community.

As inheritor of the political pact that has maintained tribal control of the security services, civil service, judiciary, and Parliament, King Abdullah II has been reluctant to extend democratic accountability to all Jordanians quickly. While he has expressed his support for increased human rights, stronger political parties, free and fair elections, a constitutional monarchy and judicial independence, and even facilitated constitutional amendments in 2011 to enshrine many of these principles, he has implemented them at a moderate pace. Consequently, many Jordanians, especially women, disadvantaged groups and the Palestinian majority, complain they have seen little improvement in access to government services or exercise of their rights.

Some of the important but still problematic steps taken following the approval of the constitutional amendments include approval of laws facilitating the establishment of the Constitutional Court (CC), the Independent Elections Commission (IEC), political parties and the elections process; the running of the January 2013 parliamentary elections; the approval of the Judicial Authority Strategy; the creation of Judicial Council administrative units; the establishment of juvenile courts, and the beginning of programs to strengthen prosecutors. Donors continued to strengthen the following institutions and actors: Judicial Council, the judiciary, the Ministry of Justice, courts, the Judicial Inspection Service, the Judicial Institute of Jordan (JIJ), the Anti-Corruption Commission (ACC), police, prisons, civil society, the media, legal aid providers, and law schools.

In some areas, progress has been inadequate. These areas include establishment of an independent prosecution service, transfer of the Judicial Inspection Service and the IJI from the Ministry of Justice to the Judicial Council, and the termination of civilian trials at the State Security Court (SSC). Delays in these areas hurt judicial independence and the provision of timely and impartial justice.

In some areas, there has been almost no progress. These areas include the quantity and quality of legal aid, legal awareness campaigns, media freedom, the capacity of parliament to provide oversight of the executive and support for the judiciary, and the governance of the Judicial Council. The new elections law remained severely flawed, maintaining the domination of parliament by Bedouin tribes and denying a level playing field for political parties. Governors continue to use administrative detention for women "at risk" in 'honor crimes' or those they consider to be public threats. The judicial system and individual judges continue to discriminate against women in cases of domestic violence. The criminal justice system continues to abuse due process by limiting provision of free legal aid to indigents only to cases that could lead to capital punishment or life in

prison. It also continues to tolerate forced confessions based on torture, as well as the suppression of women's rights under tribal justice.

Despite increased criticism of government policy inspired by the Arab Spring, civil society remains weak. It is not strong enough to hold the government accountable, either by serving as a check on abuse of government power or by facilitating citizen engagement in government decision-making. Parliament, ministries and the judiciary neither provide information transparently nor offer adequate opportunities for citizen engagement.

OBSTACLES TO EFFECTIVE RULE OF LAW

Since 2011, Jordan has continued to increase the efficiency of its courts through training, case management and automation, but the country's political system and tribal culture will make it difficult to advance to the next stage of rule of law. To ensure that judicial decisions are not only expeditious but also of high quality, and to guarantee that the principles of rule of law govern, Jordan must come to terms with these systemic and cultural obstacles.

POLITICAL SYSTEM

The country's political structure is a parliamentary regime with a hereditary monarchy. The King uses his constitutional authority to nominate and influence decision-making by senior leaders of the Executive and Judicial branches, and to dissolve parliament and issue temporary laws in the absence of parliament. The executive has maintained its dominance over the judiciary and parliament. In addition, the Ministry of Justice continues to dominate the Judiciary institutionally. Judges and prosecutors have been unable to organize their own professional organizations. There has been little, if any, increase in governmental or non-governmental oversight of the executive or citizen engagement in government decision-making. Both parliament and civil society are too weak to provide any effective oversight of the executive. Laws and policies neither nurture nor protect civil society organizations (CSOs). The media continues to be repressed and discouraged from reporting critically on government or advocating for reforms. The Bar Association remains politicized, which hurts its capacity to engage as a professional body with the judiciary or Ministry of Justice.

King Abdullah II inherited from his father, King Hussein, an unstated but well understood pact between the monarchy and East Bank tribes to give them preferential access to parliamentary seats and government positions and resources in return for their allegiance to the monarchy. Preferential access of the tribes to government resources and leaders, unfettered access of Palestinians to the private sector and significant donor assistance have prevented major challenges to Jordan's social stability during the King's reign.

With the growth of the Palestinian population and large refugee flows from Iraq and Syria, there are signs that this pact is breaking down. The 2011 Arab Spring inspired unprecedented public demonstrations of opposition. Many Palestinians are no longer willing to accept their second-class status in representation and public life.

In response to these challenges, King Abdullah has undertaken several public consultations and lent his support to important strategic and legal initiatives, such as the 2006 National Agenda, the 2011 constitutional amendments, and the 2011 Judicial Authority Strategy. In addition, he guided the development of an elections law governing the 2013 elections. Despite these initiatives, little of significance has changed. The National Agenda does not guide planning. The constitutional amendments are being implemented slowly and have certain defects as well. The current Chief Justice is not using the Judicial Authority Strategy to build judicial independence, stating that he is satisfied with the current state of the judiciary. The State Security Court continues to exist, and civilian cases are still heard in it, although with civilian judges.

In the absence of progress on these initiatives and in order to assuage public discontent, the King has changed the members of government and replaced the Chief Justice frequently. Each incumbent knows that his or her tenure is short and bases priorities on signals from the executive. Consequently, long-term plans on paper are not followed through in practice.

Until the establishment of a revised social compact, reform efforts are unlikely to achieve the transformations needed to institute judicial independence and minimize corruption. The main objectives of such initiatives are apparently to appear responsive to the donor community. Examples of these efforts include measures to increase the financial and administrative authority of the Judicial Council and to create the ACC. There appears to be no real commitment (political will) to ensuring the success of either of these bodies.

TRIBAL CULTURE

Jordan's semi-nomadic Bedouin culture has evolved and adapted to modernization and urbanization, but remains an important factor in many people's lives. Members of the same tribe are expected to support each other, leading to the use of *wasta*, or favoritism, in access to government resources. Family and tribal honor remains vital, acting as its own informal code of law. Despite major gains in education of females, tribal traditions limit the participation of some women in employment and guide their behavior in marriage and family relations. While only about 20 so-called 'honor crimes' per year are brought to court, many others are believed to have been dealt with by informal tribal law, which runs parallel to the formal criminal justice system. In recent years, tribal justice has been applied to Bedouin in cases involving death, including murder and traffic accidents, and women, including adultery and rape. Each of these cases is dealt with through a mediation process among families and is led by a tribal judge. Often, formal criminal decisions are delayed until tribal law mediation has been completed.

RELIGIOUS LAW

Jordan has established religious courts to deal with family law issues. The largest religious court system is the Sharia Court, which is responsible for administering the Personal Status Law, an official law based on the Hanafi School of Islamic Law. Although Jordan ratified the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW), it noted reservations on nationality, inheritance, and rights in marriage related to children and personal choices, including employment. These reservations reflected concerns about consistency with Sharia. Women's rights groups have been fighting to lift these reservations and succeeded in removing the reservation on freedom of movement and travel. They also have been encouraging women to specify in the traditional marriage contract their rights to continue education, seek employment, and refuse to accept polygamy as well as to set conditions for divorce. Many judges are unaware of CEDAW and the need to consider it along with national law. Despite the availability of contracts and courts to protect their rights, many women are reluctant to use them, relying instead on family and tribal mediation, often under the influence of their male relatives. In addition, they are unlikely to be represented by counsel at Sharia courts, and lawyers are often unfamiliar with the Personal Status Law.

LEGAL FRAMEWORKS GOVERNING THE RULE OF LAW

The 2011 constitutional amendments put in place the basis for important improvements in judicial independence through: (1) empowerment of the Judicial Council; (2) establishment of a Constitutional Court to review draft legislation and enacted laws as well as some case appeals; (3) improvement of human rights protections, including increased media and civil society freedoms and prohibition of torture; (4) establishment of an independent electoral commission; (5) narrowing of the types of cases that can be brought to the State Security Court; (6) limiting the King's authority to dissolve parliament; and (7) new parliamentary authorities to refer ministers for criminal prosecution. Implementation of some of these authorities required amendments to ex-

isting laws and the drafting of new laws and regulations. Four major laws were approved in 2012: (1) Independent Elections Commission Law; (2) Political Parties Law; (3) Constitutional Court Law; and (4) Elections Law.

Many Jordanians interviewed believe that the government missed an opportunity to include measures in the constitutional amendments to forbid discrimination on the basis of gender; to expand the ability of the Constitutional Court to hear cases; eliminate the SSC; and empower the Judicial Council to guarantee judicial independence.

Other notable legislative amendments passed recently include: (1) the Juveniles Law, which set the framework for important improvements to the juvenile justice system; (2) the new Information Systems Crimes Law, which established unnecessary restraints on electronic news sites; (3) the Penal Code, which increased penalties for speech offenses; and (4) the Public Assembly Law, which no longer requires prior consent from the authorities to hold rallies.

A temporary law creating an independent prosecution service was allowed to expire by Parliament in 2010. If it had remained in place, the law would have strengthened the functional independence of prosecutors. In 2011, the Minister of Information resigned to prevent passage of legislative amendments that would have severely increased media penalties.

To increase independence of the judiciary and empowerment of the Judicial Council, revisions are under preparation for the Judicial Independence Law, the two-level Administrative Judiciary Law, and the Execution of Judgments Law. Likewise, changes are under discussion for the civil and criminal procedures codes to reduce case delay, offer alternative sentencing, and enhance effectiveness; the Crime Prevention Law to reduce the authority of governors to detain administratively those considered a public threat and women “at risk;” and the Companies Law to better address bankruptcy. Many Jordanians also see a need to modify the General Amnesty Law, which allowed the King unilaterally to release 3,500 prisoners and pardon one million criminal offenses in 2011.

STATUS OF ESSENTIAL ELEMENTS OF RULE OF LAW

ORDER AND SECURITY

Official statistics show violent crime in Jordan is quite low by international standards (1.3 homicides/100,000 persons in 2005, and 1.8 homicides/100,000 persons in 2006, the last years for which data is available).⁵ Police have shown restraint during the Arab Spring protests over the last two years. While in many monarchies the police serve the state more than the citizenry, the Jordanian PSD has tried to cultivate a professional, customer-friendly image. However, the fact that Palestinians are for all intents and purposes barred from serving as police officers makes it more difficult for the police to build good relations with people of Palestinian origin. Torture in police stations has been a problem, leading to its official prohibition by the 2011 constitutional amendments. Another complicating factor for the PSD is tribal justice. Murder cases involving members of Bedouin tribes are not decided by the courts until the tribal justice process is completed. As discussed above, many women will not report crimes to the police, preferring to use tribes, families and non-governmental or-

⁵ UNODC Homicide Statistics (1995-2011) https://www.unodc.org/documents/data-and-analysis/statistics/crime/Homicide_statistics2012.xls

ganizations (NGOs) for mediation. Despite the fact that Jordanians do not report all cases to the PSD, they apparently have an enormous amount of confidence in the police. The 2007 World Values Survey of 1,200 Jordanians showed that 89.2% had “quite a lot” or “a great deal” of confidence in the police.⁶

In some of the cases sent to State Security Court, security forces arrested and detained citizens without warrants, detained them without charges, and prevented them from meeting with their lawyers. The 2011 constitutional amendments restricted the SSC to crimes of treason, espionage, terrorism, drugs and currency forgery. The amendments also required that civilians in criminal cases be tried in courts where all judges are civilian. Several politically charged cases that otherwise would have been barred from being sent to the Court have been heard by these judges.

Jordan has welcomed multiple waves of refugees, the latest being the Syrians (541,000 by June 2013 according to government estimates). The presence of refugees, including Palestinians who make up half to two-thirds of the population, is a potential source of conflict. In addition, the military is attempting to protect itself from any spillover from the Syrian civil war. Both of these phenomena are a threat to Jordan's order and security.

LEGITIMACY

There are several sources of legitimacy in Jordan: the Bedouin tribes, Islam, and the monarchy. The Constitution serves as the basic law. The fact that the Constitution is based on an unstated pact between the monarchy and the Bedouin tribes reduces its legitimacy to the Palestinian majority. While there is no explicit discrimination against Palestinians contained in the Constitution, the laws are implemented in a manner that discriminates against them with regard to access to government employment and services.

Islam provides the legitimacy for the Sharia Courts and personal status law. Other religious courts are based on their own religious law, but only the monotheistic religions accepted by Islam are permitted to have their own courts.

The monarchy provides a certain degree of legitimacy for the Constitution, the law and governmental institutions. Legislative power is vested in Parliament and the King. Executive power is vested in the King and exercised by his ministers. Judicial power is vested in the courts, but judgments are made in the name of the King.⁷

Despite these multiple sources of legitimacy, Jordanian citizens are confronted with constitutionally-mandated abuses of or exceptions to rule of law. Special courts continue to exist, with procedures that may not provide due process. The King can dissolve parliament and then issue temporary laws.

The 2011 constitutional amendments were based on a series of national dialogues, increasing their legitimacy. In addition, they created a new source of legitimacy: the Constitutional Court. This court is not structured ideally, since the conditions for appealing cases to it on constitutional grounds are overly restrictive. However, it does allow the Council of Ministers and parliament to seek its binding opinion on draft and existing laws.

⁶ World Values Survey, 2007, <http://www.wvsevsdb.com/>

⁷ Articles 25-27. Article 27 regarding the courts was amended in 2011.

CHECKS AND BALANCES

To move toward a true rule of law, Jordan requires stronger checks and balances that promote judicial independence and accountability. The 2011 constitutional amendments included language that for the first time described the “Judicial Power” as independent. While the Judicial Council has prepared a strategic plan that targets judicial independence and has taken some steps to increase its transparency, the legal and institutional framework is not yet in place to make an independent judiciary a reality.

The King has shown his support for separation of powers and judicial independence several times in the last two years. In September 2011, he sent a letter to Chief Justice Mohammad Al Mahameed expressing his support for independence of the Judicial Authority, separation of powers and appointment of judges by the Judicial Council, as well as efforts to strengthen the capacity of the judiciary, improve facilities and infrastructure, strengthen judicial inspection, and enhance cooperation among state branches to promote rule of law. The King’s letter inspired the Judicial Council to build the capacity of its administrative units to undertake the analyses and strategic planning processes needed to prepare the 2012-2014 Judicial Authority Strategic Plan.⁸ The process followed good participatory practices.

In May 2012, the King put in place a new Chief Justice, Hisham Tal, and directed him to guarantee judicial independence and implement the Judicial Authority Strategic Plan: “Since we assumed our responsibilities, we have been keen on promoting the judiciary and enhancing its independence. This was evident in the recently endorsed constitutional amendments, which seek to entrench the independence of the judiciary and empower it so that it can continue to carry out its mission of protecting the freedoms and rights of citizens against any oppression or arbitrary acts.

Due to the significant role of the judiciary and its impact on all aspects of life in our dear country, we emphasize the need to develop the judicial apparatus, inspired by and building on the achievements of the past years, particularly the strategy to build the capacity of the judicial authority for 2012-2014. The development plan should ensure that all cases are ruled on with utter neutrality, in line with the standards of a fair, firm and efficient judicial system.”⁹

However, since May 2012, the efforts of the Judicial Council to advance the Judicial Authority Strategic Plan have slowed down. Chief Justice Tal told the team that judicial independence is an idea that is under discussion, requiring legislative action.¹⁰ A draft amendment to the Judicial Independence Law has not yet made its way to parliament. Consequently, the Ministry of Justice still has a major role in hiring new judges, controls the judiciary budget, the Judicial Institute of Jordan, and the Judicial Inspection Service, and its Secretary General (a judge) remains a member of the Judicial Council. The Judicial Council Administrative Units have focused more on improving transparency than other parts of the plan that directly target judicial independence. The Judicial Council’s website publishes its decisions, and important information about the judiciary is shared in the Judicial Authority annual report. No one has reviewed judicial asset declaration forms, which are locked away, making them useless as an accountability tool.

⁸ Cited in the Judicial Authority Strategic Plan, p. 9.

⁹ http://www.kingabdullah.jo/index.php/en_US/royalLetters/view/id/314.html

¹⁰ Meeting with Chief Judge and Judicial Council President Hisham Tal, March 18.

The establishment of the Constitutional Court has the potential to provide an additional check on all three branches of government. The Council of Ministers and parliament can request an opinion from the Constitutional Court on draft and approved laws, while a limited number of court cases can be appealed to it.

In addition, parliament still lacks the capacity to provide appropriate checks on the executive and appropriate support for the judiciary. Furthermore, parliament has no specialized staff or committees dealing with the judiciary.

The Ministry of Justice not only has authorities that, from a rule of law perspective, should belong to the Judicial Council, but it is also reportedly putting pressure on senior judges influencing judicial decisions. A survey by the Centre for Strategic Studies (CSS) at the University of Jordan found that in 2011 63% of Jordanians believed that the executive authority and its bodies interfered in judicial rulings, compared with 56% in 2010.¹¹

Most civil society organizations lack the understanding of rule of law needed to recognize the importance of their role in promoting judicial independence and accountability. Legal aid, women's rights, and human rights organizations have no significant court monitoring role. The Bar Association is politically engaged and protests legislation that has a negative impact on the legal profession. However, judicial independence is not its top priority. Few journalists understand rule of law and the importance of judicial independence to issues that concern them, such as human rights, women's rights, and corruption.

FAIRNESS

EQUAL APPLICATION OF THE LAW

Until at least 2007, Jordanians had strong confidence in the justice system. The World Values Survey of 2007 found that 89.8% had either "a great deal" or "quite a lot" of confidence in the justice system.¹² At the same time, they believe that those with influence interfere in court decisions. The CSS survey noted above found that 61% of the polled sample said individuals with political and economic influence also interfered in court decisions, compared with 55% in 2010.¹³ These seemingly contradictory opinions may be explained by the acceptance by Jordanians of *wasta* and impunity as a part of daily life, which they believe is unrelated to the quality of the justice system. It is also likely that a similar survey today would show less confidence in the justice system, reflecting increased criticism associated with the Arab Spring.

In fact, the justice system is organized in a manner that facilitates unequal application of the law. Few Palestinians are members of the judiciary, even though they are a majority in the country. While the number of female judges is increasing (due to large numbers of women graduating from the Future Judges program), they still only represented 16% of judges in 2012.¹⁴ In such an environment, Palestinians and women have reason to question whether the law is being applied equally to them.

Women also are faced with judges who are unsympathetic to them, particularly in cases of domestic violence and divorce. Governors have put "women-at-risk" of 'honor crimes' in administrative detention, rather than

¹¹ "Most Jordanians see country on right track — survey," <http://m.jordantimes.com/most-jordanians-see-country-on-right-track---survey>

¹² <http://www.wvsevsdb.com/wvs/WVSAanalyzeQuestion.jsp>

¹³ "Most Jordanians see country on right track — survey"

¹⁴ Draft Judicial Council Annual Report, 2012

send them to shelters or provide other means of protection. There are currently 150 “women-at-risk” in administrative detention.¹⁵

While the salaries of judges have increased, the salaries of court staff remain very low, giving them the incentive to engage in petty corruption. Court users also use *wasta* to gain special favors from court staff.

The result of all of these phenomena is that some Jordanians have preferential access to the justice system, while others have less than equal access. Some have impunity, while others are victimized. Judicial independence and accountability are not strong enough to counter the pressures placed on the judicial system.

PROCEDURAL FAIRNESS

Jordan’s criminal procedure law and civil procedure code have been the source of significant case delay and a large percentage of pre-trial detainees, but donors have helped the courts reduce the severity of these problems. With assistance from USAID in case management and automation, a number of courts have been able to reduce backlog and decrease the length of time that detainees await trial. According to Hadeel Abdel Aziz, Executive Director of the Justice Center for Legal Aid, the average length of pre-trial detention has fallen from 180 to 57 days.¹⁶ USAID’s Rule of Law Project (ROLP) has also helped institutionalize mediation offices, but they have not been very successful at diverting cases. The EU Criminal Justice and Penitentiary Reform Projects are now helping in the development of alternative sentencing options, building on ROLP’s initial work. The civil and criminal procedure laws need to be revised to make these approaches standard for due process. ROLP has helped the Judicial Council and the Ministry of Justice plan these revisions.

The short number of years that judges remain prosecutors prevents many of them from receiving adequate training. Consequently, some prosecutors have difficulty leading investigations and assuring that evidence is acceptable for trial. They also may abuse the rights of defendants unwittingly.

Amendments to the Juveniles Law were passed recently, leading to the establishment of juvenile courts. In these courts, legal aid is required for all defendants. Unlike before, juveniles are not being held in the same prison as adults. Juvenile courts are now part of the MIZAN II (computer software) court automation system.

As noted earlier, some of the more politicized cases continue to be directed to the State Security Court, where due process is less respected. This practice appears to contravene the spirit of the constitutional amendments, which require civilians to be tried by civilian judges. The Judicial Council has helped to establish courts led by civilian judges in the SSC, in an attempt to get around the constitutional requirement.

While SSC cases can be appealed to the regular court system, Police Court cases cannot. These cases also are not made public as they should be.

The Judicial Council has been working on a two-stage Administrative Court Law, which would take into account the importance of the appeals process.

The establishment of the Ombudsman’s Office provides an opportunity for citizens to challenge abuses by courts, the police, and the General Intelligence Directorate (GID). The National Center for Human Rights also can address due process abuses associated with human rights.

¹⁵ According to Torben Adams, Program Director, EU Penitentiary Reform Project

¹⁶ Meeting with Hadeel Abdel Aziz, Justice Center for Legal Aid, March 27, 2013

PROTECTION OF HUMAN RIGHTS AND CIVIL LIBERTIES

Jordan's government, courts, prisons and police continue to abuse human rights. According to credible reporting, torture is practiced occasionally in police stations and prisons.¹⁷ Conditions in most prisons are not up to international standards, although the government has built some new prisons and plans to close down the largest prison, Jweideh, where most of the Islamist prisoners have been held.¹⁸

The 2011 constitutional amendments expanded the rights of Jordanian citizens and forbade the use of torture. While Jordan has ratified or approved the major international human rights conventions, the Constitution does not make explicit reference to them. Many laws must be revised to be consistent with the international conventions. Many judges are ignorant of the ratified conventions and their applicability to cases, despite the fact that the Judicial Institute of Jordan has provided some human rights training.

Although the GOJ has published CEDAW in the Official Gazette, making it an integral part of national legislation, Jordan maintains reservations to this convention, based on the government's belief that some portions of these instruments are inconsistent with Sharia. Women's organizations are lobbying to remove these reservations.

While the regime showed great restraint in response to the increased intensity of protests associated with the Arab Spring and lifted the requirement to seek approval before holding demonstrations, it did send groups of activists to the SSC, where due process is not strictly observed. As noted earlier, to meet the new constitutional requirements that civilians must be tried by civilian judges, the Judicial Council established a court of civilian judges within the SSC. Using the Crime Prevention Law, governors also put some protesters in administrative detention, without charges and incommunicado for up to a year. They also used administrative detention for women they believed were at risk of 'honor crimes.' In 2011, 11,345 persons were detained administratively.¹⁹ Use of this law is problematic from a human rights perspective, and some governors abused the law by imprisoning individuals when there was not enough evidence to charge them or prolonging detentions of prisoners whose sentences had expired.

In criminal courts, the vast majority of defendants are unrepresented. The law requires the state to provide free legal assistance only to indigent prisoners who are being tried for a crime that could result in capital punishment or life in prison.

Despite constitutional protections for the media, many journalists and editors continue to receive pressure from the government. Self-censorship is prevalent. In response to harsher criticism of the regime by electronic news sites, the government pushed through the Information Systems Crime Law in 2010 and has used it to close several sites. Similarly, the right of association is protected by the Constitution, but can be abused under law by the Ministry of Social Development. The ministry can refuse to allow foreign funding for associations.

Citizens have multiple opportunities to complain about human rights abuses, including the National Center for Human Rights (NCHR), the Ombudsman's Bureau, the courts, and the PSD Ombudsman. Only a small percentage of abuses are believed to be reported, and a small percentage of reported abuses are resolved. The

¹⁷ U.S. Department of State Jordan 2012 Human Rights Report, pp. 2 and 3, www.state.gov/documents/organization/204579.pdf

¹⁸ Meeting with Fahed al Kassasbeh, EU Penitentiary Reform Project, April 1, 2013

¹⁹ 2011 State Department Human Rights Report for Jordan, p. 6.

NCHR reported that it resolved only 17.3% of 770 rights complaints in 2010. The major complaints to the NCHR that year focused on nationality issues, the right to a fair trial the right to humane treatment, the right to labor, the right to movement, the right to have identification documents, the rights of inmates and the rights of the child. Women's rights and the right to freedom of opinion received few complaints.²⁰

ACCESS TO JUSTICE

Jordan's poor, disadvantaged and female populations continue to have major obstacles to accessing justice, despite progress in some areas. The cost for legal advice and representation is high, and court costs can also be beyond the means of many persons. Although the Bar Association Law requires the provision of private legal aid to the destitute except for cases leading to capital punishment or life in prison, that requirement is only honored in the breach. No free government-funded legal aid is available in the Sharia Courts, where the majority of litigants are women. NGOs provide legal aid only to a small percentage of cases in the Sharia and ordinary courts. Courts can postpone fees, but litigants often lack the information to take advantage of this opportunity.

Citizens also lack knowledge of the law and understanding of the justice system. Even for those who wish or are forced to represent themselves, it is difficult to find printed or electronic versions of laws and regulations. There are virtually no guides explaining laws in simple language. Most police stations and courthouses have inadequate public information on making complaints or following up on cases.

Women in particular have social and economic barriers to using the formal justice system. They may be under pressure from their extended family or tribe not to make a complaint or to participate in informal mediation, lack access to financial resources, fear hurting their family's reputation, or need more urgent justice than the formal system can provide. Women often are mistreated by police, court staff, prosecutors and judges when they do make a complaint. Their efforts to initiate legal action are sometimes questioned inappropriately or are not recorded or investigated. Some authorities show clear bias against women complainants and provide undue support for the accused. Even greater bias is shown against women who dare to complain against those with high status or who can use *wasta*.

Another obstacle to access to justice is the execution of judgments. All courts have major delays in execution of civil and criminal judgments. USAID has helped two courts to make important progress in reducing delays of criminal judgments. In West Amman Court, automation of criminal judgment execution reduced the length of the appeals process and execution of judgments from six months to two weeks.²¹ In addition, the system limited the opportunity for documents to be purposefully misplaced, reducing opportunities for corruption.

The access of Jordanian women to their rights is sometimes blocked by laws that are inconsistent with the nondiscrimination clause of the Constitution and the human rights conventions ratified by the GOJ. There has been some important progress in addressing these problems. Women's groups helped to remove the government's reservation to the CEDAW article allowing freedom of movement and travel. Some judges are applying CEDAW in their decisions. In 2001 and 2010, the Personal Status Law was amended to give greater rights to women. A domestic violence law was enacted in 2008 and a trafficking-in-persons law was enacted in 2009.

²⁰ National Center for Human Rights 2010 Annual Report, p. 188, <http://www.asiapacificforum.net/members/full-members/jordan/downloads/annual-reports/2010>

²¹ Meeting with West Amman Court President, April 3, 2013.

Diversity within the justice system can help improve treatment of the disadvantaged, women and the poor. The small number of Jordanians of Palestinian origin in the police and judiciary is likely a barrier to justice for many Palestinians. However, the percentage of lawyers of Palestinian origin is much larger. The Future Judges Program has helped to increase the number of women judges in 2012 to 141 out of 911 (16%).²² Women significantly outnumber men at the law schools. The Jordanian National Commission for Women projects that women will soon make up 50% of lawyers, based on the fact that in 2011 there were 2,339 practicing female lawyers and 877 female lawyers in training.²³

EFFECTIVE APPLICATION

The effective application of the law is critical to the rule of law. Where the application of legitimately derived laws is ineffective or inadequate, there can be no access to justice, no equal application of the law, no procedural fairness, and no guarantee that human rights will be upheld. The effective application of the law is therefore key to ensuring citizen security, and it is a precondition for accountability and the elimination of impunity. Jordan's justice sector actors and stakeholders have made some progress in applying the law effectively, but need to make much more progress.

Judiciary – The judiciary remains neither independent nor accountable. Selection (appointment and removal) of the Chief Justice/Judicial Council President by the King, with no role for parliament, and interventions by other agencies prevent the judiciary both from being accountable to the Jordanian people and exercising an appropriate degree of independence. The number of judges has increased from 754 in 2009 to 911 in 2012. As noted above, the percentage of female judges has increased sharply through the Future Judges program to 141 in 2012, making up 16% of the judiciary.²⁴ Judges are better trained than previously, due to the efforts of the Judicial Institute, the University of Jordan Law School and USAID Rule of Law Program to develop the Future Judges program, new entry training, and continuing education. Judges work more efficiently due to improvements in case management and automation as well as increased transparency, but lack of clear policy guidance forces each Chief Judge to establish or adapt his or her own systems and procedures. ROLP investments in the Cassation Court Technical Office have significantly improved its case management, but similar offices are needed at the Appeals Courts.

Judicial Council – There has been no change in the Judicial Council's governance process, which allows the Chief Justice/President to dominate decision-making and to exercise virtually unchecked authority in promoting, transferring and disciplining judges. In addition, the Secretary General of the Ministry of Justice, while a judge, still is one of the Council members, creating undue involvement of the executive branch in Judicial branch affairs and a potential threat to judicial independence. The Ministry of Justice provides the Chief Justice with a list of candidates for judicial appointments. Members of the Judicial Council are appointed by the King, rather than elected by the judges, leaving no room for judicial self-governance as a collegiate body. Few decisions of the Council are made public, and no minutes of meetings are released. The relationship between the Council and the Ministry of Justice is unclear, with overlapping responsibilities. The lack of a line item for the

²² Draft Judicial Council Annual Report, 2012

²³ Progress of Jordanian Women: In Pursuit of Justice, Participation and Equality, 2010 – 2011, p. 24, http://www.women.jo/admin/document/JNCW_Progress%20of%20Jordanian%20Women_EN.pdf

²⁴ Provisional figures from the draft 2012 Judicial Council Annual Report

Judicial Authority within the general budget makes it overly dependent on the Ministry of Justice for funding and budget management, threatening judicial independence.

While Chief Justice/Judicial Council President Hicham Tal's royal appointment letter told him to follow the Judicial Authority Strategy, he did not indicate to the team that the Strategy was guiding his priorities. He noted that he is content with the current division of responsibilities between the MOJ and Judicial Council, although he believes that the Judicial Independence Law, which lays out roles and responsibilities of the Council, needs to be revised. He shows no interest in providing sustained leadership to increase judicial independence, particularly to increase the responsibility of the judiciary for its own financial and administrative management.²⁵

The Rule of Law Project played an important role in establishing and strengthening the Judicial Council Judges Affairs Unit, Training and Specialization Unit, and Planning and Development Unit. It helped these units develop the Judicial Authority Strategy, its implementation plan and monitoring systems. ROLP also is supporting the establishment of a Media Unit, in collaboration with a CSO, the Center for Defending the Freedom of Journalists. The success of these units will depend upon the leadership provided by the Judicial Council President.

Ministry of Justice – The Ministry maintains full responsibility for facility development and maintenance, automation, legal reform, court management and court staff, but is cooperating with the Judicial Council on judicial inspection (judge and court performance evaluation) and training. Most of its key positions are held by judges seconded to the Ministry, further muddling the distinction between Executive and Judicial branches. Its Secretary General is a judge, and he represents the Ministry and the Executive branch as a formal member of the Judicial Council. Since 2011, the Ministry has made some important achievements in automation of all courts and execution of judgments in two pilot courts, with USAID assistance. The MIZAN Version 2 system now connects all courts, helping court administrators to facilitate workflow, reduce bottlenecks and monitor efficiency. A single, unified case numbering system allows trial level and appeals case files to be better coordinated. Lawyers, clients, and even the public have improved access to case information.

Public Prosecution – Prosecutors, who remain at the same time judges in the Jordanian system, take their jobs seriously, but their effectiveness is limited by lack of personal independence from the judiciary; inadequate training and investigative tools; obstacles to collecting evidence and gaining access to databases and forensics; lack of specialization and trained assistants; and disincentives to remain as prosecutors. Consequently, they have difficulty leading investigations or gathering evidence for successful convictions.

Prosecutors have primary responsibility for criminal investigation, while police have responsibility only for initial oversight of the crime scene. However, police and judges are often forced to go beyond their assigned roles, as prosecutors cannot do their job effectively. Jordan's division of responsibility between prosecutors and police is not in and of itself problematic. The division of responsibility for investigative work varies across countries, with no single preferred model. In Jordan, greater use of the police, however, would free prosecutors and their own limited staff from having to handle all aspects of the pre-trial investigative process and allow them to prepare better for those cases actually brought to trial. Lack of training leads many prosecutors to choose to detain the accused, rather than simply to charge them, while carrying out an investigation. The 2011 State Department Human Rights Report indicated that over the year a total of 23,118 persons were in

²⁵ Meeting with Chief Justice/Judicial Council President Hicham Tal, March 19, 2013

pre-trial detention. As of March 31, 2013, 35% of the 8,600 prisoners were in pre-trial detention.²⁶ Hadeel Abdel Azeez, Executive Director of the Justice Center for Legal Aid, stated to us that average pre-trial detention has fallen from 180 to 57 days.²⁷ If accurate, this represents significant progress in dealing with a chronic problem.

The temporary law to create an independent prosecutorial service addressed some of these problems, but it was set aside by Parliament in 2010 for reasons to which the team was not privy. Public Prosecution leaders are interested in reintroducing the bill, but have not yet received support from the Chief Justice. In addition, no systems are in place to train specialized public corruption prosecutors on a sustainable basis.

The capacity of public prosecutors is increasing through support by both the ROLP and the EU Criminal Justice Reform Project (CJP). ROLP has developed a close relationship with the Chief Prosecutor General and four Attorneys General; undertaken and shared an assessment report; provided a variety of investigation training to prosecutors, including anti-corruption training; and is developing crime scene protocols. CJP is preparing guidance manuals and an on-line legal resource center; reviewing selection and appointment procedures; identifying required changes to the penal and criminal procedure laws; helping judges, police and prosecutors clarify their roles; developing recommendations to improve inspection of prosecutors; and developing and delivering core and specialist training plans. The impact and sustainability of this work is in question due to the current policies of the Judicial Council with respect to prosecutors and the limited timeframe of CJP.

Courts - With USAID support, significant progress has been made in case management, court automation, transparency and management of execution of judgments (for two pilot courts). Mediation departments of first instance courts are still not dealing with many cases, only 1,357 in 2011.²⁸ Some potential litigants, particularly women, have been dissuaded from using the formal justice system, which they view as unwelcoming and biased against them. Lack of specialized courts or training has prevented judges from building the skills needed to effectively address specialized cases. The pilot courts for execution of judgments show what can be done using a good model. As noted earlier, despite constitutional amendments restricting the types of cases to be heard by the SSC and requiring civilian judges to hear civilian cases, many civilians are still being brought to that court. Sharia courts are dealing with an increasing number of divorces and related cases, but many women lack legal representation due to the difficulty in securing legal aid. Following the amendment of the Juveniles Law, the UN Office of Drugs and Crime, with EU funding, is assisting the juvenile courts in installing closed circuit television for those youth who need to be protected from testifying in court. It also is helping the Ministry of Justice monitor juvenile justice procedures.

“Model Courts” – Assistance to the courts has included certain elements of business process reengineering in order to incorporate the new technologies into the working operations of the courts. The automated systems clearly have improved court operations in those aspects throughout the country. However, ROLP has not attempted to treat all activities of a court as a single management unit and establish quality standards for the entirety of a courthouse, particularly as to service to the public.

²⁶ Meeting with EU Penitentiary Reform Project consultant Fahed Al Kassassbeh, April 1, 2013

²⁷ Meeting with Hadeel Abdel Aziz, March 27, 2013

²⁸ 2011 Judicial Council Annual Report, p. 224

USAID has had considerable success in Eastern Europe and the Balkans using such a holistic approach, usually referred to as “model courts.” As an enhanced management/technical package that does not require addressing sensitive political issues, it may be appropriate as the next stage in assistance to the Jordanian court system. It involves using a limited number of courts and putting in place comprehensive court improvement plans using a team-based, “change management” process supported by a technical assistance team.

The objective of the process beyond technical aspects is to change mindsets and create a new institutional culture and an open, customer-oriented way of doing business in the court. The approach is based on an agreed, co-designed and co-signed set of court performance standards that lay out mutual responsibilities and measurable indicators. The goal is to create model courts that can be replicated throughout the system. In the case of Jordan, perhaps ten courts around the country could be chosen to test the model.

Police – PSD showed great restraint in response to frequent demonstrations associated with the Arab Spring. Its recruits are almost entirely members of East Bank tribes, some of whom are not well educated. Serious mistreatment of detainees occurs in police stations, and almost no suspect has legal representation at that initial stage. The role of police in criminal investigations is minimal, perhaps too limited: collecting initial information before arrival of a prosecutor. However, prosecutors may not be available or do not know how to lead investigations, so police sometimes take on the role of prosecutors and initiate investigations without supervision. Untrained police disturb crime scenes or cover up afterwards for their mistakes. When police are accused of wrongdoing, they are tried in special police courts, where cases cannot be appealed to the regular courts. Police misconduct, therefore, is not subject to any independent judicial process.²⁹ The Forensic Lab, which is under PSD control, is considered sound.

Prisons – Jordan has ten prisons, nine of which are not overcrowded. Most of them are newly constructed. Eight of the prisons can hold 800 inmates, one holds 1,000 and one holds 2,000. The largest prison, Jwaideh, is overcrowded, partly because prosecutors prefer to send defendants there prior to trial. Of 8,620 prisoners on March 31, 2013, 3,000 are awaiting trial.³⁰ In 2011, however, the State Department Human Rights Report said that there were approximately 16,444 inmates, including 170 juveniles, three percent of whom were female, in 15 correctional and rehabilitation center facilities.³¹ The Report also noted that Governors placed 11,345 persons in administrative detention.³² In 2013, 150 women victims of domestic violence were administratively detained, supposedly “for their own protection.”³³ Juveniles are held separately from adults. The EU’s Penitentiary Reform Program is collaborating with the CJP on developing alternative sentencing options, building on work started by ROLP. It also is helping to develop opportunities for ex-convicts after their release from prison. Alternative sentencing or simplified procedures outside the formal court system, particularly for first offenders, are being adopted as part of criminal justice reforms in many countries. Until now, Jordan has done little in this area.

Judicial Inspection Service - The Judicial Inspection Service (JIS), the judge and court performance evaluation system, does not use adequate, modern methodologies for the Judicial Council to manage the judiciary

²⁹ Meeting with Fahed al Kassasbeh, April 1, 2013

³⁰ Meeting with Fahed al Kassasbeh

³¹ State Department Human Rights Report, 2011, p. 3

³² State Department Human Rights Report, 2011, p. 6

³³ According to Torben Adams, Director, EU Penitentiary Reform Project, March 18, 2013

properly and preserve its independence and accountability. JIS reports have led to the disciplining of only four judges.³⁴ Although the JIS Director told the team that the Service was independent and tied to the Judicial Council, the Ministry of Justice appears to influence its work.³⁵ According to the current version of the Judicial Independence Law, the JIS is within the ministry. Both the JIS (which would be better renamed as an Office or Department inside the Council) and the Judicial Council lack a modern judge and court performance evaluation system with objective, data-based criteria. They also lack an objective, data-based system for prosecutors.

Judicial Institute of Jordan – The Judicial Institute of Jordan continues to be used for training of new judges and prosecutors and continuing education, as well as for special courses. It receives funding from multiple donors for these courses, including ROLP, but lacks adequate funding for equipment and operates out of a rented building. Both the Judicial Council and the MOJ oversee the Institute, which is a problem for judicial independence. The Institute's President, Judge Mansour Hadidi, would like to train specialized judges and prosecutors, with the proviso that they remain in their role for at least five years.³⁶ The Judicial Council will address these issues in its proposed revisions to the Judicial Independence Law.

Constitutional Court – The Constitutional Court was established in October 2012. It does not yet have a permanent building. As noted in the Constitution, its judges are appointed by the King for six-year, non-renewable terms; and the Court can make binding decisions on challenges to the constitutionality of laws and regulations by the Council of Ministers, the House of Representatives and the Senate. It also can receive constitutional appeals in other court cases under certain conditions of discretionary jurisdiction. While there are certain benefits to restricting the number of cases heard by the Court, some lawyers complained that avenues of redress for individual litigants have become more restricted. The President of the Court explained that cases are “filtered” in order to maintain a gradual pace of legal reform, which is necessary to preserve Jordan's stability. That is a *non sequitur* as well as an inappropriate standard of jurisprudence. However, he noted that all laws must be consistent with the rights laid out in the Constitution. The Court has already exercised constitutional review in one major case, in which it struck down the Landlord-Tenant Law.³⁷

Parliament – Parliament has no role in approval of judges. It is responsible for approving the budget for the Judiciary as submitted by the MOJ rather than the Judicial Council. Its members lack adequate understanding of the judiciary to play this role well, and they have no permanent technical staff to assist them in this process. Since 2010, the House of Representatives has initiated investigations of potential corruption by current and former governmental leaders, some of which have been prosecuted in court. The weakness of Parliament prevents it from assuming its proper role as a co-equal branch with the judicial branch, even as the executive branch continues to dominate both.

Bar Association – The Jordanian Bar Association remains a politicized organization that does not provide adequate support or services to the legal profession. Membership is mandatory. Until 1989 when political parties were legalized, the Bar acted as a proxy political party. During that time, it was divided into groups of supporters of different political ideologies, each of which did underground political work. Since 2011, it has supported the *Herak* street movement, which mirrored the Arab Spring movements in other countries in

³⁴ Meeting with Chief Justice Hicham Al-Tal,

³⁵ Meeting with Judicial Inspection Service Director Mustafa Asafetida

³⁶ Meeting with Judicial Institute of Jordan President Judge Mansour Hadidi,

³⁷ Meeting with Constitutional Court President Taher Hikmat, March 19, 2013

demanding political reform. The Bar today sees itself as a counterpart to the Constitutional Court in reviewing the consistency of draft laws with the Constitution. Although such a status is not recognized, the Bar is ready to protest if draft laws appear to present constitutional issues. The Bar participated in development of the Constitutional Court and the new election law.³⁸ It seeks to enhance the professionalism of lawyers, yet it plays no serious role in disciplining misconduct by private lawyers. The Bar Association Law requires it to provide a certain amount of legal aid, but assistance given comes nowhere near to meeting the need for indigent legal representation. After resisting cooperation with donors for many years, the Bar recently has begun to sit down with civil society groups to discuss legal aid planning, under the auspices of the EU Criminal Justice Project.³⁹

Civil Society and Media - Civil society is not yet strong enough to play its important role as a check on the abuse of government power and a guarantor of the integrity and accountability of the judiciary. It has not done enough to build awareness and understanding of rule of law. No strong watchdog organizations exist, other than human rights groups. The judiciary is reticent to open itself to dialogue with civil society, given the lack of groups capable of engaging on policies in this area. While there are some professional journalists capable of monitoring the judiciary, they are subject to repression and self-censorship, due to pressure from the government. Some groups have established themselves to defend the freedom of expression by civil society and the media, so that they can become a more effective voice for citizens.

Legal Aid Organizations – Jordan has 13 organizations that provide legal aid. One of them, the Justice Center for Legal Aid (JCLA) defends more clients than the other 12 organizations combined. Founded by an alumna of ROLP, it has received World Bank funding donated by the Japanese government. JCLA has 10 legal clinics with 22 lawyers. JCLA's original client focus was on women, and the majority of its clients still are women, but it now defines its mandate more broadly to serve all disadvantaged and vulnerable client groups. Most of its female clients have cases in Sharia courts. The NGO legal aid organizations are able to meet the needs of only a small percentage of cases. JCLA has advocated for the creation of a public defense system, recognizing that its own model is not financially sustainable in the long-term and cannot provide adequate coverage.

Law Schools – There are ten public and private law faculties. They produce more law graduates than can be absorbed by the legal profession. The USAID ABA/ROLI project has helped many law faculties improve their curricula and practical education, focused particularly on increasing understanding of human rights and gender equality. In addition, it has contributed to the Future Judges Program and helped build legal aid skills. The quality of many law schools seems to have improved, supported by changes in policies that required raising standards for admission, raising the number of credit hours for degrees, and increasing their flexibility in establishing law clinics. However, the limited number of law school professors interviewed did not indicate support for new legal system reform measures.

³⁸ Meeting with Samir Khirfan, Bar President candidate

³⁹ EU Criminal Justice Reform Project, The Second Progress Report on the Development of Legal Aid and Access to Justice Work Stream, December 31, 2012

OPPORTUNITIES FOR INTERVENTION

PRIMARY CONSTRAINTS TO BE ADDRESSED

The essential elements of justice where USAID has helped Jordan make the most progress were in the effective application and efficiency of the court as well as procedural fairness, human rights and equal application of the law. Other donors complemented USAID assistance by focusing on order and security, legitimacy, checks and balances, human rights and access to justice. As USAID develops follow-on programs in rule of law, it needs to build on existing investments to fully address the problems it has begun to address. At the same time, it must take into account other areas that remain blockages to the process of establishing rule of law. Some constraints are not worth addressing immediately, including those where there is little political will or strong resistance by judicial or political actors. Many also relate to new laws that need to be adopted and implemented in order to comply with the United Nations Convention against Corruption (UNCAC), which will be discussed in more detail in a later section of this report. The constraints where USAID may be able to make a difference over the next five years include:

- Delays in execution of judgments
- Lack of awareness of rule of law and integrity
- Lack of civil society oversight and support for judicial independence
- Need for selected “Model Courts” around the country
- Need for further improvement in modern, efficient approaches to court management
- Inadequate legal aid for the indigent and women in criminal and Sharia courts
- Inadequate support for systems and services dealing with violence against women
- Weak, non-specialized prosecutors, putting undue pressure on judges and police
- Lack of use of coordinated, specialized task force units to deal with complex investigations and prosecutions such as money laundering, organized crime, and high-level public corruption
- Lack of specialized judges and courts to deal with cases in areas requiring such specialized knowledge
- Inadequate coordination between prosecutors and police during investigations
- Inadequately trained judges and lack of gender balance in the judiciary
- Poor judicial hiring, inspection, evaluation, promotion, discipline and transfer procedures that do not reflect judicial independence or accountability
- Lack of MOJ budget to sustain automation and expand to other legal actors
- Procedural codes that create obstacles to efficiency
- Large percentage of prisoners awaiting trial
- Inadequate parliamentary oversight and support of judicial independence
- Inadequate judicial accountability, including the lack of enforcement of key anti-corruption laws and conflict of interest codes of conduct

- A lack of transparency in all phases and processes of the judiciary, from appointments to dismissals to decision-making, including no timely public access to judicial decisions
- Almost no training on corruption issues, particularly financial corruption, money laundering and income and asset disclosure
- No independent association for judges or prosecutors, and no permanent reform-focused working groups with these professions

If civil society support for judicial independence grows strong enough, USAID should focus on these constraints as well:

- Administrative detention used on political opponents and women-at-risk
- Poor governance of the Judicial Council, lack of elected members and inappropriate participation by the MOJ
- The Judicial Institute of Jordan not being under the control of the Judicial Council
- The Judicial Inspections Office not being under the control of the Judicial Council
- MOJ control of Judicial Authority budget and influence on hiring of judges

SPECIFIC LAWS AND INSTITUTIONS FOR WHICH OPPORTUNITIES EXIST FOR REFORM

In addressing the above constraints, there are opportunities to assist in revision or development of many important laws. For example, the EU is at an advanced stage of planning for a 30 million-euro justice sector budget support program with MOJ. This program already has been agreed in principle between the EU and the GOJ with funds available. The program is policy-based with “benchmarked” commitments and targets for the GOJ to meet. Many of the policy issues under discussion are very similar to the ones raised by USAID/Jordan for this report. The potential for close collaboration between USAID and the EU in a combination of project and non-project assistance to the justice sector merits consideration. The policy focus of the EU program and the technical assistance focus of a USAID project may well be mutually reinforcing, particularly in areas such as judicial independence, prosecutorial specialization, reform of the Judicial Council, and legal aid.

In Jordan, there is a great need to develop legal specialists in different governmental and non-governmental institutions to assist with this modernization process. This kind of approach will help promote checks-and-balances and improve the quality of the laws. Some of the laws that need to be reformed in order to create the legal enabling environment to promote and sustain reforms include the:

- Execution Law
- Bar Association Law
- Judicial Independence Law
- Criminal Procedure Law
- Civil Procedure Code
- Prosecutors Law
- Association Law

- Press and Publications Law
- Information Systems Crimes Law
- Constitutional Court law
- Anti-Corruption Commission Law
- Criminal, Libel and Slander Laws
- Code of Conduct Law
- Protection of State Secrets Law
- Access to Information Law
- Financial Disclosure Law

Focusing on the following institutions will help relieve the above constraints:

- Court execution offices
- Civil society organizations
- Bar Association
- MOJ court management office, court staff office, automation office, budget office, procurement office
- Judicial Council Administrative Units and Media Unit
- Legal aid providers: NGOs, Bar Association, private lawyers, Sharia court lawyers,
- Judicial Institute,
- Police
- University of Jordan Faculty of Law
- Judicial Council
- Judicial Inspection Service
- MOJ legal drafting office
- Social service agencies
- Jordan National Council for Women
- Police Training Institute
- Sharia courts
- Mediation offices
- Juvenile courts
- Parliamentary committees

PART II: ANTI-CORRUPTION

ANALYTIC OVERVIEW OF CORRUPTION IN JORDAN

While the assessment team is reluctant to make a categorical finding as to the scope and depth of corruption in Jordan, as sound empirical research does not exist, we believe the weight of existing evidence points to corruption being endemic at many levels.⁴⁰ Public surveys over the last five years also indicate the Jordanian public believes corruption is one of the country's top three most serious problems.

We have learned through global experience that in the world of corruption public perception counts. In addition, annual country rankings by global NGOs point to the governance situation in Jordan either not improving at all or getting worse on a number of key democracy, governance and corruption indicators. However, the team would acknowledge that this conclusion cannot be empirically proved or disproved because the data used either measures only perceptions or is based on experts' judgment, not scientific findings. Thus, this conclusion is not as quantified or as reliable and definitive as we might like.

But while we cannot categorically state that *wasta* or what most call corruption runs deep among Jordanian elites or high- or lower-level officials, we believe we can safely state that many Jordanians from all walks of life believe the problem is a serious personal and societal problem that jeopardizes Jordan's future. In any case, one of the best indicators we have at the moment is the public survey results of Jordanians over many years.

Nonetheless, we believe our analysis, based on country, regional and global research and comparative experience, numerous field meetings with Jordanian officials, CSO's and individuals, as well as review of numerous global and regional country reports and corruption indexes, supports this educated view.⁴¹ We believe it is now too risky, from a developmental if not political perspective, to *not* begin to address the signs of endemic corruption through empirical country research and analysis and a more holistic, participatory approach to reform. This is a reform course the GOJ has resisted for years.

This analysis and report will hopefully serve as a wake-up call to the GOJ, which we believe remains one of the region's best hopes for democratic governance with a capital 'D' (Democracy). It is important for the country's future economic and political development that the GOJ deal more decisively and democratically with this phenomenon before it gets worse. This does not mean just throwing more people into jail or organizing show trials. Rather, at this stage of the country's development, it means that much more focus should be placed on the prevention and public awareness-oriented side of the corruption equation and planting the seeds for a rule of law culture that would underpin integrity systems. A prevention-oriented approach, rather

⁴⁰ The team informally surveyed over a dozen possible institutions and centers in Jordan in an attempt to collect all credible surveys and polls that touched upon governance, corruption or rule of law issues over the last five years. With the exception of surveys done by IRI, we surprisingly could find very few.

⁴¹ In 2003 Transparency International (TI) ranked Jordan 43rd out of 133 countries; in 2008 TI ranked Jordan 53rd out of 179 countries; in 2013 the TI ranking was 58th. While the country's overall ranking may not appear to be that poor compared to other countries in the region, a more in-depth examination of specific segregated indicators used by TI and others, such as those related to human rights, freedom of expression and civil society participation and judicial independence, is more revealing and worrisome.

than a pure law enforcement-oriented approach, also reduces the risk of unintentionally enhancing prosecutorial and political abuse in a justice system prone to such abuse.

Jordan needs a new, strategic anti-corruption framework that has sharp, focused, transparent, and accountable teeth and broad stakeholder buy-in and participation. The old top-down approach to reform has repeatedly proven itself not to work.⁴² It is also worth noting that there are some who believe that a larger influx of donor money related to projects like construction and public procurement is helping fuel the corruption fire, so it may be time to make sure that both the houses of donors and international businesses are also in order.⁴³

The team was asked, both prior to and during our visit, to undertake a focused anti-corruption assessment that identifies possible new opportunities with the ACC. Accordingly, we devoted considerable time to ACC-related meetings and to exploring possible anti-corruption programming ideas with the ACC or those that might complement and be integrated with any future rule of law programming.

SCOPE AND NATURE OF CORRUPTION IN JORDAN

It is very difficult to assess the scope or nature of corruption in Jordan without more empirical research, access to information, or more open public discussion and debate. However, the most consistent assessment message the team heard was that the *wasta* system of giving and receiving favors, along with government secrecy, is the norm at virtually all levels of government and society. This reality was also a key finding reported in some of the few public surveys done on this topic in years past.⁴⁴

This form of corruption as the norm would be called endemic corruption in a country with any other name, but in Jordan this multi-headed phenomenon has been masked under the banner of tribal tradition. This 'justification' for *wasta* underestimates its negative impact on development and its disproportionate impact on those not in a good position, such as the poor, women, would-be entrepreneurs, and the politically disenfranchised, to reap some of its benefits.

One of the next fundamental strategic steps for Jordanians to take on the corruption front is to embark on a national, ongoing public awareness campaign that focuses on the individual and societal cost of key forms of corruption. This campaign should also clearly identify *wasta* as a form of corruption and quantify its full cost. While by global definition these two illegal or unethical practices amount to one and the same, the team recognizes that not all forms of *wasta* or corruption are equally pernicious. However, that still means all of those engaging in such practices should be held accountable, especially for anything amounting to a criminal offense, and such accountability will vary depending on the form and scope of *wasta* or corruption involved.

While the practice of how *wasta* works is well understood in Jordan, its full costs, impacts and ramifications clearly are not. Some Jordanians have called it one of Jordan's worst kept national secrets. At the same time, it is also clear that criminal corruption, including extortion, bribery, embezzlement and money laundering (described by many we met as high-level, cross-border financial crime) and all of its forms and costs is likewise

⁴² Jordan's anti-corruption campaign gets a boost, The National (September 23, 2008).

⁴³ Jordan's rural poor the loudest critics of 'corrupt' politics, The National (July 2, 2012). Lessons learned from Afghanistan include the failure of the donor community at large to set the example to the Afghan people.

⁴⁴ The Impact of *Wasta* on the Business Climate in Jordan (DIE 2006).

not well understood within the Jordanian context.⁴⁵ While polls and surveys indicate that the majority of Jordanians condemn both practices under either name, the few surveys that were done about a decade ago indicate many believe “petty” *wasta* is more justifiable, because it is necessary in order to make anything happen.⁴⁶ From what we learned during our fieldwork, that may be true within the Jordanian context.

Unfortunately, petty *wasta* or corruption often replicates, perpetuates and lends tacit support to the practice of grand corruption at the highest levels of government and society.⁴⁷ Ultimately, it all merges into an endemic, corrupt system throughout the country. While more empirical research needs to be done to confirm the exact depth of *wasta* or corruption within the Jordanian context, there is growing evidence that grand corruption and financial bribery and embezzlement is either already endemic or has the clear potential to become endemic.⁴⁸ If this is even nearly true, it will be very hard to convince the Jordanian people that the GOJ is serious about addressing corruption or changing the system, because high-level officials are not setting an example of integrity themselves first. Setting the example at the highest levels of government is an important first step towards establishing anti-corruption norms and practices in most countries, including those needed to nurture a rule of law culture. Obviously, however, this is a challenging political task taking on powerful vested interests.

While forms of *wasta* or what some call merely “giving favors” is practiced in all countries on at least a sporadic basis, the danger within the Jordanian development and transition context is that it has or will become the transactional norm and not the exception. If pervasive or endemic, it has a multiplying corrosive impact on democratic, political and economic development and creates an environment where a rule of law culture cannot thrive. Even if one believes that all forms of *wasta* or corruption are not serious barriers to development or that they do not constitute serious crimes, its collective hidden tentacles are stifling Jordanian values and good governance practices, economic and career opportunities, and access to fair and equitable justice. Unfortunately, Jordanians have never known any other system or way of doing business with the state but through *wasta*. Convincing them that the system can be changed or that changing it will benefit them and their children will be a difficult, long-term, multi-stakeholder task.

However, global lessons learned highlight the need for an approach that is targeted, incremental and impact-oriented in the near-term, but grounded on a comprehensive, closely linked strategy in the long-term. Small short-term successes and effective public awareness campaigns based on research and focusing on institutions and government services have sometimes proven to be the catalyst for larger more comprehensive anti-

⁴⁵ The X Files of Corrupt Jordan Characters, Charges and Cases, Albawaba Slideshows (February 25, 2012) and Jordan's PM to launch anti-corruption offensive, The National (January 26, 2010).

⁴⁶ *Wasta* 2002 survey.

⁴⁷ The international community often classifies corruption as either petty (low level or administrative/regulatory corruption) or grand (high-level involving large sums of money or valuable assets or high level political corruption). Many also use the term “state capture” if it is clear that all key government institutions are weak, corrupt or politically controlled by political elite networks. Sometimes state capture also extends to the non-governmental sector. Most distinguish between countries where a limited or manageable amount of corruption occurs within certain institutions or processes and those where corruption practices permeate all key institutions and large elements of society at large. The latter is called endemic corruption and is viewed as the most serious and complex form of corruption to address and prevent. See many excellent articles found at: wbi.org/governance.

⁴⁸ See Corruption trends in the Middle East and North Africa Region, 2007-2011, www.U4.no (January 2012, which notes widespread grand corruption, nepotism, cronyism and public and private sector collusion trends across the region.

corruption reforms. In the context of this report, some of these might be considered “windows of opportunity;” but a distinction should be made between *ad hoc* incremental efforts based on weak political will and those that are incremental but based on an open, well-developed strategy demonstrating strong political will.

We found that different people in Jordan defined *wasta* differently. However, when quizzed, most acknowledged that *wasta* indeed amounted to an “abuse of private or public entrusted power;” which is now considered the best definition of corruption within any country context. The groups most disproportionately impacted by *wasta*, not unlike those affected by bribery or embezzlement, are the very poor and those not well-connected. Virtually all respondents were quick to note that there was literally no other way to get most things done in Jordan and that *wasta* was a practice birthed by necessity because of inefficient, unfair and corrupt governance and lack of adherence to the rule of law.

However, while there is much discussion about high (grand) and low-level (petty) *wasta* and corruption, there is actually very little solid research or evidence to fully explain the scope of the problem, including who is involved, where it is most prevalent, or what it costs. The net result is that virtually everyone is uninformed, or misinformed, and they do not see any realistic way or incentives to change the current system. Sometimes the result of this frustration becomes public demonstrations and civil unrest.

While the assessment team received mixed messages regarding the degree of financial bribery and embezzlement that currently exists (two of the key measurements of corruption), we heard these two problems are seen as “growth areas” and that Jordan does not have the knowledge, capacity, or tools to address either. Our review of various reports from donors over the years supports these conclusions. Indeed, in a new Pan-Arab globalizing world of finance, technology and enhanced donor support, the situation in Jordan is ripe for more significant and damaging forms of internally and externally driven corruption to flourish. This includes high-level embezzlement, theft, and bribery both in the public and private sectors, as well as money laundering.

Some of our key findings include the following:

- Meaningful reforms in public and regulatory services are constrained by political-economic dynamics (the Jordanian elite bargain).
- *Wasta* undermines meritocracy and the development of systematized rules of governance as well as the development of a rule of law culture.
- Public bureaucracies and major accountability mechanisms are authoritarian and resistant to change.
- Lack of skills and technical capacity and frequent changes and intentional rotational assignments at higher levels of government mean reforms rarely progress.
- Bureaucratic opacity clouds meaningful transparency, accountability, and oversight.

The team is convinced that breaking down the walls of *wasta*, patronage, and corruption are serious reform hurdles, difficult to jump over within the Jordanian context. Deep public cynicism and a long history of repeated and fatally flawed, piecemeal anti-corruption reform failures make these hurdles even more difficult to overcome. As a result, it is risky to predict success on even short-term anti-corruption reforms in Jordan. This includes relatively straightforward reforms such as streamlining administrative regulations and approvals in key government sectors and decision-making processes.

It is even riskier to predict success on more complex anti-corruption reform fronts, such as those designed to promote more checks and balances and a more independent and empowered judiciary, Parliament, or civil

society. However, there are adaptable global models that may be able to deal with these obstacles with the right leadership and resources in place.

Whatever programming choices are made, it should be clear from the lessons of Jordanian and global experience that the old Jordanian top-down, unaccountable approach to anti-corruption and rule of law reform does not work. Building up the demand for reform, through broad stakeholder participation and systematic monitoring and reporting, and a balanced prevention and law enforcement agenda, has been the key to success in a number of small countries or city/states, including Georgia, Costa Rica, Hong Kong and Hungary.

Recently, several high profile corruption cases have been brought against the Mayor and Deputy Mayor of Amman, as well as the former head of the GID. Furthermore, many of the ACC's pending investigations are against private enterprises. The wave of recent anti-corruption cases is not a new phenomenon to the Jordanian people. Indeed, in the early 2000's and around 2007, similar high profile cases were brought to public attention. Jordanians interviewed and surveyed and several we recently interviewed thought the current wave of cases was mainly a public relations effort by the government to ease public unrest in a post-Arab Spring environment. However, no one thought these recent cases or the creation of the ACC itself was an indication that the GOJ was serious about addressing *wasta* or grand corruption.

While Jordan's corruption scores appear to fare comparatively well within the region and even in some of the perception-oriented global reports, there has been very little research or publicly released corruption surveys in Jordan over the last several years. This makes the quality of any recent country results and regional and global comparisons done by various organizations questionable. Given this reality, we have to turn, at least in part, to some of the more analytic and holistic anti-corruption assessments and country report cards done by in-country experts for international NGOs like Global Integrity (GI).

GI is considered to be one of the best available barometers by which to examine inter-related anti-corruption and rule of law issues⁴⁹ and attempts to measure the integrity and effectiveness of key anti-corruption institutions, mechanisms and processes, and the public's access to them, through 320 actionable anti-corruption and rule of law indicators. This is done through carefully selected in-country researchers, journalists, academics, and analysts participating in a blind peer review process. Most of GI's analytical results are consistent with the assessment team's analytical results and findings, although we believe that some of GI's low scores and findings are, if anything, too generous.⁵⁰

Specific issues and indicators analyzed include those mainly geared toward measuring how institutions, laws and policies work in practice, such as:

- the Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism indicators point to a lack of independence of the judiciary, the ACC, and Parliament (GI score: **Weak**);

⁴⁹ While the methodology for all of the global comparative country reports and report cards is by definition not considered "scientifically reliable," many consider the GI indicators to be among the most relevant and highest quality for purposes of the issues being analyzed in this report. A review of the 2007 Global Integrity Report for Jordan also points to little progress being made on most key issues analyzed here.

⁵⁰ Global Integrity Jordan (2011). www.globalintegrity.org/report/Jordan/2011

- Public Information and the Media indicators point to a non-empowered weak civil society that does not participate in the governance decision-making process (GI score: **Weak/Very Weak**) and a lack of public access to government information (GI score: **Weak**); and
- Public Administration indicators point to an almost complete lack of conflict of interest safeguards and checks and balances (GI score: **Very Weak**).

A number of specific ratings begin to illustrate some of the serious oversight, participation, institutional independence, and free speech issues highlighted in this report as well, such as:

- GI's overall global comparative rating for the independence, transparency, and accountability of the Jordanian ACC, which is on par with the worst anti-corruption commission ratings in the world, rivaling such countries as Zimbabwe, China, and Azerbaijan (GI: "Anti-Corruption Agencies, Not the Panacea" – **bottom 20% globally**);
- GI's country rating related to the effective enforcement of income and asset disclosure laws by public officials (GI country score: **0**);
- GI's rating concerning the status and enforcement of laws related to conflict of interest issues for all three branches and the civil service (GI aggregate country score: **40 points out of 100**);
- GI's country rating for the public's ability to effectively access government information within a reasonable period of time (GI country score: **0**);
- GI's country Yes/No question related to whether it is legal to report accurate news even if it damages the reputation of a public figure (**No**); and
- GI's country rating on whether Jordan has an effective whistleblower system to disclose or report on corruption (GI country score: **29 out of 100**).

CORRUPTION TRENDS

Our review of many country reports over the years reveals that not much of substance has changed with regard to corruption in Jordan, except that it may be underreported because of increased free speech restrictions in the name of national security. Indeed, it is more difficult than before to report on corruption without fear or threats of intimidation or retaliation. This does not mean that one should fully discount some of the positive steps that the country has taken. They may become *potential* door openers to either new or broader anti-corruption opportunities in the future if backed by political commitment now. This includes opportunities to work on a set of checks and balances-oriented reforms with relatively new institutions, such as the ACC, the Ombudsman, and the Constitutional Court, or on transparency and accountability reforms related to other developing institutions such as the Judicial Council, judiciary, and Parliament.

Other *potentially* important future anti-corruption programs might also be linked to some of the key prevention, criminal law, and law enforcement cooperation reforms mandated in the United Nations Convention Against Corruption, such as those related to public awareness, international law enforcement cooperation, a

judiciary with integrity, access to information, civil service reform, conflict of interests, financial disclosure, and political and financial support for an informed and engaged media and civil society.⁵¹

However, fleshing out the exact nature and design of state institution-oriented projects will need to be done through a more detailed project design exercise, in close consultation with other donors, as well as any ongoing rule of law or civil society-oriented program.⁵² The roadmap in Annex A should help orient project-level decision-making.

Even if some of these individual reforms are effectively and properly implemented in practice, experience from other countries reminds us they will not be enough to sustain credible anti-corruption reforms in a country where corruption is endemic. This is especially true if parliament, and as some allege other government entities are guilty of intervening or selectively politicizing high-profile corruption investigations and cases. The resignation of the Deputy Chairman of the ACC, who accused the Commission of unfair prosecutions and a lack of professionalism, as well as the arrest of a sitting Commission member on charges of corruption, also damages the credibility and integrity of the ACC and the GOJ.⁵³ If there is even some truth to these stories, then clearly there are some risks that need to be carefully weighed before indiscriminately strengthening the hands of some of these key state institutions. In this kind of environment, programming options should be carefully considered and focused to ensure they do not strengthen the hand of corrupt actors or make the situation more volatile. The first rule is: “Do no harm.”

However, one thing that has changed is the Jordanian public's perception that corruption is getting worse. Another change relates to the regional political winds that continue to gather from the post-Arab Spring storm. There are reports of number of problems and investigations concerning transnational crime and corruption in Jordan.⁵⁴ Currently, the GOJ does not have the technical capacity to address “new and emerging” forms of financial corruption, such as high-level bribery, money laundering, and the recovery of stolen state assets, that have regional and global feet.

We note again that it was disappointing and somewhat surprising as to how little recent homegrown and empirical research at the sectoral, institutional and local levels has been done over the last few years. For us, this means part of any future technical assistance package would have to include the development of empirical and applied research, which is essential for guiding future policy, establishing priorities and implementing programming decisions by both the Jordanian and international community.

For purposes of this analysis, we were only able to find a limited amount of baseline information upon which to measure progress or regression. This includes a review of the historical public record dating back to 1999, the beginning of King Abdullah II's rule, and his first government's efforts to fight corruption. Most of our research stems from a number of reports, polls and surveys published during the 2003-2007 period and a small

⁵¹ Against Corruption: The Role of Arab Civil Society in Fighting Corruption, Arab Archives Institute (Amman 2007) and The UNCAC: Reflections of an Anti-Corruption Practitioner: New Legal Trends, Norms and Global Tools for Doing Business and Governance in the 21st Century, Henderson, K., International Bar Association (2008).

⁵² Kingdom on right track in fighting corruption, Jordan Times (February 8, 2012). This article states that the World Bank approved a \$250,000 loan package to Jordan in 2012, that the European Union and UNDP have a 30 million euro and \$5 million dollar rule of law/anti-corruption program in the planning stages, respectively.

⁵³ Jordan's corruption puzzle, The Middle East Channel (May 16, 2012).

⁵⁴ Corruption trends in the Middle East and North Africa Region (2007-2011), U4 (January 16, 2012)

number of commissioned polls and surveys that have been published over the last three to five years. This material primarily includes analytical reports written by Jordanian anti-corruption researchers and advocates, USAID-supported assessments and evaluations, and several polls and surveys.

Our review, including an analysis of various country reports and rankings published in annual publications like Global Integrity, Transparency International, the Bertlesman Index, Freedom House, Doing Business In Jordan, and Human Rights Watch, as well as various polls and surveys conducted by organizations like the International Republican Institute (IRI), point to downward (negative) corruption trends in Jordan.⁵⁵

BARRIERS TO ADDRESSING AND PREVENTING CORRUPTION: HISTORICAL AND CONTEMPORARY PARALLELS AND PAST REFORM FAILURES

Perhaps the most striking feature of our timeline analysis is how many parallels there are between the reports and analyses of yesterday and today. To some degree, a quote the team found in a 2002 book entitled, *Wasta: The Declared Secret*, captures a large part of the Jordanian corruption picture then and now. The experience of the last ten years shows that the issue of corruption had been approached frequently but with little action taken to confront it directly. This was due to several reasons:

1. **Constitutional:** since it is difficult to prosecute senior officials;
2. **Legal:** laws conflict each other;
3. **Political:** since real representation of the people is absent in parliament;
4. **Civil:** since civil society organizations are weak and do not perform their anticipated role in fighting corruption;
5. **Economic:** Since private sector's contribution to the economic process is meager;⁵⁶
6. **Cultural:** tradition and acquired rights encourage certain pro-corruption practices.

While fully understanding that the complexity behind the causes and lack of progress in addressing and preventing corruption requires deeper empirical research and analysis, as well as hard institutional and sector data and richer informed public discussion, these six elements capture much of what is wrong with the time-tested but flawed approach to reform Jordanian style. These elements are also captured, in principle, in USAID's own anti-corruption framework analysis.

Within the Jordanian context, this analysis highlights: **(i)** weak executive oversight or meaningful checks-and-balances, in the government, and independent agencies; **(ii)** weak institutions, including executive and independent agencies, the parliament, and the judiciary; **(iii)** limited political and economic competition imbued with pervasive conflicts of interest; and **(iv)** limited government transparency and accountability, including limited public access to information, freedom of expression, and public accountability.

⁵⁵ www.globalintegrity.org/jordan; www.Transparency.org/index; www.BTI-project.de; and www.hrw.org/jordan; A comparative review of these reports from 2007 to present reveals that Jordan has regressed rather than progressed in terms of its efforts to address corruption and improve its international corruption scores.

⁵⁶ This is less true today due to the economic liberalization and privatization policies.

Indeed, after years of reform and capacity building, institutions that could provide checks and balances over government entities, including the judiciary, parliament, anti-corruption authorities, and to some degree media and civil society, remain largely captured or effectively repressed by the state.

While the GI country ratings for Jordan help highlight a number of highly problematic barriers to reform, some other more specific practices are worth highlighting, including:

- discouraging reporting on corruption and criticizing government officials under the veiled threat of jail, unfair fines, demotions or unemployment;
- raising high legal and administrative barriers to new NGOs either receiving foreign funding or efficiently engaging or advocating for anti-corruption reforms;
- not providing the public with access to government information;
- not providing all but a handful of poor criminal defendants facing death or life imprisonment with access to counsel and the right to a fair trial;
- lack of or failure to effectively implement in practice conflict of interest or income and asset disclosure laws and regulations in various institutions and decision-making processes, including the judiciary, parliament, the executive, independent agencies, state-owned enterprises, and the public procurement process;
- lack of an independent agency or department to effectively and fairly implement in practice an anti-corruption strategy or interagency reform action plan;
- lack of integrity and qualifications of appointments to the law enforcement community;
- lack of public access to a transparent budget and effective oversight institutions; and
- lack of access to an independent judiciary capable of enforcing the law fairly and effectively.

All of this indicates that corruption may be a more pervasive and corrosive political, economic, and societal development problem than many persons perceive. Past polls and surveys indicate no matter how broadly or narrowly Jordanians' define *wasta* or corruption, most believe it is wrong. At the same time, these same polls and surveys also clearly reveal that no Jordanian really knows what the short- or long-term cost of *wasta* or corruption is to their country's institutional or overall development or how it impacts enforcement of their fundamental right to a government with integrity, fair justice, and free expression.

This fact, coupled with global experience and success in other countries, leads us to conclude that one of the most important and urgent steps the GOJ should undertake is a national and local participatory multi-stakeholder strategic process that attempts to quantify the full cost of *wasta* and corruption to individuals as well as society at-large. This has proven to be the most effective way to engage the public and promote broad stakeholder demand for real change. It is also one of the best ways to discourage government secrecy and prioritize balance, and connect key anti-corruption and rule of law reforms with a broader economic and political reform package. This, like a full-scale national anti-corruption assessment, also would serve to test the seriousness of the GOJ's commitment to reforms.

Under all of these circumstances, the fact that the levers of power within the Jordanian governance system have not significantly changed over the years is no surprise. Jordan is a relatively small country where elite networks and waves of new immigrants try to co-exist and access limited resources and opportunities. This

kind of combustible environment serves as a breeding ground for pervasive conflicts of interest and nepotism. It also presents growth opportunities for more pernicious forms of high-level corruption.

The current *wasta* system for doing business and just living day-to-day produces a culture of suspicion, secrecy and self-censorship, and it makes the have-nots feel threatened with nowhere to go. These institutional and real-world factors, coupled with a repressive multi-layered and threatening legal enabling environment seemingly designed to stifle open discussion related to high-level corruption, make informed, responsible public debate and meaningful reform extremely difficult. It also makes virtually everyone reluctant to blow the whistle on corruption or *wasta*. Together, silenced and uninformed voices without rights and a system built around *wasta* go a long way toward explaining growing social unrest. The frustration of Jordanian citizens grows as they see the world around them changing, but little response by their own government.

JORDANIAN LESSONS LEARNED AND GLOBAL BEST PRACTICES

The reality is there has been little opportunity to address or prevent corruption because key state institutions and civil society remain very weak. Past and current flawed government policies, strategies, laws, anti-corruption commissions, investigations, and prosecutions, coupled with a dearth of empirical research, data, informed discussion, and participation, have all created high barriers to meaningful reform progress on either corruption or the rule of law. Among the Jordanians we consulted, there was a consensus that this unfortunate state of affairs represents the reality.

The more cynical view we heard is that the façade of anti-corruption reform was set in motion at different times over the last 10 to 15 years or so by the every-rotating cadre of prime ministers to maintain the status quo that benefited the elite. A more generous view is that the GOJ decided the fragility of the country could not accommodate broader reform without undergoing significant security risks and that reform must be carefully controlled and done in piecemeal fashion. While the truth about Jordan's reform failures may lie somewhere in between these two theories, the net result is poor implementation of institutional democratic reforms, the absence of strong, independent public institutions that enforce the law fairly and effectively, and inadequate governmental and non-governmental checks and balances.

One of the lessons learned in Jordan and other countries is that promoting a rule of law culture and reducing and preventing corruption requires a holistic, participatory approach to reform and it requires leadership and close oversight.⁵⁷ This requires strong institutions with integrity and multiple governmental and non-governmental checks and balances. Piecemeal technical reforms that focus mainly on improved capacity and efficiency have not and do not work or take root. Most reform efforts to date have not changed institutional incentives, governmental or non-governmental mindsets, or practices that Jordanians believe they need to thrive or sometimes even to survive.

Without clear and sustained governmental and non-governmental leadership, a system of multiple governmental and non-governmental checks and balances and broad stakeholder support, future success on these inextricably linked reform fronts is not likely. It is clearly time for the Jordanian government to adopt a very different strategic approach to anti-corruption reforms. The increased political risks of not doing so, following

⁵⁷ Global Lessons and Best Practices: Fighting Corruption and Promoting the Rule of Law through Transparency, Openness and Judicial Independence, Henderson, K., Chendu, China (2005).

the historic unrest and wave of change set in motion by the Arab Spring, are now too great to at least not *try* to reform.

NEW OPPORTUNITIES AND INCENTIVES

All of this said, we found some targeted opportunities for anti-corruption reform worth exploring. Some of these opportunities are centered around implementation of the United Nations Convention Against Corruption and the treaty's prevention-oriented provisions that include civil society awareness and participation. Some also relate to reforms designed to promote judicial independence and the recent creation of a Constitutional Court.

If implemented in practice, these reforms collectively could enhance the credibility and ability of the Jordanian judiciary to enforce anti-corruption laws more fairly and effectively and to promote a rule of law culture. This is particularly true if the judiciary, as we heard it, has in fact retained a certain amount of respect within Jordanian society, even if not independent by international standards. Fledgling societal respect for international treaties and the judiciary is an important social underpinning that can be nurtured over time. It is an essential element for preventing and addressing corruption and promoting a rule of law culture.

Unlike in most other countries, interviews showed implementation of and compliance with the UNCAC is an important objective for the GOJ. It should be noted that Jordan was among the first countries globally to sign and ratify the treaty (2003/05) and that it has hosted several key UNCAC regional and global conferences. However, there has been limited progress in implementing the treaty's mandated legal framework reforms and even some backsliding.⁵⁸ Global Integrity's scores also demonstrate a burgeoning implementation gap between the country's legal framework and actual implementation, contributing to the overall deterioration in the ranking of Jordan's legal system slipping from 'moderate' in 2007 to 'very weak' in 2009.

There is some evidence that the country is making an effort to comply with the treaty's multiple legal, institutional and policy mandates and best practices -- at least as they relate to its criminal mandates and path-breaking international law enforcement cooperation mandate. This particular mandate benefits all signatory countries, including in the potential recovery of stolen assets, expedited and legal extradition, and enhanced national security across borders. It is designed to motivate countries to implement a broad range of anti-corruption reforms mandated in the treaty. Unfortunately, there is little evidence that the GOJ has complied with the treaty's obligations on prevention, many of which relate to the empowerment and participation of civil society.

From an international or UN perspective, Jordan stands out among countries in the Middle East as a leader in implementing the UNCAC, having been one of the first countries in the region to voluntarily submit a country compliance report to UN Office of Drugs and Crime (January 2012). In its efforts to comply, Jordan also became one of the first countries in the region to create an Anti-Corruption Commission (2007) and to develop a national anti-corruption strategy (2008). However, both of these efforts appear to have been flawed by design, in law and practice, and both seem to have had little impact on abating the endemic corruption problem. This may be explained in part by the fact that the ACC has not included civil society or the business

⁵⁸ Corruption trends in the Middle East and North Africa Region (2007-2011), U4 (2012).

community as key stakeholders in its anti-corruption efforts and because a culture of secrecy and *wasta* still permeates virtually all government circles.

While Jordan was the first country in the region to pass an access to information law, it is also widely viewed in Jordan as flawed and not implemented in practice (2008). Other positive signs include Jordan's formation of an independent anti-money laundering unit and a financial disclosure department within the Ministry of Justice (although the law as passed is intrinsically flawed and cannot be fully implemented), as well as a number of laws that better define and penalize criminal active and passive bribery (all required as a signatory country to the UNCAC). Indeed, of all of the new laws passed, it appears the only one that is in full compliance with international mandates is the money laundering law.⁵⁹ However, it remains to be seen whether the law will be implemented fairly and effectively. While virtually all of these initiatives are problematic, they represent a move in the right direction. If their weaknesses are addressed, they will contribute to preventing and responding to corruption.

In the field, the team learned that the Royal Court, through a National Integrity Commission (NIC), is in the process of creating a new, overarching strategy and coordination mechanism to more effectively implement a national anti-corruption program with teeth (including a monitoring and reporting mechanism with timelines and institutional responsibilities). This kind of mechanism holds promise, if structured properly and sufficiently supported by both the GOJ and the international community; but to succeed the process must be transparent and led by credible governmental and non-governmental leaders. . It is therefore important to restructure the composition and on-going oversight mandates of this commission. Otherwise, it will almost certainly prove to be ineffective and suffer the same fates as its predecessors of years past. While in the field we were told this exercise as nearing completion and that a new national anti-corruption strategy was about to be released.

Perhaps the only credible institution capable of leading and sustaining a long-term, comprehensive national anti-corruption undertaking is the Royal Court. Even then, unless the court works in partnership with credible representatives from civil society and the business community, and has strong support from the international community, the opportunity to succeed is greatly reduced. Beyond that, such an institutional choice cuts against the need for the actual branches of government to improve capacity and operate independently with checks and balances. This opportunity and programming idea is covered further in Program One in Annex A.

THE STATUS OF KEY ANTI-CORRUPTION INSTITUTIONS

THE ANTI-CORRUPTION COMMISSION

The ACC was established in 2007 and was given a broad anti-corruption mandate, including investigations and prevention and public awareness programming.⁶⁰ The Jordanian ACC was the first such commission established in the region. Six ACC members and the chairman are appointed by the King -- upon recommendation by the Prime Minister.

⁵⁹ OECD FATF Money Laundering Guidelines. www.oecd.org/fatf

⁶⁰ Anti-Corruption Commission Law (2006/13 as amended).

While the ACC law states that the Commission is independent, the law is contradictory in stating that it is “affiliated with the Prime Minister.”⁶¹ By law and in practice, it is ultimately accountable to the Council of Ministers and the Prime Minister. A team of prosecutors, seconded to the ACC, handles prosecutions. They appear to be selected in practice by the Prime Minister, in close consultation with the MOJ and Chief Justice.

A cursory review of the ACC law and practice reveals a number of flaws and potential problems with its structure, powers and mandates. Bringing the ACC into compliance with the GOJ’s mandates under the UNCAC should be given attention. For example, the ACC law does not provide clarity on the reporting relationship of seconded prosecutors or the limits of their interaction with ACC members and investigative staff. Another highly problematic area relates to their lack of power to subpoena documents, officials, civil servants, or bank records without judicial approval/oversight.⁶²

The law is also unclear as to what independent prosecutorial powers, if any, the ACC has been given.⁶³ There is no provision in the law giving the ACC the power to investigate private sector corruption cases or those related to state-owned enterprises. These are two important high-risk corruption areas in all countries. One unusual provision relates to the ACC’s legal mandate “to combat character assassination,” alongside provisions that relate to recent mandates to protect whistleblowers.⁶⁴ We never have seen a provision like the former in any other country’s anti-corruption commission law and see it as problematic, as it sends threatening mixed signals to potential whistleblowers. In sum, according to the GOJ’s own country compliance report to UNODC, the ACC is deficient and unclear in a number of areas related to the UNCAC’s mandates and best practices.⁶⁵

The ACC has been in the process of developing a new anti-corruption strategy for some time, with the support of EU experts (in coordination with the Ministry of Planning). Its first national strategy covered the period 2008 to 2012, which was also supported by EU experts. This written strategy covered a number of areas, including: (i) ACC capacity building; (ii) simplifying the business environment; (iii) reforming the public sector; (iv) training of public officials; (v) awareness raising; and (vi) reviewing and proposing anti-corruption legislation. Our discussions with the ACC and others revealed that very few components of this strategy have actually been implemented in practice. The ACC pursued its first anti-corruption case in 2010.⁶⁶ The Chairman of the ACC reported then that 41% of its cases related to exploitation of public authority; 11% on forgery; 10% on embezzlement of public money; 8.2% on abuse of public office; and 4% on fraud. He also noted that the number of anti-corruption investigations grew to 890.⁶⁷

⁶¹ Most people we met with believed the ACC was not a credible institution in the eyes of the public.

⁶² When asked about this problem one prosecutor told us they were sometimes asked to obtain judicial approval to subpoena private banking information.

⁶³ Several people we interviewed outside the ACC believed clear lines needed to be drawn between the ACC’s commissioners and investigators and seconded prosecutors who should make their own independent decision as to whether to bring a criminal case to court.

⁶⁴ When the team asked if any international policies, procedures, or mechanisms had been established internally to implement these two competing goals we were told they had not.

⁶⁵ GoJ Country Compliance Report to the UNODC (2012). www.unodc.org/corruption

⁶⁶ US Department of State Report 2011.

⁶⁷ Jordan Times (April 2011)

More recent statistics released through the ACC's automated data tracking system reveal that from 2011 to 2013 the ACC has completely dismissed or referred to the courts 543 investigations out of a total of 774 registered complaints and currently has 52 cases pending. However, a cursory review of media stories and ACC press releases reveals there are discrepancies among these various reports, so it is not clear which of the cases were referred and which ones were dismissed and for what reasons. Over the last five years, only a handful of prosecutions have been brought against high-level officials. Most of them have been brought since the Arab Spring.⁶⁸

The ACC seemed to be receptive to some forms of donor assistance but they made no specific requests for assistance (that had been discussed, approved and prioritized by the Commission) during our many meetings. Most general interest was expressed, at least at the department head level, in capacity building and specialized training for investigators, technical assistance, and asset recovery and public awareness programming.⁶⁹

There was also a clear expression of interest in support for a public awareness and research-oriented program. However, when questioned about whether such a program would include the development of publicly accessible empirical research, polls, or surveys as a way to enhance public awareness, ACC department heads indicated that research and survey results would be for internal analytical purposes only. Virtually everyone we met with inside and outside the ACC acknowledged that the ACC had done little on prevention or public awareness and that they would need a great deal of technical assistance and capacity building in this area.⁷⁰ Assistance in prevention could help jump-start a credible anti-corruption campaign, but only if objective accessible targeted research, polls, and surveys are part of the picture. Civil society must be involved.

The next most important area would be to support a program focused on developing an ACC prevention strategy, an action plan and a prioritized program, along with an empowered blue-ribbon advisory committee that regularly meets with ACC leadership and department heads. This committee would also be charged with commissioning and overseeing research, including undertaking credible polls and surveys, providing regular reports on ACC activities and reforms, and overseeing the public awareness campaign. Other ideas for possible work with the ACC are outlined in this report and under Program Two (Annex A). Because the team did not have the opportunity to meet with the Chairman of the ACC one-on-one, we recommend a high-level follow-up meeting to discuss some of the ideas expressed in this report.

ANTI-CORRUPTION OVERSIGHT

Ombudsman. The Ombudsman is a relatively new independent agency modeled after the ombudsman offices in Europe. It was promoted and has been supported largely by the Finnish and Dutch governments, with a very small budget. Unfortunately, while its legal mandate is broad, there appears to be little support for such an office within the GOJ. Established to assist anyone with a complaint against any government entity, it has in practice focused only on employment-related complaints from civil servants. Its leadership seemed very proud

⁶⁸ Anti-graft body referred 36 corruption cases to prosecutor in 2011, *The Jordan Times* (December 4, 2012).

⁶⁹ Their keen interest in asset recovery may stem from a recent regional UNDP conference focused on this topic. However, the assessment team tried to point out that the global success record in identifying and recovering significant stolen assets was very poor, and that this might not be the best high priority area to invest the ACC's limited resources.

⁷⁰ Experience of the Anti-Corruption Commission in the Area of Prevention (2011), www.unodc.org

of the fact that they were able to help “hundreds” of civil servants resolve their complaints against their respective agency or ministry, but this does nothing for the public at-large.

When asked about the scope of their mission, we were told they had to narrow their focus because of resource and staffing constraints and a lack of political support. When asked why they did not ever receive citizen complaints, they acknowledged that they had no public relations department or knowledgeable staff and no resources for public outreach. While officials said they needed and would welcome donor assistance as well as more resources from the GOJ, they seemed less than optimistic about their future. We do not see much potential for this institution to play a key role in the anti-corruption arena.

Audit Bureau. The Audit Bureau is responsible for financial and performance auditing in all government institutions. Currently a USAID contractor is providing technical assistance to the Bureau. While promoting a more open, transparent budget process and financial management system is a worthwhile cause, it was not clear that the Audit Bureau has the capacity, resources, independence, mandate or political support to play an important role in addressing and preventing corruption or even to effectively follow up on its reports.

The Bureau has gained credibility and capacity in past years, particularly in cities outside of Amman through its regional offices, although many of its reports submitted to parliament or the ACC seem to go nowhere. Ministers still have the right to disagree with the Audit Bureau on any issue. Thus, in many cases no official response to the Bureau’s report is ever received, and no action is ever undertaken. Under these circumstances, we do not see much potential in working more closely with this agency on anti-corruption issues without more of a political commitment and financial support from the GOJ.

Parliament. Parliament as an institution has limited oversight powers and remains largely subservient to the executive. Most Jordanians have a negative view of parliament and do not believe it is representative of the population.⁷¹ Given the structure of the electoral system, parliament does favor East Bankers. It also still has limited capacity to fulfill its mandate to write laws or oversee government budget expenditures. Nonetheless, some individual parliamentarians are seen as reform-oriented and interested in being more engaged on the corruption issue, although their hands were often tied politically.

Unfortunately, there are still no permanent government oversight committees or mechanisms in place necessary to address government corruption issues across sectors, ministries, and such important decision-making processes as public procurement. *Ad hoc* anti-corruption committees are formed on a periodic basis, but usually only after a high profile scandal makes the press. However, some of the parliamentarians we met with and other respondents identified certain parliamentarians as part of the corruption problem and not the solution.

Journalists have reported about one recent case where parliament even voted to close an open anti-corruption investigation against a high level official.⁷² Finally, some of those interviewed also noted that parliamentarians have no subpoena power, so parliamentary requests for information or to testify are often ignored.

⁷¹ IRI Jordan Index (March 4-7, 2013)

⁷² Jordan’s corruption puzzle, The Middle East Channel (May 16, 2012).

Expanding USAID parliamentary assistance to include support and capacity building for a government oversight standing committee would be a good investment if that committee were given sufficient powers and budgetary independence, at least in targeted high priority areas. This might include more parliamentary oversight over the public procurement process or specific high priority sectors, such as education, electricity or water. Enhancing assistance to promote the development and implementation of clear conflict of interest rules and effective income and asset disclosure laws for parliamentarians and others would also help enhance the integrity and credibility of this key institution.

Media. A free and independent media, including social media and investigative journalism, is often one of the most effective institutions or tools by which to address and prevent corruption in most countries. However, without freedom of expression this institution cannot be empowered to fulfill its public mission. Unfortunately, these freedom of expression rights, while guaranteed in the Jordanian Constitution and the Universal Declaration of Human Rights, are effectively suppressed by various laws and government practices.

These laws and policies, individually and collectively, serve to threaten or censor those who try to openly discuss corruption involving high-level Jordanian officials or business elites.⁷³ They include a law that prohibits free speech with “just cause,” such as speech that would result in public unrest.⁷⁴

Jordan also continues to criminalize speech critical of the King, government officials, institutions, and Islam that is deemed insulting. In 2011, the Center for Defending Freedom of Journalists assisted Jordanian journalists with more than 70 ongoing criminal cases for speech violations prohibited under the Press and Publications law. That same year, several journalists reportedly also were attacked by unknown assailants or parliamentarians.⁷⁵ Many of the CSOs and human rights groups we met with observed that most journalists and CSOs know where the government’s red lines are and that they self-censor accordingly.

Corruption within and state control over the media also looms large in Jordan. Several contacts we interviewed told us stories of journalists being paid to write or not write a story related to a high profile corruption case, and noted that the publication and content of such stories is more often than not controlled by the government.⁷⁶ In addition, many leading dailies have government ownership indirectly.

Civil Society/NGOs/CSOs. By all accounts, civil society and NGO/CSO’s remain very weak in Jordan, particularly in the governance arena, and have almost never had significant impact on government policy. Civil society has never been empowered to be a serious participant in Jordanian governance.⁷⁷ The team learned that even attempting to identify the handful of Jordanian NGO/CSO’s working in the governance and anti-corruption arena was not always easy. It appears that the NGOs are feuding among themselves for recognition and the funding it brings.

⁷³ Introduction to News Media Law and Policy in Jordan, IREX (May 2011).

⁷⁴ www.globalintegrity.org/jordan2011. This report also notes that citizens cannot obtain a print or broadcast media license in a reasonable time or at a reasonable cost.

⁷⁵ Human Rights Watch, www.hrw.org/world-report-2012/world-report-2012-jordan

⁷⁶ This problem was also discussed in research cited in a publication by the Arab Archives Institute in 2000: Towards Transparency in Jordan, Sakijha, B. & Kilani, S., p. 100.

⁷⁷ www.globalintegrity.org/jordan

The legal and political enabling environment for NGO/CSO work on corruption or rule of law issues in Jordan is both constricting and threatening. There are many high procedural and political hurdles in Jordan for NGOs/CSOs wishing to work or receive foreign funding in these two areas.⁷⁸ The registration process for these kinds of NGOs/CSOs sometimes includes unannounced, unofficial and intrusive background/documentation checks by the security services.

KEY ANTI-CORRUPTION AND LEGAL ENABLING ENVIRONMENT LAWS NECESSARY TO ADDRESS AND PREVENT CORRUPTION

As previously discussed, the legal enabling environment to address and prevent corruption and promote democratic governance and a rule of law culture is still lacking in Jordan. While many of the right kinds of laws are on the books, many have fatal flaws and others are inconsistent or even contradictory to related laws. Good examples are laws related to the media, free press, and access to information, which often effectively eviscerate, in practice, what appear to otherwise look like good laws. Some laws are even inconsistent with the Constitution. Many of these laws also are inconsistent with the legal mandates and best practices embraced in the UNCAC. Excellent analyses have been undertaken by IFES, IREX, UNODC, Partners/Jordan, ABA, Rule of Law Project, OECD, and the National Centre on Human Rights in this area.

It is clear that a large number of important legal enabling environment laws, including the Access to Information Law and the Financial Disclosure Law for Public Officials, need to be reformed, and dedicated support is needed to guide such a process. Jordan's relatively new money laundering law now appears to be in compliance with international standards after several years of hard work.⁷⁹ Other important laws, such as those related to elections, are discussed in the rule of law section of this report. They also would require deeper analysis and high priority attention in future programs.

Money laundering. After several years of work, OECD and Jordanian money laundering experts are now in full agreement that the right money laundering law and unit is in place. This is an important achievement because most countries use their money laundering law as a key tool to identify and attack many forms of corruption. However, now the challenge is to make this law work fairly and effectively in practice. This will be a challenge, as it appears that relevant anti-corruption investigative, prosecutorial, and judicial institutions have little capacity, knowledge, or political will to fully implement or utilize this law to address and prevent corruption. This means it also would be important to support programming that promotes real-world national and international cooperation in high profile areas like money laundering. High-level interagency dialogue will be required to make this law work in practice.

Access to information/criminalization of free speech. The team heard from many contacts that the Access to Information Law is badly flawed.⁸⁰ Many described its much-heralded passage more than five years ago as a classic Jordanian-style reform failure. Several also lamented that the government's efforts to create a culture of openness rather than a culture of secrecy were little more than political democratic rhetoric.⁸¹ Re-

⁷⁸ www.globalintegrity.org/jordan. Jordan is one of the only countries in the region to make it illegal for NGOs/CSOs to receive foreign funding without prior government approval.

⁷⁹ www.oecd.org/fatf/jordan (2012)

⁸⁰ See Media Sustainability Index for Jordan, IREX.

⁸¹ Interview with human rights advocates.

gional experts have captured the political story and myriad problems behind implementation of this law in Jordan and other Middle Eastern countries. Other emerging issues in this area that need attention relate to growing restrictions on access to the Internet.⁸²

A closely related set of laws that also needs high priority attention are those that impact free speech and free media. Even though the 2007 Press Law amendment decriminalized libel, slander, and defamation, many other laws and amendments have been passed since then to effectively gut the amendment.⁸³ Any activity would need to examine and recommend a series of inter-related reforms to ensure Jordanian's constitutional free speech rights, particularly in the area of reporting on corruption, and will require high-level political support and dialogue.

Public Disclosure Law for Public Officials/Civil Service. In other countries this type of law, if properly drafted and institutionally implemented in practice, has proven to be one of the more effective tools to address and prevent corruption among high-level officials, although implementation has not been easy anywhere. Unfortunately, Jordan's law is seriously deficient, as virtually no one except the Chief Justice has the right to review and access the disclosures being made. In fact, no one has ever filed a complaint or requested to review a filing. The Chief Justice has never opened any of the sealed envelopes in a locked safe that contains the disclosures.⁸⁴ This situation is clearly neither a result of poor legislative drafting nor poor implementation; rather, it is a clear effort to subvert an anti-corruption law that has the potential to impact all high level officials and set a new tone for government integrity. Reform of and harmonization of this law with other key anti-corruption laws, such as an illicit assets law and the access to information law, should also be a high priority for the GOJ and the international community. It will require high-level political support and dialogue.

Other anti-corruption legal enabling environment laws. Many other laws, such as those related to the ACC, public procurement, and civil service, as well as many referenced in the Rule of Law section of this report, also need to be reformed, harmonized and implemented through clear policies, by-laws and regulations. What is needed most is a holistic, participatory approach to law reform that incorporates international best practices and systematic monitoring and reporting mechanisms to ensure they are implemented fairly and effectively in practice.

We know from global and the Jordanian experience that law drafting itself often results in laws that are poorly crafted, intentionally designed to fail, or serve some ulterior purpose. Many are also never implemented in practice. This means that due care should be given to reforming these key laws through a participatory process that enhances capacity of democratic governmental and non-governmental institutions. This important task also would require high-level political support and both Jordanian and international experts and broad public discussion and engagement.

⁸² Freedom House - Freedom on the NET (2012). Freedom House gives Jordan a 'partially free' country ranking in this area and notes that Internet restrictions have increased since 2011 that have resulted in the arrest of bloggers.

⁸³ A Regional Strategy for Promoting a Free Media and Freedom of Expression in the Middle East and North Africa, Henderson, K., IFES (2005). This paper was cited by the Jordanian Ministry of Foreign Affairs as one of the justifications for the law decriminalizing defamation and slander laws in Jordan in 2007. www.ifes.org/Henderson.

⁸⁴ Team meeting with asset disclosure office.

DONOR COORDINATION/CONSENSUS AND SYSTEMATIC MONITORING & REPORTING IMPLEMENTATION MECHANISMS

While donor coordination has already been touched upon in the rule of law section, it has proven to be very important to address within the anti-corruption context in other countries. The main lesson learned is that any serious anti-corruption program supported by donors, whether done as a free-standing or integrated program, requires ongoing, systematic, high-level policy dialogue and systematic monitoring and reporting at many governmental and non-governmental levels. This almost always includes enhanced, ongoing interaction between USAID, the Embassy and State INL/Department of Justice, in Country Team as well as between the USG and other key donors.

Often, country donors establish specific mechanisms to promote implementation, unity in message, and successful program impacts that benefit everyone. Another important lesson is that it is very important to agree upon a unified anti-corruption message and package of reforms. Donors do not have to agree on everything, but reaching consensus on conditionality and targeted reforms improves chances for success and lessens the risk of inconsistent programming in a very sensitive cross-cutting area.

Because there is only a small amount of programming in the anti-corruption area in Jordan, it is the optimal time to establish donor policies and mechanisms. If and when conditions become ripe, there are opportunities to develop coordinated programs with other key donors in Jordan, including UNDP/Jordan and UNDP/Beirut, the EU, Finland, the Netherlands, and Germany.⁸⁵ USAID might also consider a program that complements the World Bank's Doing Business or SME projects. Opening and increasing donor discussions would also present opportunities to discuss anti-corruption oriented programming in specific high priority areas and sectors, such as the budget and public procurement process or the water, energy, or education sectors as other donors are already working in all of these areas. Programs could be designed in these sectors to reduce corruption related to basic government services or key decision-making processes. Other sectoral issues might relate to health, education, water or electricity. These are all ideas worth considering by USAID and other donors.

A BEST PRACTICES APPROACH TO ANTI-CORRUPTION PROGRAMMING IN JORDAN

The recommendations and programming outlined in Annex A all draw on global, regional, and country experiences and international best practice principles. In addition to the integrated reforms that link-up anti-corruption and rule of law reforms outlined in this report, serious consideration should be given to developing anti-corruption programs that address specific problems, institutions, and issues more directly.

Global experience tells us that the most effective approach to USAID anti-corruption programming, at least over the long-term is to integrate anti-corruption elements into existing Democracy and Governance and Economic Growth programming alongside targeted, mutually supportive stand-alone programming. This programming, at least in the short-term, could be implemented through integrated rule of law strategies, objec-

⁸⁵ The rule of law section includes more detailed discussion about the possibility of coordinating with the EU's new 30 million euro benchmarked justice sector budget support program, which could also include anti-corruption components (such as work with the ACC). State/INL also plans to fund a relatively small capacity building program with prosecutors. Such a program should not proceed in an uncoordinated fashion. UNDP/Beirut is still waiting for the release of the ACC's new national strategy before deciding what kind of support to provide.

tives, and programs. Two best practices approaches to anti-corruption programming are described briefly below. An ideal program would contain elements of both.

1. Program short-term anti-corruption successes. While there are several recently tested formulas for delivering short-term anti-corruption success in developing countries, there are always significant challenges to adapting and replicating them. One of the most successful formulas, at least in the short-term, has been targeted programs that reduce the number of approvals needed to obtain key government services or signatures.⁸⁶ As further discussed, even this reform would no doubt be problematic and challenging within the Jordanian context. However, reforms in this area usually have an inherent degree of stakeholder support (businesses, entrepreneurs and investors and/or rich or poor citizens who all need basic government services at the national and local levels, such as water, electricity, or access to government information).

2. Programs focusing on long-term objectives and achieving short-term successes. Such programs address key institutions, like the judiciary, parliament, and oversight institutions. They also build transparency, accountability, participation and justice into processes and mechanisms. These programs are more challenging and problematic to implement. They are designed to reform and promote strong independent institutions that can both fulfill their constitutional mandates and work with and provide a check on each other.

This long-term, largely home-grown approach has worked in a number of countries in recent and not so recent history. They have at least succeeded in minimizing and containing corruption.⁸⁷ Some of these countries had the advantage of already having a rule of law culture and engaged civil society, while others did not.

This more holistic, participatory, systematic approach to reform requires broad stakeholder support and an ongoing monitoring and reporting mechanism to promote the demand for and actual implementation of reforms. This kind of multi-pronged program also needs leadership by well-respected and credible governmental and non-governmental leaders known for their integrity.

COMMON ELEMENTS OF PAST PROGRAMMING SUCCESSES IN OTHER COUNTRIES

Some of the key elements to the success of many past programs have been those that placed emphasis on promoting access to information, civil service reform, civil society participation, and advocacy through an economic growth, good governance and rule of law-oriented package of reforms.⁸⁸

The fundamental question for either of these approaches is not so much how to do them but whether there is political will in Jordan to do them. Our conclusion is that the level of political will needed has not been demonstrated publicly or privately. If political will is not present, then the fallback question becomes whether

⁸⁶ Doing Business, www.doingbusiness.org

⁸⁷ *Contextual Choices: Global Lessons Learned* (2011), www.norad.no/en/tools-and-publications/publications/publication?key=383808. Some recent examples include South Korea, Hungary, Costa Rica, Chile and Georgia. Examples from the 18th and 19th centuries include Scotland, the UK, the U.S. and many countries in northern Europe.

⁸⁸ *Ibid.* It is also worth noting, from a historical empirical research perspective, that many of the countries that have the most anti-corruption success were countries that undertook reforms on their own without significant financial support from the international community. The main point here is that there must be clear and deep "country buy-in" and ownership of the process.

and how to enhance the demand for targeted reforms that will help build the foundation for broader future reforms or help support current reforms in other related areas. Political will questions can really only be answered through high-level policy discussions. We have decided to outline at least two possible approaches to anti-corruption programming that can hopefully serve as entry points for such a discussion.

Our working assumption is that there is at least low-level political will in either governmental or non-governmental quarters to work on some of the programs we have outlined in Annex A. These programs include work on prevention with the ACC and a broader range of activities with Jordanian and international NGOs/CSOs. Any areas of cooperation with the ACC should focus on prevention-oriented programming, such as public awareness raising, developing safe and anonymous whistleblowing policies, procedures and mechanisms and partnerships with the business and international communities and anti-corruption NGOs, such as Transparency International. Other forms of possible technical assistance to the ACC would include developing clear policies, mechanisms and procedures related to enhancing international cooperation on several fronts, such as asset recovery, money laundering and extradition. These forms of assistance are all mandated and recommended best practices under the UNCAC.

Within the Jordanian context, either or both approaches could potentially be wrapped around the effective implementation of the UNCAC.⁸⁹ While the GOJ is beginning to use the UNCAC as a vehicle for addressing corruption, it is unlikely to succeed in these efforts because it is trying to “drive UNCAC alone without a civil society co-passenger.”⁹⁰ The UNCAC is the only global, consensus-oriented, best practices anti-corruption framework for promoting a wide range of anti-corruption reforms, including those linked to prevention, law enforcement, and national and international cooperation.⁹¹

The highest priority program the team confidently recommends is actually a “window of opportunity:” helping establish a Transparency International Chapter in Jordan. A high priority is the comprehensive strategic approach and set of challenges outlined in Program One (Annex A), but only if sufficient GOJ commitment to such a program is shown. A lower, but still high/medium priority is the step-by-step incremental strategic approach outlined in Program Two. Other anti-corruption programming ideas have been integrated into many of the rule of law programming recommendations. These activities are contemplated as free-standing activities that could be funded and linked to current and future rule of law programming.

⁸⁹ UNODC also offers technical assistance in this area, including a model UNCAC implementation oriented university and law school curriculum scheduled to be released in May. See: www.unodc.org/corruption (Henderson, K, editor/co-editor). There is no course like this at the university or law schools in Jordan. There were expressions of interest in using this curriculum as training and teaching material by various governmental and non-governmental groups interviewed.

⁹⁰ Against Corruption – the Role of Arab Civil Society in Fighting Corruption - Implementing the UN Convention against Corruption, www.gtz.de (December 2007)

⁹¹ www.unodc.org/corruption. Unlike in most countries where the team has experience, the UNCAC was mentioned as a reference point at virtually every turn of our mission. One of its mandates relates to the need to support reforms that promote the integrity of the judiciary. It also requires a host of transparency and access to information reforms, including several related to public procurement, open budgets, income and asset disclosure, civil service reform, codes of ethics. It also includes path-breaking reforms related to national and international law enforcement in a number of targeted areas, including money laundering, extradition, mutual legal assistance and asset recovery. The UNODC also offers technical assistance to countries trying to implement the UNCAC (usually funded by individual donors). The USG and other donors, including UNDP, have also assembled interagency teams and experts to provide technical assistance in these areas.

Whichever path is chosen, both may be feasible and appropriate through different mechanisms, objectives and integrated programming. Any resulting action plan should include participatory, systematic monitoring and reporting mechanisms, and credible, research-based public awareness-oriented programming components. They should ideally also place emphasis on programming elements related to transparency and access to information wrapped around principles of integrity.

FINDINGS AND RECOMMENDATIONS

INTEGRATED FINDINGS

Finding #1: The weakness and ambivalence of “political will” in government and organized “public will” in society means that expectations for results must remain realistic, with no major breakthroughs in either rule of law or anti-corruption anticipated in the near-term.

Finding #2: The loss of public trust and confidence in government institutions and actions seriously undercuts efforts to improve the justice system and combat corruption, with lack of public voice leading to frustration and civic apathy.

Finding #3: The executive still wields most of the decision-making power. There has been little, if any, measureable progress in the last five years in promoting more governmental or non-governmental oversight on the executive’s unchecked authority. Key decisions are still made from the top down, emanating from one or more of the key executive power structures. The MOJ also remains a key power center for dealing with the judiciary.

Finding #4: Jordan is not yet ready for a full-scale, comprehensive anti-corruption program. However, the Mission is positioned to continue a rule of law program that includes a focus on transparency and accountability issues. Such a program may help to build a national commitment to design and implement a major anti-corruption program.

Finding #5: Civil society is not yet strong enough to play its important role as a check on abuse of government power and a guarantor of the integrity and accountability of the judiciary or in fighting corruption.

Finding #6: Media is not independent of government control. This sharply limits its ability to carry content critical of the GOJ or engage in the kind of credible investigative journalism that can bring government corruption to public attention.

Finding #7: Public prosecutors are neither independent nor capable of playing their role effectively. Among other things, they are integrated so closely with the judiciary that their separate function is compromised. Their effectiveness also is limited by inadequate training and investigative tools; obstacles to collecting evidence and gaining access to databases and forensics; lack of specialization and trained assistants; and career path disincentives to remain as prosecutors.

Finding #8: The key actors in the justice system – regulatory office personnel, police, investigative staff, prosecutors and judges – do not have the skill sets necessary to deal with complex, contemporary legal issues and cases. There is an urgent need for greater specialization both in the courts and in executive offices, particularly with respect to anti-corruption efforts.

AS TO RULE OF LAW

Finding #9: The judiciary cannot become truly independent unless Parliament and the Executive also exercise their authorities independently and the three branches provide appropriate checks and balances among themselves. This includes strengthening ongoing accountability to the public through increased government transparency and citizen engagement in public affairs.

Finding #10: The judiciary is neither independent nor accountable, nor empowered for self-governance through the Judicial Council. Among other things, full independence of the Judicial Council is needed. Parliament currently has no role in the appointment of judges. If such an authority is considered desirable, the role of Parliament as a 'check or balance' of the Executive would be strengthened.

Finding #11: USAID has helped the judiciary achieve some important advances in judicial efficiency and effectiveness. However, civil society must greatly strengthen its role in creating checks and balances to increase the legitimacy and integrity of the justice system, which also would leverage the impact of donor assistance to the judiciary.

Finding #12: The MOJ and the judiciary recognize that criminal defendants would benefit from better legal representation, but show little interest in seeking funding for legal aid beyond that mandated by the Constitution (capital offenses and life sentences). The lack of counsel for indigent criminal defendants violates their right to due process.

Finding #13: Structural changes made within the judiciary since 2011, such as the transfer of some financial and administrative authority from the MOJ to the Judicial Council, have not been implemented effectively. They have not been enough to promote more judicial independence or access to justice.

Finding #14: Judicial independence is supported by constitutional amendments but lacks a statutory framework. The Judicial Council's current governance process allows the Chief Justice to make all decisions arbitrarily and without transparency. He favors the current balance between the MOJ and the judiciary, and he is not using the Judicial Authority Strategy as a guide for increasing judicial independence. Although time did not permit a detailed analysis of the structure and workings of the Judicial Council, it appeared clear that the Council is in need of serious reform. A comprehensive assessment of how the Council works in both constitutional theory and actual practice should be undertaken urgently, with the results of the assessment guiding reforms.

Finding #15: Systems and services dealing with violence against women are inadequate. The judicial system and individual judges appear to discriminate against women in cases of domestic violence. Governors have put "women-at-risk" of 'honor crimes' in administrative detention rather than send them to shelters or provide other means of protection. Many women will not report crimes to the police, preferring to use tribes, families and non-governmental organizations for mediation. Women often are mistreated by police, court staff, prosecutors and judges when they do make a complaint. Their efforts to initiate legal action are sometimes questioned inappropriately or are not recorded or investigated. Some authorities still show clear bias against women complainants and provide undue support for the accused. Even greater bias is shown against women who dare to complain against those with high status or who can use *wasta*.

AS TO ANTI-CORRUPTION

Finding #16: The Anti-Corruption Commission (ACC), the Audit Bureau, the Ombudsman, Parliament, and its committees are seen as largely "independent" entities on paper, but not in practice. They are insufficiently funded, generally weak institutions, and largely under the effective control of the executive. Indeed, they appear to have little interaction with each other and have little if any meaningful interaction with civil society.

Finding #17: The draft anti-corruption strategy of the ACC does not prioritize the need for prevention-oriented solutions, credible research, and serious interaction with civil society or the business community. There are no serious plans or resources to support a strategic public awareness anti-corruption campaign by the Commission. The strategy was not developed through a genuinely participatory process that included broad representation from civil society or the business community.

Finding #18: Given the ACC's deficiencies, including its lack of transparency and accountability, and its failure to implement important elements of its current strategy and action plan, it would be a mistake to invest significant resources in the Commission at this time, particularly without a clear written understanding such as a co-signed MOU that outlines the conditions for and exact kind of assistance being offered. USAID should not place reliance on the ACC as a lead counterpart institutional partner for anti-corruption programming.

Finding #19: An anti-corruption programming and policy dialogue strategy is needed that engages key issues, institutions and carefully selected individuals or reform champions. This is dependent on high-level political will and financial support as well as an informed and involved civil society.

Finding #20: There are political and human rights risks in connection with providing some kinds of law enforcement-oriented programming support to the ACC or other prosecutorial institutions, given an investigative process that many believe to be secretive and politically selective. Any significant future support to the ACC would need to be carefully targeted and focused primarily on prevention-oriented programming, such as enhancing public awareness, launching educational programming for youths (high school and university levels), human rights training, international cooperation (on issues such as asset recovery) and corruption reporting and whistleblowing policies, mechanisms and procedures (safe and effective open and anonymous reporting/whistleblowing).

Finding #21: The legal and political enabling environment to address and prevent corruption is unfavorable in Jordan. Currently, it is simply too risky and costly - legally, politically and career-wise, for most government officials, businesses, private organizations and individuals to seriously engage the government on anti-corruption. Many existing anti-corruption laws need to be reformed and harmonized, while others still need passage. Policies and regulations to effectively and fairly implement the laws also are needed. Other restrictive laws both limit the ability of civil society and the media to report on corruption and facilitate government abuse of the constitutional rights to freedom of speech and association (including placing high barriers to civil society registration procedures involving foreign donations).

Finding #22: Technical capacity and national cooperation on a range of anti-corruption problems is seriously deficient. There are only a handful of informed anti-corruption specialists in the law enforcement and judicial community, and even fewer professionals or CSOs in civil society working in this field. Specialists and inter-agency networks in financial crime areas are particularly lacking and sorely needed.

Finding #23: Important anti-corruption laws, such as those focusing on access to information, conflict of interest and financial disclosure, have serious substantive flaws, are not being effectively implemented. The financial disclosure law is particularly problematic and in need of fundamental reform, as it applies to all high-level public servants, including those in all three branches of government.

Finding #24: There does not appear to be a clear anti-corruption public procurement policy or oversight mechanism. There are gaps in the laws related to the public procurement process, which open the door to widespread corruption and non-competitive bidding. There is also no systematized or incentivized whistleblower system for reporting corruption.

Finding #25: Journalists, anti-corruption advocates and bloggers feel threatened, at least financially and career-wise, by laws, policies, procedures and veiled threats from various government authorities. The net result is self-censorship.

INTEGRATED RECOMMENDATIONS

Recommendation #1: Design a single integrated activity (project) that builds on successful USAID investments in rule of law and lays the foundation for a comprehensive and serious anti-corruption program.

Recommendation #2: Programming in rule of law should change focus sharply, with less emphasis on selected, technical court administration functions and increased emphasis on: (1) holistic, co-designed, performance-based, “change management” programs in selected courts to achieve “Model Court” status on a replicable basis; (2) effective and fair enforcement of court judgments; and (3) strategic support to an integrated network of CSOs (not a typical small grants program) advocating for key justice sector reforms, including anti-corruption programs.

Recommendation #3: This fortified civil society component should support the CSO network to lead in building a rule of law and integrity culture; in engaging with government; and in establishing credible watchdogs. It should include measures to protect CSOs’ freedom of expression and association.

Recommendation #4: Improve the “functional independence,” roles, responsibilities and capacity of public prosecutors, including anti-corruption prosecutors both inside and outside of the ACC. Support passage of a new Public Prosecution Law that safeguards this independence and promotes their integrity and accountability.

Recommendation #5: Increasing attention to anti-corruption issues, the prosecutorial function, responsiveness to citizens’ demands for public accountability, and rights protection such as public defense will require USAID to place more emphasis on the whole criminal justice system, not just the court system alone.

Recommendation #6: If political will is demonstrated to increase the independence, powers and representative nature of Parliament, USAID should consider undertaking a program to strengthen checks and balances among the branches that increases Parliament’s capacity to play a responsible role in addressing rule of law and anti-corruption issues. Such a program should focus on reviewing the justice sector budget; undertaking effective corruption investigations; forming anti-corruption coalitions; collaborating with civil society and media in justice sector oversight; increasing Parliament’s transparency and accountability; complying with conflict of interest and income and asset disclosure laws; responding effectively to corruption within Parliament; reviewing and acting on Audit Bureau reports; building legislative drafting capacity on rule of law and anti-corruption; establishing and strengthening government oversight standing committees; participating in national anti-corruption efforts; and helping Jordan move toward a constitutional monarchy.

AS TO RULE OF LAW

Recommendation #7: Strengthen the capacity of justice system actors, including judges, prosecutors, legal aid providers, and legislative drafters to address violence against women. It is important that USAID strengthen the capacity of the Judicial Council to lead judicial sector efforts, including improving training of judges and prosecutors, monitoring their performance, collecting and reporting data on prosecutions, and coordinating with the MOJ to revise the Protection from Domestic Violence Law and other relevant laws. Prosecutors need to gain the skills and experience in directing investigations to meet the requirements of the domestic violence law. Legal aid organizations should be trained in the relevant laws and extend their outreach throughout Jordan.

Recommendation #8: Take advantage of the progress made in pilot courts on improving execution of judgments by including such activities in the new project, which can be introduced first in the Model Courts.

Recommendation #9: Design, test (first in the Model Courts), and implement a court and case-weighted judge performance evaluation system managed by the Judicial Council, replacing the current Judicial Inspection Service in MOJ.

Recommendation #10: Support an organized advocacy movement inside and outside government leading to establishment of a public defender system for indigent criminal defendants and the strengthening of legal aid in Sharia courts, especially for women and children.

Recommendation #11: Given the unmet need for structural governance reforms at the Judicial Council, USAID in new programming should place less reliance on the Council to strengthen judicial independence and instead identify other actors to lead, unless the Council is seriously reformed.

AS TO ANTI-CORRUPTION

Recommendation #12: Assess the ACC and the new national anti-corruption strategy to determine the Commission's capacity and appropriate role to lead prevention efforts, undertake investigations, and improve national and international cooperation. Base any USAID institutional support to the ACC on the results of the assessment, and limit any assistance to awareness and prevention, including civil society engagement. Other areas of subsequent support might include technical assistance to reform the anti-corruption legal infrastructure or enabling environment needed to address and prevent corruption, particularly in the financial crimes, and training on human rights. Support for ongoing academic, applied and empirical targeted research, including public, business and government surveys, would also be appropriate, but only if the ACC agrees to make the research and survey results publicly accessible.

Recommendation #13: If the GOJ commits to a serious partnership with USAID for anti-corruption efforts, USAID's new activity could help lay the foundation for the first credible, comprehensive national anti-corruption program through: (1) a participatory, national anti-corruption assessment focused on key sectors, institutions and decision-making processes; (2) a knowledge-based, national anti-corruption short and long term strategy; (3) a prioritized, sequenced action plan; (4) an awareness/advocacy campaign; and (5) a systematic joint government-civil society implementation monitoring plan.

Recommendation #14: Within the civil society network element of the new activity, support the institutional development and various activities of a new Transparency International chapter in Jordan, including research, public awareness, coalition building and advocacy. This can include curricula and training materials related to global anti-corruption best practices, frameworks, and tools, and adapting them to the Jordanian context. A targeted grant program to a network of indigenous anti-corruption CSOs also should include the integration of anti-corruption programming into existing programs.

Recommendation #15: Include as part of any potential future programming anti-corruption curricula in both public and private schools and core rule of law and good governance training programs for public servants and CSO's. (The UNCAC has just developed model anti-corruption curricula for universities and law schools that can be quickly adapted to Jordanian UNCAC implementation context).

Recommendation #16: Consider supporting a secretariat for a high-level and a technical-level anti-corruption working group made up of the GOJ and the international community that meets regularly and issues working paper reports to the public. The secretariat might prepare an Annual State of Corruption Report based on an agreed upon best practices anti-corruption framework.

Recommendation #17: Consider support for reform of and effective implementation of the law on financial disclosure statements for high-level public officials, including judges, parliamentarians, law enforcement officials,

and independent agencies like the ACC. Oversight mechanisms and Internet technology systems can help promote timely public review of certain basic information by both governmental and non-governmental institutions. Support should also be seriously considered for reform of the access to information and criminal libel, slander and defamation laws. Addressing and preventing corruption without the reform and effectively implementation of these key laws will be virtually impossible.

Recommendation #18: Consider, as part of any potential future programming, a program to identify, analyze, harmonize, link-up and reform all laws, regulations and policies related to creating the legal and political enabling environment necessary to addressing and preventing corruption (including *wasta*). This would include aligning and reforming, if necessary, the national anti-corruption strategy, and establishing an effective, on-going governmental/non-governmental monitoring and reporting mechanism to ensure that new laws, policies, regulations and strategy are implemented fairly and effectively.

ANNEX A: PRIORITIZED RECOMMENDED ACTIVITIES

RULE OF LAW ACTIVITIES/PROGRAM

HIGHEST PRIORITY

ACTIVITIES TO BE CONTINUED:

Activity 1: Expand Execution of Judgments pilots to other courts.

Results: Faster, more efficient execution of criminal and civil judgments.

Rationale: Two promising pilots have reduced the time for execution of criminal and civil judgments, reducing the time for cases to return from the appeals court and judgments to be executed from six months to two weeks. More courts need to install this system, in order to improve the effective application of the law and procedural fairness. The “model courts” approach could be used to expand this system quickly, with full-scale national rollout to follow later. **IR 2.2: Rule of Law Strengthened.**

ACTIVITIES TO BE REDIRECTED:

Activity 1: Replace civil society small grants with integrated support to a CSO network to build demand for judicial independence, gender-blind rule of law, human rights, and public integrity. Empower civil society to build a rule of law and integrity culture, engage with government, and establish credible watchdogs on judicial independence, gender-blind rule of law, human rights, and integrity. Strengthen organizations working to protect freedom of expression.

Results: (a) Increase in the percent of population that views judicial independence, rule of law, and public integrity as important; (b) Increase in effective participation of civil society groups in government and judicial advisory bodies; (c) Increase in number and quality of civil society judicial monitoring reports; and (d) Increase in number of successful court cases against government repression of civil society and media.

Rationale: Donors, especially USAID, have helped the courts achieve some important advances in judicial efficiency and effectiveness. Citizens have gained greater voice as a result of the Arab Spring, but transition problems in other countries in the region have tempered public opinion. Civil society needs to greatly strengthen its role in creating checks and balances and in increasing the legitimacy and fairness of the justice system. The impact of donor assistance will be much greater if citizens increasingly become empowered and value a culture of lawfulness. Civil society is not yet strong enough to play its important role as a check on abuse of government power and a guarantor of the integrity and accountability of the judiciary (including in efforts to combat corruption). To get to that point, it will need to go through several stages: building education, awareness and changing values; building its capacity to advocate positions and engage with government; and institutionalizing watchdog organizations and building its credibility with the judiciary and the public. It must facilitate the creation of a legal environment and legal defense groups that can protect freedom of expression. **IR 2.3: Civil Society Engagement and Effectiveness Increased. IR 2.2: Rule of Law Strengthened.**

Activity 2: Improve the “functional independence,” roles, responsibilities and capacity of public prosecutors, including anti-corruption prosecutors.

Results: (a) More effective prosecution of criminal, civil, and anti-corruption cases; (b) Clearer definition of roles of ACC, judges, police investigators, and prosecutors; and (c) Greater cooperation among these groups.

Rationale: Full independence of the public prosecution would advance both rule of law and anti-corruption efforts. If the provisional law on an independent public prosecutor cannot be reintroduced and approved, USAID should support other activities that make prosecutors functionally independent from judges, so they can pursue investigations and present cases without judicial interference, whether direct or indirect. They need a defined career path that allows them to remain as prosecutors if they so desire without suffering disadvantages. They also need greater clarity in their roles and responsibility with regards to the police, given the few years that many of them remain prosecutors before returning to their roles as judges. Prosecutors also need to gain access to the full resources of the state for their investigations, including databases, forensics, and government documents. They also need trained assistants. Anti-corruption prosecutors need more extensive training and access to a greater range of investigative information and tools. They need the resources and information to organize effective anti-corruption “strike forces.” **IR 2.2: Rule of Law Strengthened.**

Activity 3: Strengthen the capacity of justice system actors, including judges, prosecutors and legal aid providers, and legislative drafters, to address violence against women throughout Jordan.

Results: (a) More effective legal action against perpetrators of violence against women; (b) Increase in percentage of victims of violence against women who report attacks; and (c) Improved legislation to address violence against women.

Rationale: There are many governmental and non-governmental actors focused on the problem of violence against women. USAID’s DG Office has established credibility and trust with justice sector actors, who are an essential part of responding to this problem. Previous justice sector work on violence against women has focused on training judges, prosecutors, and lawyers. It is important that USAID strengthen the capacity of the Judicial Council to lead judicial sector efforts, including improving training of judges and prosecutors, monitoring their performance, collecting and reporting data on prosecutions, and coordinating with the MOJ to revise the Protection from Domestic Violence Law and other relevant laws. Prosecutors need to gain the skills and experience in directing investigations to meet the requirements of the domestic violence law. Legal aid organizations should be trained in the relevant laws and extend their outreach throughout Jordan. **IR 2.3: Civil Society Engagement and Effectiveness Increased. IR 2.2: Rule of Law Strengthened.**

NEW ACTIVITIES:

Activity 1: Develop a model treating courts as a single management unit and putting in place comprehensive court improvement plans using team-based “change management” processes that will lead to a new institutional culture and open, “customer- friendly” courthouses in a number of selected “model courts,” numbering ten or more around the country.

Results: (a) A model for customer-oriented, transparent courts with measurable higher quality and service standards; (b) Increase in the number of court users who report satisfaction with their treatment in the court system; (c) Increase in the number of women using the formal justice system; and d) Increase in quality of decision-making for specialized cases.

Rationale: With USAID support, significant progress has been made in case management, court automation, transparency and management of execution of judgments. Litigants have not yet experienced improvements in the quality and fairness of decisions. Some potential litigants, particularly women, have been dissuaded from using the formal justice system, which they view as unwelcoming and biased against them. Model courts can show what can be done through across-the-board improvements with a changed management mindset and practices in a limited number of courts. Expanding the number of pilot courts and integrating advances in customer orientation, transparency and accountability will create “critical mass” to institutionalize such progress and later extend it to all courts. **IR 2.2: Rule of Law Strengthened.**

Activity 2: Develop specialized courts, judges, prosecutors and investigative units capable of managing complex cases such as bankruptcy, money laundering, organized crime and high-level public corruption.

Results: (a) Increase in number and quality of decision-making for specialized cases; and (b) a permanent cadre of specialized personnel dedicated to these units and courts.

Rationale: USAID support to the court system has led to introduction and use of a number of modern, technical court management tools such as automated case management. However, those tools and training for personnel apply generally to ordinary cases in the system. Lack of specialized courts or training has prevented judges from building the skills needed to effectively address specialized cases that are more complex and require new skill sets and the build-up of expertise and experience to adjudicate more effectively.

Activity 3: Build a civil society-led movement that leads to establishment of a public defense system for indigent criminal defendants.

Results: (a) Civil society movement for a public defense system established; (b) Movement engages with MOJ and Judicial Council to agree on framework for a public defense system that includes NGOs, the Bar and private attorneys; (c) Public defense law drafted and approved; (d) Public defender office established as part of system; and (e) All indigent criminal defendants in serious cases guaranteed the right of legal representation at no cost.

Rationale: The MOJ and the judiciary recognize that all criminal defendants would benefit from legal representation, but they show little interest in seeking funding for any publicly-funded legal aid beyond that mandated by the Constitution (capital offenses and crimes that might result in life in prison). This is their position in spite of the fact that Jordan acceded in 1975 to the International Covenant on Civil and Political Rights, in which Article 14.3(d) states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it." Even law professors at the University of Jordan see no urgency in providing better legal representation for criminal defendants. NGO legal aid providers recognize, however, that lack of legal representation is a civil rights violation and that only the government has the resources to provide the bulk of it. Under the current EU Criminal Justice Project, the Bar Association, which has opposed public legal aid, is beginning to have discussions with interested and already active NGOs on legal aid planning. Given the lack of political will currently, civil society needs to build demand with benchmarks for a public defense system adapted to Jordan and identify potential champions of reform in official circles. **IR 2.3: Civil Society Engagement and Effectiveness Increased. IR 2.2: Rule of Law Strengthened.**

HIGH PRIORITY

ACTIVITIES TO BE CONTINUED:

Activity I: Continue supporting the Future Judges Program.

Results: (a) Increase in percentage of well-trained judges who support judicial independence and do not tolerate corruption, and (b) Increase in percentage of female judges and judges of Palestinian and minority background.

Rationale: Young, well-trained judges are less tolerant of inappropriate intervention in decisions or corruption. The Future Judges Program shapes their understanding, skills and values and provides an opportunity to increase the diversity of the judiciary. **IR 2.2: Rule of Law Strengthened.**

ACTIVITIES TO BE REDIRECTED:

Activity I: Support structural reform of the Judicial Council.

Results: (a) Improved, more consensual collegiate Judicial Council governance; (b) Increased judicial independence and accountability; and (c) Increased support for implementation of the Judicial Authority Strategic Plan.

Rationale: The Judicial Council's governance process allows all decisions to be made quite arbitrarily and without transparency by the Chief Justice. Judicial independence, supported by constitutional amendments but without a statutory framework, can increase under current conditions only as quickly as the Chief Justice personally allows. The sitting Chief Justice is content with a balance between the MOJ and the judiciary that does not promote fuller independence of the judiciary. He is not using the Judicial Authority Strategy as a guide for increasing judicial independence. Until the governance structure of the Judicial Council is reformed to ensure greater internal equality and transparency, donors should not rely upon it to provide sustained leadership in increasing judicial independence. This is a "*high priority*" activity that first requires a significant increase in civil society demand for judicial independence, as described in the "*highest priority activities to be redirected*" section. **IR 2.2: Rule of Law Strengthened.**

Activity 2: Improve the autonomy and capacity of a reorganized Judicial Inspection Service, using modern performance evaluation methodologies. Help the Judicial Council take control of the JIS and fold it into the operating units of the Council, but only if the Council increases its commitment to advancing judicial independence.

Results: (a) Increased authority for the Judicial Council to manage the judicial career; (b) Increased capacity of the Judicial Inspection Service to collect information useful for establishing a rigorous, modern judge and court performance evaluation system; (c) Improved judicial independence, judicial performance, and protection of due process rights of judges subject to disciplinary processes; and (d) increased public confidence in the integrity of the judiciary.

Rationale: The Judicial Inspection Service is not providing the kind of information or assessments needed for the Judicial Council to manage the judiciary and preserve its independence and accountability. The MOJ has the authority to control the work of the JIS, as contained in the Judicial Independence Law. Both the JIS (better renamed an Office or Department and moved into the Council) and the Judicial Council require assistance in putting in place a modern judge and court performance evaluation system with objective, data-based criteria that take into account individual court and judge case responsibilities. This is a conditional recommendation that depends upon an increase in the commitment of the Judicial Council and the demand by civil society for judicial independence and accountability. **IR 2.2: Rule of Law Strengthened.**

Activity 3: Finalize the MIZAN II system, and fully transfer financial and technical responsibility to the GOJ, at first to the MOJ and later to the Judicial Council.

Results: (a) Increased availability of reliable court information to justice actors; (b) Increased transparency to court users; and (c) Increased sustainability of court automation systems.

Rationale: MIZAN II has increased the efficiency of court systems and made case information available to judges, court staff, prosecutors, lawyers and litigants. It could be even more effective if it were made available to police, prisons and smaller specialized courts, such as those dealing with taxes, customs and land. The MOJ needs to increase its budget to adequately staff the system, cover the cost of replacement equipment and assure maintenance. A progressive cost-sharing plan between USAID and the Ministry would allow time to phase in GOJ support, with planned transfer to the Judicial Council once reorganized, strengthened and under strong leadership. **IR 2.2: Rule of Law Strengthened.**

Activity 4: Reform Codes of Civil and Criminal Procedure.

Results: (a) Codes that reflect international best practices adapted to Jordan; (b) Increased speed and efficiency of court procedures; (c) Increased satisfaction of court users and improved public perceptions; and (d) Reduction in case backlog and average length of trial process from filing through execution of judgment.

Rationale: USAID and other donors have helped the judiciary develop new judicial administration procedures that show promise but are not fully supported by the governing civil and criminal procedure codes. The ROLP sponsored a workshop on integrating alternative sentencing into the criminal procedures code. The EU projects are continuing to work on alternative sentencing. The Jordan National Commission for Women has made several rec-

ommendations on procedure code reforms to increase access to justice for women. Making the laws of procedure consistent with best practices will increase the ability of the judiciary to make expeditious, fair and effective decisions that place a minimum burden on the state. **IR 2.2: Rule of Law Strengthened.**

NEW ACTIVITIES:

Activity 1: Reduce pre-trial detention.

Results: (a) Reduction in violations of due process and prisoners' rights; (b) Reduction in prison overcrowding; (c) Reduction in lost income to families and spouses; and (d) Reduction in prison costs.

Rationale: Prosecutors, rather than judges, have the sole authority to order pre-trial detention. Lack of training and abuse of their authority lead prosecutors to use pretrial detention excessively, resulting in human rights abuses and high costs to the state. This problem could be addressed as part of efforts to increase the functional independence of prosecutors and redefine roles between prosecutors and judges. One opportunity, which has been advocated by Jordanian police specialists, would be to create a 24-hour prosecutor's office at each police station.

Pre-trial detention is used excessively, thereby violating good practices of allowing conditional release (bail or personal recognizance) to an accused in the absence of a public security or flight risk. Often, detention is ordered due to the lack of proper early investigation or evidence that should be required to support a finding of probable cause. In such cases, prisoners' rights also are violated. Training for police and prosecutors in gathering evidence and investigating cases at the early stage will reduce pre-trial detention. **IR 2.2: Rule of Law Strengthened.**

Activity 2: Strengthen legal aid for users of Sharia courts.

Results: (a) Increased representation in Sharia courts; (b) Greater use of the formal justice system by women; (c) Improved decision-making by Sharia court judges; and (d) Improved execution of Sharia court judgments.

Rationale: The courts that women are most likely to use are the Sharia courts. While NGOs provide some legal aid to court users, the majority of women are unrepresented. Lacking control of family income, few of them can afford to pay for lawyers. To build trust in the justice system, it makes sense to develop a limited, sustainable legal aid system for the Sharia courts, with support from civil society, the private bar and the government. Such a system could target low-income women and men, but women without adequate resources would be the major beneficiaries. Training of Sharia court lawyers should be continued. **IR 2.3: Civil Society Engagement and Effectiveness. Increased IR 2.2: Rule of Law Strengthened.**

MEDIUM PRIORITY

ACTIVITIES TO BE CONTINUED:

Activity 1: Increase the sustainability of the Judicial Institute of Jordan. Facilitate transfer of control to the Judicial Council.

Results: (a) Increased capacity of JIJ to fund basic training of new judges; (b) Increased capacity of JIJ to fund continuing education for judges and prosecutors; (c) Increased capacity of JIJ to support special donor-funded training; and (d) Increased number of judges and prosecutors who have received required training.

Rationale: JIJ has received significant donor support. ROLP is helping it to sustain the Judicial Studies Diploma Program and the Future Judges Program. However, JIJ lacks funding for basic training of new judges and is not able to maintain or replace its equipment. JIJ needs to implement a plan that assures continued annual GOJ support of its regular training of judges and prosecutors and enables it to maintain effective counterpart support to donors who provide special training. The MOJ should transfer responsibility for overseeing JIJ to the Judicial Council as part of this planning process. Through Activity 2 below, USAID should then support the Council's Training and Specialization Unit. This is a conditional recommendation that depends upon an increase in the commitment of the Judicial

Council, its internal reorganization, and strengthened advocacy by civil society for judicial independence and accountability. **IR 2.2: Rule of Law Strengthened.**

Activity 2: Continue to strengthen the Judicial Council's Administrative Units.

Results: (a) Increased Council capacity to oversee judicial careers; (b) Increased capacity to report on the judiciary; (c) Increased capacity to provide technical support and oversee training; and (d) Increased capacity to oversee court and judge performance evaluation.

Rationale: In the absence of a major commitment from the Chief Justice or an improvement in Judicial Council governance, the impact of strengthening the administrative units will not be very great. However, as part of a USAID program that builds civil society demand for judicial independence and accountability, support for the units is likely to have a stronger impact in the medium- to long-term. Judicial independence and accountability will require the Judicial Council to take on significant additional responsibility. It will need the units to carry out this role effectively. This is a conditional recommendation that depends upon an increase in the commitment of the Judicial Council and effective demand by civil society for judicial independence. **IR 2.2: Rule of Law Strengthened.**

Activity 3: Strengthen mediation bureaus.

Results: (a) Increased number of cases resolved through mediation; (b) Reduction in percentage of cases going to trial; and (c) Mediation becomes an important tool for judges to reduce court congestion and case backlog.

Rationale: The MOJ and ROLP have invested in mediation, but the number of cases sent to Mediation Departments is minimal. The previous Chief Justice expressed interest in increasing the use of mediation. Once there is strong interest from a reliable Council, this would be an important area in which USAID should invest. Modern court systems use mediation extensively, often on a required pre-trial referral basis, along with required pre-trial settlement conferences with judges, as a way to speed up cases and avoid the length and costs of actual trials. Agreements reached between the litigants themselves can promote reconciliation and engender greater satisfaction with a facilitating role of the state in settling disputes. **IR 2.2: Rule of Law Strengthened.**

ACTIVITIES TO BE REDIRECTED:

Activity I: Human rights education for prosecutors, police, legal aid lawyers, Sharia court lawyers, public defenders and civil society.

Results: (a) Integration of human rights principles in the work of justice sector actors; (b) Increased use of ratified human rights conventions for judicial decisions; (c) Increased advocacy by civil society for judicial independence, gender-blind rule of law, integrity and human rights.

Rationale: Judges have already been trained in human rights. Police and prosecutors need to have the same understanding of human rights and their use in investigations. New actors, such as legal aid lawyers and public defenders must gain enough understanding of human rights to use those principles in court. Sharia court lawyers operate under a different legal system and must understand the human rights conventions, Jordan's reservations and how to defend clients in this "grey space." To build a movement for rule of law and integrity, civil society must fully understand linkages with human rights principles and national obligations assumed by the GOJ. **IR 2.3: Civil Society Engagement and Effectiveness Increased. IR 2.2: Rule of Law Strengthened.**

NEW ACTIVITIES:

Activity I: Help establish and strengthen legal professional associations.

Results: (a) Bar Association participates with other civil society groups in a social movement for rule of law, judicial independence, integrity and human rights and the expansion of legal aid; (b) Judges' "club" (recognized professional association) is formed to support the professional needs and advocacy voice of judges; (c) Prosecutors' "club"

(recognized professional association) is formed for the same purposes for judges serving long-term as prosecutors; (c) Sharia court lawyers' association is formed for the same purposes.

Rationale: The Bar has resisted working with donors, but is beginning to cooperate with civil society on planning legal aid. Judges have been interested in establishing a judges' club for several years. Judges serving as prosecutors have no professional association supporting them. No Sharia court lawyers' association exists, but is needed to support the needs of lawyers and clients, particularly women, at the Sharia court. In advancing the other USAID rule of law and integrity initiatives, these groups would be important participants. The separate groups in fact might be organized as a single professional association. These initiatives include linking them with the civil society-led movement that demands judicial independence and a serious commitment to fighting corruption; efforts to establish the functional independence of prosecutors; and assistance that helps judges use judicial independence responsibly. **IR 2.3: Civil Society Engagement and Effectiveness Increased. IR 2.2: Rule of Law Strengthened.**

WINDOWS OF OPPORTUNITY

Activity 1: Train judges on an amended election law.

Results: Expeditious resolution of electoral disputes.

Rationale: The current electoral law was designed to maintain over-representation of Bedouin tribes (East Bankers) in Parliament. The Independent Electoral Commission (IEC) is a new body that was not well prepared for the 2013 Parliamentary elections, but ran what was considered an open, impartial electoral process by EU observers. ROLP was asked to train judges on the electoral law, which helped to expedite resolution of complaints. It is possible that the elections law will be amended to reduce gerrymandering and equalize the value of individual votes. At the same time, as the IEC becomes more institutionalized, it will be relying on the judiciary to resolve election disputes expeditiously. USAID should be ready to train the judges on the new law. This could also extend to IEC staff in cooperation with the CEPPS-funded electoral assistance program. **IR 2.1: Accountability of, and Equitable Participation in, Political Processes Enhanced. IR 2.2: Rule of Law Strengthened.**

Activity 2: Assist the Judicial Council to establish itself as a true leader and facilitator of judicial independence and accountability.

Results: (a) Council takes full responsibility for judicial budget; (b) Council takes full responsibility for judicial hiring strictly on a merit basis; (c) Council takes full responsibility for judicial performance evaluation; (d) Council takes full responsibility for judicial career track; and (e) Council guides the drafting of relevant legislation.

Rationale: Due to political constraints and perhaps the recalcitrance of the judges themselves, the Judicial Council has been unable to provide the leadership necessary to put in place the best practices of judicial councils from around the world. If a citizen campaign is successful at creating a movement that is strong enough to reduce these constraints, the Judicial Council may be able to use donor support to overcome opposition to asserting control over the judicial budget, hiring, training, evaluation and career path. This is a conditional recommendation that depends upon an increase in political will by the Judicial Council, other high-level political actors influencing it, and the demand by civil society for judicial independence and accountability. **IR 2.2: Rule of Law Strengthened.**

ACTIVITIES TO BE DISCONTINUED

Activity 1: NGO small grants program.

Rationale: Support to civil society should be the top priority of new rule of law programming. The focus should be on building an integrated civil society network, rather than providing relatively untargeted small grants. Such a network would build demand for judicial independence, gender-blind rule of law, human rights, and public integrity. It would be funded through grants and strengthened through targeted technical assistance.

Activity 2: Legal education.

Rationale: With help from the American Bar Association, Jordan's law schools have incorporated the principles of practical education as well as the concepts of human rights, ethics and gender. They have raised admission and graduation standards. However, the market for lawyers will not absorb all graduates. Professionalizing the Jordanian Bar Association, increasing legal aid, and continuing support for the Future Judges program will have more impact on resolving constraints to rule of law than strengthening legal education in general.

Activity 3: Cassation Court Technical Office support.

Rationale: Following the provision of technical assistance and equipment by ROLP to the Cassation Court Technical Office (TO), the TO should function effectively without donor support. The Cassation Court TO is a model for replication in appeals courts, which USAID may wish to support as part of its assistance to the Judicial Council.

Activity 4: Support to Constitutional Court.

Rationale: The Constitutional Court does not have the funding needed to assume its role. It needs funding from donors for study tours to learn about the work of other constitutional courts and technical assistance in communications. Yet it has been reluctant to seek assistance from donors. ROLP assisted in the drafting of the Constitutional Court Law and has offered to provide further assistance. Given that the Court has the potential to be an important check on both parliament and the Executive, USAID and other donors should respond positively to any request for assistance by the Court.

Activity 5: Strengthening of MOJ Legislative Drafting Office.

Rationale: ROLP has strengthened the MOJ Legislative Drafting Office and assisted in the drafting of 20 laws for review by parliament. Other organizations should be strengthened to provide appropriate input to the law making process, such as civil society, the Judicial Council and parliamentary committees. Supporting these organizations is a higher priority than continuing to strengthen the MOJ Legislative Drafting Office.

GENDER-RELATED RECOMMENDATIONS

IMPROVING ACCESS TO JUSTICE FOR THE VULNERABLE, ESPECIALLY WOMEN AND YOUTH

Activity 1 (See above): Build a movement that leads to establishment of a public defense system for indigent criminal defendants.

Activity 2 (See above): Strengthen legal aid for users of Sharia courts.

Activity 3 (See above): Reform procedural codes.

Activity 4 (See above): Help establish and strengthen legal professional associations.

Activity 5 (See above): Strengthen the capacity of justice system actors, including judges, prosecutors and legal aid providers, and legislative drafters, to address violence against women.

MAKING THE RULE OF LAW MORE GENDER-BLIND

Activity 1 (See above): Empower civil society to build a rule of law and integrity culture, engage with government, and establish credible watchdogs on judicial independence, gender-blind rule of law, human rights and integrity.

Activity 2 (See above): Include gender-sensitive thinking and gender-specific activities in court improvement plans in model courts.

Activity 3 (See above): Continue supporting the Future Judges Program.

Activity 4 (See above): Support human rights education for prosecutors, police, legal aid lawyers, Sharia court lawyers, public defenders, and civil society.

Activity 5 (See above): Strengthen the capacity of justice system actors, including judges, prosecutors and legal aid providers, and legislative drafters to address violence against women.

RAISING AWARENESS AND ADVOCATING FOR A MORE INCLUSIVE SOCIETY

Activity 1 (See above): Empower civil society to build a rule of law and integrity culture, engage with government, and establish credible watchdogs on judicial independence and court case and courtroom quality, gender-blind rule of law, human rights and integrity.

CROSSCUTTING RECOMMENDATIONS

Activity 1: Establish a program in the interests of stronger checks and balances that increases Parliament's capacity to play a responsible role in addressing rule of law and anti-corruption issues:

1. Increasing parliament's involvement in selection of higher court judges;
2. Increasing parliament's capacity to review the justice sector budget while respecting judicial independence;
3. Using existing constitutional powers to undertake effective corruption investigations that are insulated from interventions by the executive;
4. Building the capacity of parliamentary blocs to form coalitions on corruption issues;
5. Increasing collaboration with civil society and media to oversee the justice sector while respecting judicial independence;
6. Using the Constitutional Court's advisory role effectively in drafting legislation;
7. Increasing parliament's transparency and accountability;
8. Helping parliament establish a system for complying with conflict of interest and income and asset disclosure laws. Developing the capacity to respond effectively to corruption within the parliament;
9. Improving the capacity of parliament to review and act on Audit Bureau reports;
10. Building legislative drafting capacity on issues affecting rule of law and anti-corruption;
11. Establishing and strengthening government oversight standing committees that have sufficient powers, budgetary independence, tools and human resources to meet their mandates;
12. Building capacity to participate in national anti-corruption efforts and coordinate with other anti-corruption bodies;
13. Helping parliament assume its rightful powers as Jordan moves toward a constitutional monarchy.

Results: (a) Responsible oversight of and support for the judiciary; (b) Increased and more effective oversight of the executive; (c) More effective corruption investigations; (d) More effective national integrity and rule of law initiatives and campaigns; (e) Improved justice and anti-corruption legislation; (f) Increased independence and accountability within parliament.

Rationale: A stronger and more independent parliament is essential for successful anti-corruption initiatives and improvements in judicial independence and accountability. Parliament can build on lessons learned from other countries to compensate for flawed election laws and limited constitutional powers. A comprehensive program targeting parliament will strengthen its capacity to oversee the executive and the judiciary and help it play a responsible role in national anti-corruption efforts. Such a program will also increase its accountability to citizens and build its own integrity and capacity to deal with internal corruption in its own ranks. This is a conditional recommendation that depends upon an increase in political will by parliament to play a stronger role in building rule of law and addressing

corruption. IR 2.1: Accountability of, and Equitable Participation in, Political Processes Enhanced. IR 2.2: Rule of Law Strengthened. IR 2.3: Civil Society Engagement and Effectiveness Increased.

ANTI-CORRUPTION ACTIVITIES/PROGRAMS

HIGHEST PRIORITY - WINDOWS OF OPPORTUNITY

Activity 1: Support the establishment of a Transparency International (TI) Chapter in Jordan that could serve as the national anti-corruption CSO/NGO/umbrella research, advocacy, and coalition support hub. One of the missing anti-corruption links in Jordan that can be found in more than 100 other countries is a viable Transparency International Country Chapter that could help build coalitions, partner with government on reforms, raise public awareness, effectively disseminate best practices, provide support to other anti-corruption NGO's, undertake empirical research and knowledgeable and systematically monitor and report on reforms.

Results: (a) Umbrella CSO/NGO (and presumed leading figure in the recommended civil society network in an integrated program) will provide neutral leadership, research, tools, and a forum to new and fledgling CSOs working on this and related fields; (b) enhanced dissemination and informed discussion of more empirical and best practices diagnostic research related to sectors, institutions, processes and government services as well as the cost of corruption; (c) enhanced public awareness, broader coalitions, and targeted priority reforms that will reduce and help prevent corruption.

Rationale: Establishing a TI chapter in Jordan is already under serious discussion among several CSO/NGOs and TI/Berlin. Now is the time to offer support and help shape the future chapter's leadership and agenda. This will also be an incentive for the GOJ to welcome more civil society participation in its reform efforts. Since TI's forte is centered around creating tools for and empowering civil society action, reporting, monitoring and advocacy, its development would be extremely timely and help fill a huge civil society gap. Given the problematic process related to NGOs that try to register to work in this field, particularly those with foreign funding, it is very important that an NGO be established and receive support to help other NGOs. A TI chapter would also be particularly useful if the right people were involved, providing their support, nurturing and credibility. It would have the potential to receive important political and financial support from the international community and, over time, from the Jordanian business community. IR 2.1 Accountability/Equitable Participation/Checks and Balances; IR 2.3 Civil Society Engagement and Effectiveness Increased.

HIGH PRIORITY

PROGRAM ONE (OPTIMAL CHOICE UNDER "BEST CASE" SCENARIO)

Activity 1: Support the implementation of a long-term national anti-corruption strategy and action plan led by both government and civil society. The activity will be wrapped around: (i) a holistic participatory strategy that is research-based and resonates with the public; (ii) a prioritized action plan with defined timetables and accountable institutions and people; and (iii) a systematic monitoring and reporting mechanism that includes governmental and non-governmental stakeholders with integrity and a credible, on-going public awareness campaign built around promoting the rule of law. The Royal Court, Prime Minister, parliament, judiciary (with due regard for its independence), and a credible, well-respected team of governmental and non-governmental leaders with integrity would co-lead implementation.

Results: (a) Increased national buy-in for anti-corruption efforts; (b) Increased and sustained demand for and capacity to address and prevent corruption across sectors, institutions and processes; (c) Improved tracking of progress in preventing and addressing corruption; and (d) Enhanced public confidence in democratic governance and a rule of law society.

Rationale: This activity should not be implemented until there is a full, publicly stated and acted upon commitment to it from the highest level of government. It would constitute the most credible and serious effort by Jordanians to

address corruption. The activity also would provide the most effective approach to removing *wasta* corruption from the Jordanian culture. It would target capacity building and promote governmental and non-governmental oversight over multiple but linked reforms. It also would systematize the monitoring and reporting of key anti-corruption reforms. The activity's focus on quantifying the cost of *wasta* corruption and winning short-term successes would create Jordanian anti-corruption champions, inform public awareness, and build public confidence. It would provide concrete incentives for some government officials to support reforms, giving them a tool to build Jordan's regional and global reputation through improving its corruption scores and global indices. The King's personal involvement, as well as the international community's ongoing political and financial support, would be key to success. **IR 2.1 Accountability/Equitable Participation/Checks and Balances; IR 2.2 Rule of Law Strengthened; IR 2.3 Civil Society Engagement and Effectiveness Increased.**

Activity 2: Support for human rights, free speech, and access to information programs.

Results: (a) Enactment and implementation of the legal and political enabling environment necessary to promote broad public awareness, public participation, and the enforcement of basic human rights, such as the right to free speech and government information and access to a justice system with integrity; (b) The institution of mechanisms, laws, and policies that protect whistleblowers and the right to criticize government officials and decisions without fear of unfair fines or jail; and (c) Less self-censorship, public apathy, and frustration and more confidence and trust in democratic governance and institutions.

Rationale: This activity should not be implemented until there is a full, publicly stated and acted upon commitment to it from the highest level of government. Many of its elements could be built into the long-term national anti-corruption strategy and action plan led by both government and civil society recommended under Program One Activity 1 above. No serious anti-corruption effort will succeed unless civil society and the media are guaranteed the right to responsibly speak out on corruption without feeling threatened -- politically, financially or socially. Many existing laws and current policies are individually and collectively fatally flawed in law as well as practice. **IR 2.1 Accountability/Equitable Participation/Checks and Balances; IR 2.2 Rule of Law Strengthened; IR 2.3 Civil Society Engagement and Effectiveness Increased.**

HIGH/MEDIUM PRIORITY

PROGRAM TWO (OPTIMAL CHOICE UNDER "GOOD CASE" SCENARIO)

Activity 1: Support a step-by-step, five-year program geared towards reducing bureaucratic or administrative corruption within sectors, institutions or processes.

Results: (a) Credible empirical information and analysis supports an ongoing strategic public awareness campaign; (b) Enhanced public awareness and participation in democratic governance; (c) Reduced corruption in targeted sectors, institutions, and government processes; (d) Systematic governmental and non-governmental monitoring and reporting mechanisms are put in place; and (e) More effective implementation of reforms.

Rationale: At present there is no credible empirical research that quantifies the scope, nature or full cost of corruption/*wasta*. Both public and government awareness are very low, and misinformation and rhetoric is fueling public unrest and distrust in democratic governance and the rule of law. Short-term successes related to government services and practices to which all Jordanians can relate will build demand for further anti-corruption reforms, strengthen civil societies role in addressing and preventing corruption and enhance support for a rule of law society. One area for achieving successes and with stakeholder support shown in many other countries would be to resolve the issues identified by the World Bank's Doing Business Annual Reports. **IR 2.1 Accountability/Equitable Participation/Checks and Balances; IR 2.2 Rule of Law Strengthened; IR 2.3 Civil Society Engagement and Effectiveness Increased.**

Activity 2: Support for strategic public awareness campaigns linked to targeted reform programs and on-going research, monitoring, and reporting.

Results: (a) Enhanced, better informed public dialogue; (b) Enhanced access to government and anti-corruption-related information; (c) Increased demand for anti-corruption reforms; (d) Broader, more unified reform coalitions; (e) More corruption reporting and 'whistleblowing;' (f) Stronger civil society-based checks and balances on the GOJ branches; and (f) Increased governmental accountability.

Rationale: At present, no one in Jordan really knows the full nature, scope, or cost of *wasta*/corruption. Thus, rhetoric, anecdotal evidence, and rumor without concrete action or accountability dominate the Jordanian corruption landscape. This activity includes establishment of national and regional Anti-Corruption Working Groups that target reforms in specific sectors, institutions, and government decision-making processes such as for the provision of key government services like water, electricity or access to information. Targeted institutional reforms will focus on promoting more transparency, accountability, checks and balances, and monitoring and reporting through oversight institutions such as parliament, the judiciary, the Audit Bureau, the Ombudsman, ACC, media, civil society, and the business community. **IR 2.1 Accountability/Equitable Participation/Checks and Balances; IR 2.2 Rule of Law Strengthened; IR 2.3 Civil Society Engagement and Effectiveness Increased.**

ACTIVITIES TO BE DISCONTINUED

As USAID/Jordan does not have current anti-corruption programs, there are no activities to discontinue.

GENDER-RELATED RECOMMENDATIONS

Any program recommendations related to anti-corruption will include full gender-sensitive analysis and specific gender-related activities to improve the status of women.

CROSSCUTTING RECOMMENDATIONS

Given that a single new activity (project) is recommended, all anti-corruption recommendations are considered as integrative and crosscutting by definition under the broader rule of law society objective even if treated as part of a separate component.

The crosscutting recommendation under Rule of Law for support to parliament is noteworthy because of its special, direct impact on checks and balances in the GOJ. However, that recommendation must be considered as conditional due to the current weakness of Parliament as an independent branch of government and its inability to assume a proper role in a democratic political system.

ANNEX B: SCOPE OF WORK

BACKGROUND

RULE OF LAW:

Between 2008 and 2012, USAID/Jordan implemented a comprehensive program to strengthen 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 Judiciary, the Ministry of Justice (MOJ) and other related stakeholders in the implementation of an ambitious strategy intended to modernize the judicial system to enhance its performance and credibility while bolstering judicial independence. Working in partnership with DPK Consulting 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.

Main activities included:

1. Supporting the judiciary as an independent branch of the state, through capacity building of the Judicial Council to assume a leadership role in reforming, managing and administrating the judiciary.
2. Automating and enhancing all court systems to improve court, attorney and public access to information, sharing of court data with other e-government entities and improving the security of court records.
3. Supporting the Future Judges Program through local currency funding and assisting the Ministry in the creation and administration of the program. The Future Judges Program encourages the best and brightest university students to study undergraduate and graduate law degrees in Jordanian, UK and US universities with a commitment to later serve in the judiciary as judges. This program has resulted in a significant increase of female students and future judges, placing the Jordanian judiciary on track to be gender balanced within a decade.
4. Introducing human rights education to Jordanian law schools and engaging students with clinical work.
5. Developing the legal research capacity of the Cassation Court Technical Office to expedite and improve the quality and execution of judgments in this court of final appeals and reducing case delay.
6. Re-engineering court business processes for more efficient, effective, transparent and customer-oriented delivery of services.
7. Developing mediation as an alternative dispute resolution option.
8. Developing capacity of the Judicial Institute of Jordan to develop and deliver quality through continuing legal education and new judge preparatory training programs.
9. 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.
10. Developing and expanding court mediation and alternative dispute resolution (ADR) to reduce demand on the courts and improve customer satisfaction; and
11. Upgrading legal education in partnership with the Jordanian law faculties.
12. Supporting the establishment of the constitutional Court.
13. Implementing a comprehensive plan to upgrade the Public prosecutor office.

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 changing political environment and the frequent replacements of Chief Justices and Ministers 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.

CORRUPTION:

To date, USAID/Jordan has not implemented a stand-alone anti-corruption program. Several Democracy and Governance programs (DG) and Economic Growth programs (EG) included components that promote transparency and combat corruption. Corruption in Jordan is a widely- discussed, yet a minimally understood phenomenon. Discussions of corruption remain largely based on speculation and rumors rather than accurate information and despite limited reform efforts, many issues in the areas of public transparency and accountability have yet to be addressed. Performance on the Transparency International Corruption Perception Index (CPI) reached a high point in 2005, with a score of 5.7 (of a possible best score of 10), but has declined sharply, reaching a low of 4.5 in 2011.

TI CPI Scores – Jordan		
Year	Score	Rank
2012	4.8	58/176
2011	4.5	53/183
2006	5.3	40/163
2003	4.6	43/133

By most accounts, direct day-to-day bribery is not pervasive in Jordan. But at the same time, *wasta*, or the exchange of favors and nepotism, is widely practiced, and it has been observed that these favors have monetary value (e.g. not having to pay a registration fee for a business license, hiring a member of one’s extended family). While the giver of the favor may not receive immediate monetary reward, as would be the case with a bribe, a similar favor is expected in return. The practice is widely thought to result in outcomes similar to bribery, as public resources are used for other than their intended purposes, or are not collected at all, with a net cost to the state and economy.

If daily bribery and extortion are not considered common, there is much speculation on the nature of high-level or grand corruption. Little solid evidence is available, but concern is expressed frequently about favoritism in large scale government procurements, a general lack of transparency regarding the national budget, and about the lack of merit-based allocation of public resources. Over the past year, as a direct result of the effect of the Arab Spring, several large corruption cases concerning government officials have been sent to the courts or are under investigation by the Anti-Corruption Commission (ACC). However, as mentioned above, judicial and security authorities are not seen as fully independent, and it is believed that many cases may go unprosecuted.

Despite the lack of clear data on the extent and nature of corruption in Jordan, it is clear that many of the checks and balances necessary to limit or prevent corruption are not in place. Parliamentary oversight is limited due to lack of precedence, experience and empowerment for the Parliament to truly take on and address corruption issues. While freedom of expression and the media is more extensive than in other countries in the region, opacity regarding the allocation of any national resource is the standard throughout government, and access to information is not an established right. Laws on official secrets and prohibiting defamation of the government encourage self-censorship in the media. Organized civil society has been able to raise the issue of corruption with government to some degree, but its effectiveness remains limited by lack of information, a restrictive legal environment, fear of retribution, and a general lack of engagement on the part of the majority of citizens.

STATEMENT OF WORK

The purpose of this assessment is to provide USAID/Jordan with an analysis of the primary challenges and opportunities in advancing rule of law and combating corruption, and with strategic recommendations that will inform the development of a strategy to guide programming in these areas over the 2014-2019 period. The assessment will include the following principal components:

1. An analysis of the primary challenges and opportunities in advancing rule of law and combating corruption in Jordan, including an assessment of political will for these reforms;
2. A quick mapping and review of existing rule of law and anti-corruption programs in Jordan; and
3. Prioritized strategic recommendations for rule of law and anti-corruption programming over the next five years, each supported by a specific activity rationale narrative. The recommendations should be designed to synchronize with the Mission's broader DG strategy, and include a recommendation with regard to whether rule of law and anti-corruption programming should be addressed under the same or different implementation mechanisms.

The assessment will entail two parallel analyses, one addressing rule of law, and the other addressing anti-corruption. Because efforts to date in the two areas differ considerably, the focus of analysis in each case will differ. Indicative analytic themes are outlined in Table I below.

Analytic Elements

Rule of Law Analysis:

- Analysis of obstacles to effective rule of law;
- Analysis of legal and institutional frameworks governing the rule of law;
- Identification of key constraints and opportunities relative to rule of law assistance;
- Mapping of rule of law assistance efforts to date;
- Strategic recommendations for USAID rule of law programming.

These should clearly identify the primary constraints to be addressed, and well as prioritized programming options.

Anti-Corruption Analysis:

- Analytic overview of corruption in Jordan (political and economic context, causes, dynamics, forms and settings of corruption, trends);
- Analysis of legal and institutional frameworks for anti-corruption efforts in Jordan (and corruption vulnerabilities of key institutions);
- Analysis of corruption issues in cross-cutting governmental functions (e.g., audit, budget management, public procurement, civil service recruitment, etc.) and in strategic sectors (water, energy, health, education, economic growth) where USAID is active;
- Analysis of current understandings of corruption and mapping of anti-corruption assistance efforts to date;
- Identification of key constraints and opportunities for promotion of anti-corruption efforts (including stakeholder analysis and assessment
- of political will);

- Strategic recommendations for addressing corruption in Jordan. These should clearly identify the primary constraints to be addressed, and well as prioritized programming options.

The main objective of the assessment is the development of strategic recommendations, supported by programmatic options, to guide rule of law and anticorruption interventions over the 2014-2019 period. Strategic recommendations will be based on the analysis of opportunities and constraints in both core areas, and will take into consideration broader mission priorities reflected in the Country Development Cooperation Strategy and available resources.

Because there has been considerable work to date in the area of rule of law under previous USAID strategies (primarily work with the Judicial Council, courts, the law schools and the Jordan Judicial Institute), it is expected that the analysis will take accomplishments and constraints encountered to date as a starting point for recommendations for future assistance. The assessment should not, however, be constrained by current assistance, and may include recommendations as to which activities should be continued, discontinued, or be redirected for greater impact. The assessment will also include a “windows of opportunity” section to recommend quick actions in response to enabling conditions in the country. All recommendations should be supported by clear statements of the problems they are intended to address.

USAID has not directly supported anti-corruption programming to date in Jordan, although several DG and EG projects have included components that may directly contribute to improving transparency or limiting opportunities for corruption (e.g. via fiscal and budget process reform, customs reform, etc.). Because anti-corruption work is closely related to a reliable and trustworthy court system and a transparent judiciary, the assessment should ensure that its analysis and recommendations consider the interactions between the two areas of analysis and programming. In developing strategic recommendations, the assessment should consider the extent to which political will exists in government generally and in specific institutions to seriously pursue anti-corruption activities.

The assessment will devote explicit attention to gender as an analytic element affecting both the nature of constraints, as well as the nature of recommendations for rule of law and anti-corruption programming. The assessment will make recommendations as to how to improve gender equality and emphasize gender neutrality and meritocracy as the main mechanism for hiring and advancement in work. With regard to the rule of law, recommendations should address the issue of how to improve access to justice for vulnerable segments of the population including women, how to make the rule of law more gender blind; and, how to reach out to different segments of Jordanian society in the effort to raise awareness and advocate for a more inclusive society.

The strategy should include the following components:

- Primary rule of law problem(s) framed in terms of its essential element(s) that are most critical to establishing rule of law in Jordan;
- Primary corruption issues that are most critical 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 problems. Recommendations should be prioritized in order of importance.

In addition to completing an assessment as indicated in the USAID methodology, USAID/Jordan has identified several issues that are of specific concern to the mission, mainly on the anti-corruption side, and the assessment will be expected to make specific comments and/or recommendations related to them. These include the following:

- **Appropriate timing for an anticorruption program:** The assessment should verify whether there are genuine openings for a USAID program to start this year in Jordan – whether there is political will on the side of the government to address this sensitive issue - or if it would be better to delay such program.
- **Structure of a USAID anticorruption program:** The assessment should consider the pros and cons of a stand-alone anti-corruption program versus a merged Rule of Law/Anti- Corruption program.
- **Direct support for the GOJ:** The assessment team is asked to evaluate and make recommendations whether and/or how and how much to support the Anticorruption Commission.
- **Fully understanding the Jordanian context:** The team shall review and provide an evaluation of other actors and new legislation related to fighting corruption, including the law on political parties, elections, money laundering, and the freedom of information act. It appears that three major factors need to be explained in order to address corruption in Jordan: (1) the basis of public perceptions (i.e. polls show people believe the problem is bad and getting worse) when there is such a lack of information in the first place, (2) the real extent of the problem, and (3) how to characterize the problem when, in reality, Jordan is comparatively much better off than most of the Middle East region in this regard. The team shall draw on all information available to provide the Mission with the best possible description of the extent and nature of the corruption problem in Jordan, both in terms of the impact of perception and in terms of the actual incidence of corruption or conditions that facilitate it. This may be done in the context of an overall evaluation of the strengths and weaknesses of anticorruption systems in Jordan.
- **Sector specific problems:** The Mission already includes anticorruption elements in some or all of its program areas (e.g. improving procurement practices, emphasizing transparency, etc). However, this could be more explicit and/or targeted if sector teams have more information about and evidence of corruption practices. For this reason, the assessment team will be expected to explore issues related to corruption in cross sectors such as the education, economic growth, health, energy and water sectors.
- **Existing capacity to address the problem outside of government:** The team is asked to include analysis of media and civil society roles in addressing corruption issues and the extent of past and current anticorruption programming.

In addition, the assessment will review existing USG and other donor programs in the Jordanian justice sector specifically to determine what progress has been made so far, and where opportunities and entry points might exist for new USAID programming in the sector. It will also provide an overview of best practices and lessons learned from applicable rule of law and anti-corruption programs in the MENA region at large.

METHODOLOGY

Before commencing work, members of the assessment team will submit signed non- disclosure statements, relative to the analysis and recommendations to be produced. The resulting documents (drafts as well as final products) will be considered sensitive internal documents, and neither the contactor nor individual team members shall release them without the explicit written approval of USAID/Jordan.

The contractor shall provide a five-person team which will have primary responsibility for all aspects of analysis and reporting writing in three stages. The team will work directly with USAID staff to varying degrees in each stage depending on their availability.

Preparation phase: The first phase of the assessment will involve reviewing background materials and key documents; developing an assessment and evaluation methodology that includes primary research questions and interview protocols; and preparing a schedule of interviews for the subsequent field work stage.

Field-work phase: The team will conduct at least 18 days of field research, including gathering and reviewing documents and data, and conducting structured interviews with key informants (and focus groups, if appropriate) and

beneficiaries, including the Judiciary, government personnel, international and donor personnel, USAID partners, lawyers, judges, court administrators, mediators, civil society organizations, citizens groups, the media, and other relevant stakeholders. The team will present an initial list of interviewees to USAID for approval prior to commencing interviews. The Team will be responsible for developing the list of interviewees and arranging meetings, as well as transportation to the meetings. USAID will provide one or two staff members to participate in the fieldwork phase of the assessment. The Team will also arrange a separate meeting with USAID/Jordan's DG Office to understand the mission's needs for the new program's Scope of Work.

Report-writing phase: The Team will analyze all the collected material to draft the assessment report, which will include all of the three components outlined above. The draft report shall be submitted for formal USAID review within ten working days after departure of the Team from the country. USAID will have ten working days to provide comments to the team. The final report shall be submitted no more than ten working days thereafter. A total of at least eight working days per team member are authorized for the report-writing phase.

TIMELINE

Document review will start in the first week after award of the Task Order. Field work will start on the second week and will last for 3 weeks.

Timeline									
W=Week	W1	W2	W3	W4	W5	W6	W7	W8	W9
Document Review and Preparations	•								
Submission of Workplan and Methodology	•								
USAID Approval of Workplan and Methodology	•								
Arrival of Expat(s) in country		•							
Fieldwork		•	•	•					
Interim briefing			•						
Draft Report							•		
USAID Review of Draft Report								•	
Final Report in English									•
Redacted Version									•

END OF SECTION C

ANNEX C: BIBLIOGRAPHY

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ANNEX D: LIST OF INTERVIEWEES

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Jim Fitzpatrick, Project Advisor, EU Supporting Criminal Justice Reform in Jordan Project

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Dr. Saad Abuelghanam, Assistant Professor of Patents, Intellectual Property and Commercial Law, University of Jordan Law School

MEDIA

Nermeen Murad, Jordan Times, Columnist

Francesca Sawalha, media, The Royal Court

Rana Sabbagh, Arab Network of Investigative Journalists, Director

Nidal Mansour, Executive President, Center for Defending Freedom of Journalists

Rana Hussein, Senior Reporter, Jordan Times

MINISTRY OF JUSTICE

Judge Nazem Aref, Ministry of Justice – Vice President of Supreme Court & Head of MOJ Asset Disclosure Department

Mustafa Hamameh, Ministry of Justice – Asset Disclosure

Judge Nustafa Asaf, Ministry of Justice

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Judge Ali Massimi, Human Rights and Family Affairs Office

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Judge Mansour Hadidi, Judicial Institute of Jordan

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Judge Ali Masri, Court of Appeals

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Eman Al-Rousan, Prosecutor at Anti-Corruption Commission

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