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حاصل على وضع استشاري خاص لدى
المجلس الاقتصادي والاجتماعي بالأمم المتحدة

The negative effects of terrorism on the enjoyment of human rights and fundamental freedoms: The case of Jordan

This report was prepared on the basis of the information the Amman Center for Human Rights Studies could gather from publicly available sources.



ABOUT THE ACHRS

The Amman Center for Human Rights Studies (**ACHRS**), in consultative status with ECOSOC, is an independent think tank and regional advocacy center for research and training on issues of human rights and democracy.

With the aim of contributing to the dissemination of a culture of human rights, our work and activities aim at strengthening civil society in Jordan and in the Arab World, and at inducing a change to the general level of awareness and sensibility towards human rights and democracy.

The projects carried out by the ACHRS focus on trainings individuals on democracy and human rights, as these topics are closely related and highly complementary. The work of the ACHRS generally falls within one of its five institutional concentrations: women's rights, right to life, right to think, right to speak, and right to participate. Conducting studies and research provides an informational basis from which to further these aims.

The ACHRS has additionally established the following bodies: Elections Network in the Arab Region (**ENAR**), The Arab Coalition Against the Death Penalty (**ACADP**), the Jordanian Coalition Against the Death Penalty (**JCADP**) and the Arab Society for Academic Freedom (**ASAF**).



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ACRONYMS

ASE	Amman Stock Exchange
CC	Criminal Code
CCP	Code of Criminal Procedure
CPL	Crimes Prevention Law
CSO	Civil Society Organization
GDP	Gross Domestic Product
GID	General Intelligence Directorate
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant of Economic and Social Rights
ISIS	Islamic State in Iraq and Syria
OHCHR	Office of the United Nations High Commissioner for Human Rights
PSD	Public Security Court
UDHR	Universal Declaration of Human Rights
UN	United Nations
WGAD	Working group on Arbitrary Detention



1. Introduction

Terrorism commonly refers to acts of violence that mainly target civilians in the pursuit of political or ideological purposes. However, among the international community, regardless of unilateral declarations, resolutions and treaties relating to some specific aspect of terrorism, a lack of consensus remains as to what constitutes terrorism. The absence of this consensus between states lead to the current situation in which there is no legal and comprehensive definition of terrorism.

Terrorism aims at the destruction of democracy and the rule of law; in turn negatively impacting civilians' enjoyment of human rights, particularly the rights to life, liberty and physical integrity. Terrorism often results in catastrophic events, threatening the livelihood of governments and its people. According to the United Nations (UN), terrorism attacks the values that lie at the heart of the Charter of the UN: rules governing armed conflict and the protection of civilians, tolerance among people and nations, and the peaceful resolution of conflict. Therefore, terrorist acts can destroy cooperation among states, jeopardizing a government's territorial integrity and safety, while undermining the smooth-functioning civil society organization (CSOs). Ultimately, the country and surrounding nations face social, political, and economic risk.

In recent years, counter-terrorism measures have posed a serious threat to human rights and the effectiveness of the rule of law, due to the complex and multifaceted nexus existing between terrorism and human rights. According to the UN, the promotion and protection of human rights and the rule of law are essential to all components of the UN Global Counter-Terrorism Strategy. Therefore, effective counter-terrorism measures and the promotion of human rights are not conflicting goals, but rather complementary and mutually reinforcing one another.

Upholding human rights and the rule of law remains at the core of global counter-terrorism efforts. This requires, from both national authorities and international organizations, a strict implementation of adequate counter-terrorism policies that seek



to prevent acts of terrorism and tackle its spread. Thus, an environment is fostered to enhance the participation of CSOs, promote and protect human rights, and initiate fair legal proceedings for those responsible for such criminal acts.

Regarding the Hashemite Kingdom of Jordan, the government has exploited the threat of regional terrorism to implement counter-terrorism measures that CSOs and human rights defenders perceive as restrictive and aggressive. In response to the 2005 terrorist attack in Amman, Jordanian parliamentarians instituted an anti-terrorism law that clearly violates the rights of individuals. This law gives full power to law enforcement officials and the intelligence service, particularly in their fight against terrorism.

Since the enactment of the 2006 anti-terrorism law, numerous human rights violations have occurred under the pretense of counter-terrorism. The General Intelligence Directorate (GID), Jordan's intelligence agency controlled by the King and the State Security, is mainly responsible for these violations given their mandate to combating terrorism.

Ultimately, terrorism has inhibited the state's ability to promote and protect human rights in its fight against terrorism. Both terrorism and counter-terrorism measures have a destructive impact on the livelihood and enjoyment of human rights within Jordan.



2. Terrorism and Economic Rights

It is important to note that while socio-economic concerns may be a driver of radicalization, they should not be seen as the root cause of terrorism.

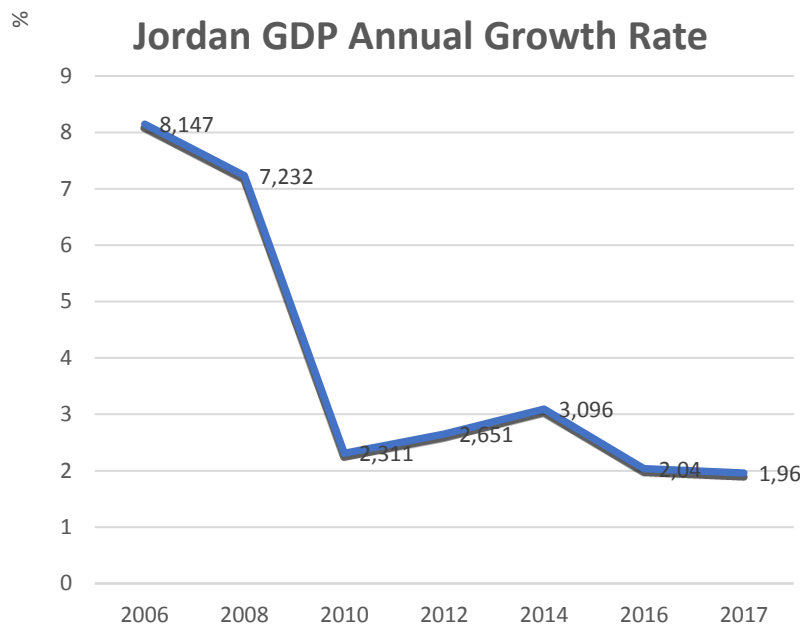
Even if the human cost of terrorism is devastating, the economic impact is likely to be more important than one would imagine. Terrorism not only undermines the smooth functioning of the rule of law and jeopardizes government's territorial integrity and safety, it also threatens the economic and social fabric of countries. Hence, terrorism imposes significant economic and social costs on societies and leads not only to direct material damages, but also to long-term negative effects that hinder countries' economy and their capability to growth.

Over the past two decades, terrorism has negatively affected Jordan's economic strength: this can be seen in part by the country's difficulties in enacting the progressive realization principle of economic and social rights and to cope with the adverse effects of terrorism. Periods of increased terror activity have had a measurable effect on Jordan's economy. Indeed, Jordan has faced domestic terror threats since the early 2000s, following the rise of Al-Qaeda. After a period of relative stability, the 2011 outbreak of the Syrian Civil War and the subsequent emergence of Islamic State in Iraq and Syria (ISIS) have renewed the Jordanian government's concern in combating terrorism. In 2017, Jordan continued to face attacks from insurgent groups: this was coupled with growing public unrest at the monarchy's inability to enact substantive economic reforms.¹

Terrorism produces significant impact (direct and indirect) which results in an interconnected and interdependent regional economic environment. Regarding Jordan's economy, the country lacks natural resources to meet its economic needs and is highly dependent on foreign aid to run. This economic and financial dependence makes the country's economy highly vulnerable to any regional instability.

¹ Beverly Milton-Edwards, "Jordan's Troubles in its Own Backyard," *Brookings*, February 27 2017.

The rise of ISIS and the resurgence of terrorist acts across the region have fragilized the whole regional business environment and have negatively impacted all economies of the region, in particular, Jordan's economy. Indeed, according to Nitsch and Schumacher, countries targeted by terrorism will trade less with each other than countries not affected by it, resulting in a decrease of the bilateral trade flows and of the economic growth.



Source: World Bank national accounts data

There is a negative correlation between terrorism and Gross Domestic Product (GDP) growth rate. Indeed, according to the World Bank, Jordan's GDP growth rate has fallen from 8% in 2006 to 1.9% in 2017. This is directly linked to the regional instability and to the loss of its "natural markets" and the

closure of export routes in Iraq and Syria.

In addition, terror activity has an adverse impact on investment. Indeed, the destructive effect of terrorist acts on financial markets is one of the clearest aspects of terrorism. In fact, it has been observed in the economic literature that countries suffering from terrorist activities loose investors' confidence and it take significant time and efforts to rebound.



Regarding Jordan's stock market, the Amman Stock Exchange General (ASE General) is a major stock market index which tracks the performance of large companies based in Jordan. The stocks included in the index

represent 90% of their aggregated market capitalization.

According to trading economics, the index fell drastically from 4800 points in the end of the 2000s to 1957 points in 2018. This fall is correlated to the regional instability caused by terrorist groups. Terrorism has increased the sense of insecurity and uncertainty for foreign investors and traders which results in a redirection of the investment to safer countries.

Because share prices reflect expected future gains of a company, terrorist acts will negatively influence the share prices, leading to a decline in expected profits as security measures increase which pushes up the costs of production and trade which yields a decreased consumption rate. Therefore, negative effects of terrorism begin to affect the financial markets before any attacks occur due to the expectation of terrorist attacks. This affects all sectors of business, resulting in a deterioration of social and economic rights of citizens.

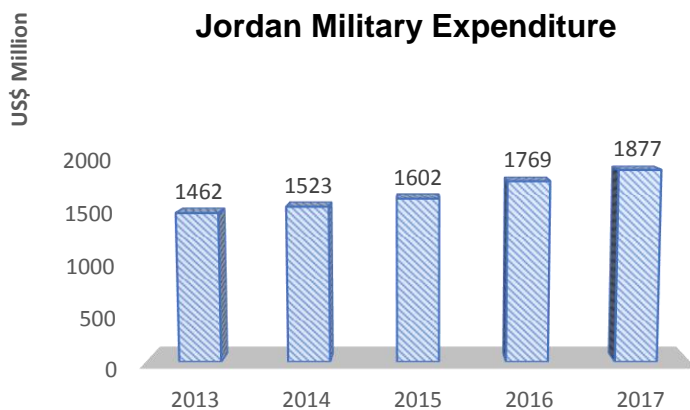
However, under the principle of progressive realization, states must actively work towards the fulfillment of economic, social, and cultural rights for their citizens, irrespective of domestic political or financial climates.² In light of this, the Office of the United Nations High Commissioner for Human Rights (OHCHR) describes state budgets as helpful indicators of a country's commitment to the economic rights of its citizens, claiming, "underfunding of programs, manifest disparities in the use of public

²OHCHR. "Human Rights, Terrorism and Counter-terrorism". Fact Sheet No. 32.

funds for specific groups and regions, or significant decreases in funding to particular sectors may indicate a State's failure to realize economic, social and cultural rights progressively.”³

Threats or acts of terror can be seen as impinging on the economic rights of individuals when said acts have a noticeable negative effect on a country's financial strength. Economic rights fall within the larger group of economic, social, and cultural rights, guaranteed primarily under two documents: The International Covenant of Economic and Social Rights (ICESR) and the Universal Declaration on Human Rights (UDHR). Articles 23 and 25 of the UDHR guarantee the right to work and the right to an adequate standard of living, respectively. Perhaps the most common violation of these rights is the failure of Jordanian governments to ensure minimum wages cover the cost of living.

The Office of the High Commissioner for Human Rights (OHCHR) additionally outlines two ways terrorism affects economic rights: through economic marginalization leading to radicalization, and through high security spending diverting resources from economic and social programs.⁴



Source : Trading Economics

Terrorism has a direct impact on the capacity of a state to invest in economic and socially benefiting projects for its citizens. Particularly, it has forced states to increase their military spending on security, defense and prevention of terrorist activities. Military expenditure in Jordan steadily

increased over the past 5 years in detriment of economic and social programs.

³ OHCHR. "Human Rights, Terrorism and Counter-terrorism". Fact Sheet No. 32.

⁴ Ibid.



To conclude, the impact of terrorism is always negative on a country's economy. Terrorism negatively impacts economic and productive resources which could have generated added value for the country. Combating terrorism often lead to an increase of military spending in detriment of economic and social programs. This reallocation of resources, in favor of counterterrorism programs, seriously challenges states already lacking resources to address economic and social rights issues within their own country. In such case, counterterrorism measures can fuel the resentment and discontent among the general public, exacerbate the existing critical situation, and negatively impact on the enjoyment of economic and social rights.

While it is not a catch-all solution, economic development can help curb terrorism by lowering general sentiments of marginalization, especially among the youth population. Nothing can justify violent extremism, but one must also acknowledge that it does not arise in a vacuum.⁵ The nexus between economic and social rights violations and terrorism are complex, multifaceted, and require an attentive analysis. However, one can claim that promoting economic and social development can play a decisive role in reducing support for terrorism. Therefore, it is urgent that the Jordanian government enact substantive economic and social reforms to re-assert and re-promote the rights of their citizens.

⁵ United Nations Plan of Action on Preventing Violent Extremism, 2015.



3. Terrorism and Civil and Political rights

The impact of terrorism on human rights has always been a concern for the international community. In time of emergency, states are accountable for protecting those living within their own jurisdiction and taking effective counter-terrorism measures to tackle the spread of terrorism while ensuring that human rights standards are rigorously respected. According to Kofi Annan, former UN Secretary-General, the response to terroristic threats should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms, and the rule of law are essential tools in the fight against terrorism and must not be sacrificed at any cost.

Civil and political rights are the core principles of international human rights law. These rights are safeguarded in one vital treaty, the International Covenant on Civil and Political Rights (ICCPR), which compels signatory states to take all necessary measures to protect and promote the right enshrined in this treaty. Jordan is a state member of the ICCPR and Article 24 of the Jordanian Civil Code provides that in a situation where national and international law are incompatible, international laws or treaties take precedence over national legislation.⁶ A 2003 ruling (No.818/2003) by the Jordanian highest court, the Court of Cassation, holds that national legislation may not be passed if incompatible with international law.

Moreover, by one of its landmark judgments, the Court of Cassation, has re-asserted that the right to life, right to liberty and security, human dignity and freedom of opinion enshrined in the Constitution and several international documents cannot be restricted, except on the basis of law and its procedures.⁷

⁶ U.N. ICCPR Human Rights Committee, Replies of the government of Jordan to the list of issues to be taken up in connection with consideration of the fourth periodic report of Jordan, art. 2(1) CCPR/C/JOR/Q/4/Add.1, Sept. 16, 2010.

⁷ Jordanian Cassation Court's Decision in Case No: (2426/1999), issued on April 25, 2000.



However, in Jordan, the fight against terrorism is systematically invoked by national authorities as a justification for human rights limitations. In fact, a side effect of counter-terrorism is the possibility for states, in the name of countering terrorism, to amend laws that become, in practice, more repressive and restrictive. Even though, these laws are theoretically directed to tackle the proliferation of terrorism across the country and to prevent any terrorist attacks, they are both unjustifiably extensive and intrusive to allow governments to increase their power and to repress any form of public contestation.

During its review of Jordan in 2017, the Human Rights Committee expressed concerns over a number of issues related to human rights violations committed in the context of countering terrorism. In its concluding observations, the UN experts voiced their concerns over the provisions contained in the 2014 amended anti-terrorism law as well as the scope of the jurisdiction of the State Security Court (SSC).⁸ The 2014 amendments granted the SSC authority over non-violent offences by defining terrorist acts as those which disturb “the public order” or “relations with a foreign state”.

Alkarama, a non-governmental human rights organization, issued several reports about human rights violations in the context of counterterrorism, affirming that one of the most pressing concerns in the country are the GID’s practice to detain incommunicado and to use systematic torture against peaceful dissenting voices. Individuals detained by the GID are then subjected to unfair trials before the SSC and sentenced to heavy sentences. In several cases, this constituted a form of retaliation for acts of free speech, in an environment where freedom of expression, association and peaceful assembly is severely restricted.⁹

⁸ Fifth Periodic Report of Jordan by the HRC n: CCPR/C/JOR/Q/5. April 11, 2017.

⁹ Alkarama Foundation, Report submitted to the Human Rights Committee in the context of the review of the fifth periodic report of Jordan, September 18, 2017.



3.1: The right to life

The right to life, is recognized under international human rights law and treaties as the “supreme right” because without its effective guarantee, all other human rights would be without meaning. So, even in times of crisis, governments have the duty to protect the life of every citizen within their territory and are accountable for failing to do so. As part of this obligation, States must implement effective criminal justice and law enforcement systems, such as measures to deter the commission of offences and investigate violations where they occur; ensure that those suspected of criminal acts are prosecuted; provide victims with effective remedies; and take other necessary steps to prevent a recurrence of violations.¹⁰

In one of its landmark judgments, Jordan’s Court of Cassation ruled that the right to life and human dignity guaranteed by the Constitution cannot be subjected to restrictions, except on the basis of law and its procedures.¹¹ Therefore, the Court ordered that all international treaties which contain the right to life have priority in their application over national laws.¹² Jordan never ratified nor signed the 1991 Optional Protocol to the ICCPR which is geared towards the abolition of the death penalty, but it is a state party to the ICCPR which only allows for the imposition of the death penalty for the “most serious crimes”.¹³

Terrorism is one of the crimes punishable by death and led to the resumption of executions in the country in 2014 following an eight-year moratorium.¹⁴ The 2006 anti-terrorism law states that even in the case of terrorism-related offenses not resulting in death, the crime is punishable by death.¹⁵ In 2014, Jordanian Parliament amended the anti-terrorism law of 2006 and expanded the definition of “terrorist act”. The amended definition now includes the recruitment, attempt to recruit, establishment of charities

¹⁰ “The Economics of Post-Conflict Reconstruction in MENA,” MENA Economic Monitor, World Bank Middle East and North Africa Region, April 2017.

¹¹ Jordan Court of Cassation, Decision in Case No. 2426/1999 (25 April 2000).

¹² Jordan Court of Cassation, Decision in Case No. 2426/1999 (25 April 2000).

¹³ Amnesty International, *When the State Kills*, p. 159, ACT 51/07/89, 1989; Jordan Penal Code, arts. 110-113, 124-126, 135-137, 142, 148, 158, 292, Law No. 16 of 1960, 1960; Jordan Law on Narcotic Drugs and Psychotropic Substances, art. 10, Law No. 11 of 1988, 1988.

¹⁴ Al Jazeera. “Jordan hangs 11 after lifting execution ban”. December 21, 2014. Accessed November 3, 2018. <https://www.aljazeera.com/news/middleeast/2014/12/jordan-hangs-11-after-lifting-execution-ban-201412218257159168.html>

¹⁵ Jordan Penal Code, art. 148(4)(a, b, c), Law No. 16 of 1960, 1960.



aimed at funding terrorism, and use of information systems to support or promote terrorist group. Non-terrorist related offenses were added to the definition such as assaulting the king and queen's life, threatening the constitutional order, and forming criminal gangs.¹⁶

Besides the broad definition of a "terrorist act", the law considers that any person indirectly involved in the commission of the crime shall be punished with the same penalty as the direct perpetrator, regardless of the type of involvement and outcome of the crime. This allows for an extensive use of the death penalty against indirect perpetrators in criminal proceedings that lack transparency and respect for due process.¹⁷

Since the resumption of executions in the Kingdom, terrorist attacks have not stopped. There is, therefore, no valid justification to the use of the death penalty as a preventive, counter-terrorism measure.

¹⁶ 7iber, "Jordan's Anti-Terrorism Law: Another Step Against Reform". June 25, 2014. <https://www.7iber.com/2014/06/jordans-anti-terrorism-law-another-step-against-reform/>

¹⁷ Sanchez, M. "The return of death penalty to Jordan". Medium. March 30, 2017. <https://medium.com/@vickysilvasnchez/the-return-of-death-penalty-to-jordan-af30f7fa7771>



3.2: Freedom from torture and other cruel, inhuman or degrading treatment or punishment

The Prohibition of torture and inhuman or degrading treatment or punishment is protected by the ICCPR under Article 7. Jordan is also a state member of the 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Additionally, the Jordanian Constitution bans torture, including psychological harm, by public officials and provides penalties of as long as three years' imprisonment for its use and up to 15 years if serious injury occurs. Following a 2011 amendment, the Jordanian Constitution added that no person should be tortured, and statements extracted under duress must be rejected.¹⁸ In addition, torture is defined and criminalized under article 208 of the Jordanian Criminal Code (CC).

However, torture and other ill-treatment of political detainees has been a longstanding problem in Jordan. Despite the mounting evidence and Jordan's obligations under international human rights treaties, the Jordanian authorities have failed to take effective action either to prevent torture or to punish those responsible for.¹⁹ Punishments are not commensurate with the gravity of the crime under the provisions of the Jordanian CC since perpetrators face sentences of six months to three years of imprisonment, a penalty that is attached to a misdemeanor.²⁰ Acts of torture are therefore subject to a statute of limitations, and the legislation fails to clarify that such offenses cannot be subject to amnesty or pardon.²¹

In addition, Jordanian law does not explicitly mention that no exceptional circumstances of any kind, such as a state of war or the threat of war, or any other state of emergency, can be invoked to justify the use of torture. The Jordanian Code of Criminal Procedure (CCP) invalidates evidence or proof obtained by "means of physical or moral coercion" but does not refer to torture. In practice, coerced confessions or self-incriminating statements are commonly admitted as evidence in

¹⁸ Article 8 of the Constitution of the Hashemite Kingdom of Jordan, 1 January 1952.

¹⁹ Amnesty International. "Jordan"Your Confessions are Ready for You to Sign" - Detention and Torture of Political Suspects" July 24, 2006. http://www.refworld.org/docid/44e982804.html#_ftn1.

²⁰ Alkarama Foundation, Report submitted to the Human Rights Committee in the context of the review of the fifth periodic report of Jordan, September 18, 2017.

²¹ UN Committee against Torture (CAT), Concluding observations on the third periodic report of Jordan, 29 January 2016, CAT/C/JOR/CO/3, para. 9.



courts, particularly before the SSC.²² Therefore, acts of torture remain unpunished in Jordan due to both the lack of efficient complaint mechanisms as well as the absence of prosecution of perpetrators.

The Public Security Directorate (PSD) – which is composed of the police, prison officials, and border services and falls under the authority of the Ministry of Interior - can receive complaints through its public prosecutors. Yet in reality, the public prosecutors remain dependent on the PSD for re-appointment.²³ If a complaint received is deemed admissible, the public prosecutor will then take hold of the Police Court. This court has trial chambers composed of a civil judge appointed by the head of Jordan’s Judicial Council, the judiciary’s highest administrative body, and two other judges appointed by the PSD.²⁴ In other words, two thirds of the magistrates investigating and prosecuting acts of torture belong to the same administration as the alleged torture perpetrators. Moreover, it is concerning that unit commanders enjoy discretionary powers that allow them to decide whether to prosecute cases of abuse or to “settle” cases internally by disciplining officers.²⁵

Lastly, with regards to the investigation and prosecution of acts of torture committed by GID’s officials, it is difficult to assess which jurisdiction is vested with this task due to a very complex legal structure. The question remains if GID officers should be prosecuted before the “Military Tribunal of the GID”, the “SSC”, or the Military Court. If tried by the Military Tribunal of the GID, the sentence may be unfair given that the judges are GID officials. On the other hand, the officers would only be tried for crimes that fall under the jurisdiction of the SSC or Military court.²⁶ As a result of this complex legal regime, there is a lack of oversight over the GID, whose officers are never held accountable.²⁷

²² Alkarama Foundation, Report submitted to the Human Rights Committee in the context of the review of the fifth periodic report of Jordan, September 18, 2017.

²³ UN Committee against Torture (CAT), Concluding observations on the third periodic report of Jordan, 29 January 2016, CAT/C/JOR/CO/3, para. 33.

²⁴ Alkarama Foundation, Report submitted to the Human Rights Committee in the context of the review of the fifth periodic report of Jordan, September 18, 2017.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.



To date, no police or intelligence official have ever been convicted for acts of torture under article 208 of the CC. There have been few convictions pronounced on the basis of article 334 of the same code, sanctioning assault and battery, and article 37 of the Public Security Law, which requires, in case of failure to observe orders, penalties ranging from disciplinary measures to two months of imprisonment.²⁸

According to Amnesty International and Human Rights Watch, there have been many incidents of torture and forced confessions in Jordan, particularly conducted by the GID. Specifically, many of these “incidents” happened in connection to Jordan role as an ally to the United States on its “war on terror”. On November 2015, Amnesty International and Human Rights Watch issued a statement about the need for the Jordanian government to immediately establish an impartial and independent investigation into the allegations by a Jordanian man of Palestinian descent who was serving a 10-year sentence based on a “confession” he says he made under torture and ill-treatment.²⁹ This man, Amer Jubran is one of eight men convicted in this case, who all received prison sentences of between two and three years. Some of them also say they were tortured into making “confessions”. All eight men were tried under legislation including Jordan’s amended anti-terrorism law.³⁰

Most recently, in September 2018 it was reported that a married couple from Trinidad and Tobago, Keegan Roopchand and Zaida Mohammed, had been tortured, detained and interrogated for months in Jordan by the GID.³¹ It was said that the information taken from the couple were used in an operation against an alleged terrorist plot to disrupt Trinidad and Tobago’s Carnival. The husband said that his interrogators would describe "horrific methods of torture they would execute if we didn't comply ", and that he was gradually manipulated by interrogators into confessing to a plan.

²⁸ ACAT France, Un Monde Tortionnaire, <https://www.acatfrance.fr/un-monde-tortionnaire/Jordanie> (accessed on 15 August 2017), p. 211 as in Alkarama Foundation, Report submitted to the Human Rights Committee in the context of the review of the fifth periodic report of Jordan, September 18, 2017.

²⁹ Amnesty International, “JORDAN: INVESTIGATE ALLEGED TORTURE OF AMER JUBR”. November 3, 2015. <https://www.amnesty.org/en/documents/mde16/2580/2015/en/>

³⁰ Ibid.

³¹ Lo, Jo. “Did Jordan use torture to extract ‘false’ intel on Trinidad Carnival terrorist plot?”. Middle East Eye. September 1, 2018. <https://www.middleeasteye.net/news/did-jordan-use-torture-extract-false-confession-trinidad-carnival-terrorist-plot-400445262>



3.3: The right to Liberty and Security

The Right to Liberty and Security is enshrined in Article 9 of the ICCPR. Several provisions of Jordanian domestic law do comply with the standards set forth by the ICCPR and the Human Rights Committee. For example, under the CCP, arrests must be conducted on the basis of a warrant and anyone who is arrested must be brought before a judicial authority within 24 hours.³² However, there is no provision according to which the detention would then become arbitrary, except for persons arrested on the basis of a subpoena and who remain at the police station for more than 24 hours.³³ When being brought before the Public Prosecutor, there is no mention under domestic law of whether the Public Prosecutor evaluates the legality of the detention or, if so, has the power to release the defendant, which clearly undermines the right to habeas corpus.³⁴

Local governors have granted power by the Crimes Prevention Law (CPL) to “detain an individual without charge, and without being brought before a judicial authority, for an indeterminate period if he or she is about to commit a crime or represents a threat to “others”, which deprives detainees of procedural guarantees.³⁵ Although under the law detainees can challenge their detention before the Administrative Court within 60 days, the procedure is costly and heavily restricted.³⁶

Furthermore, the CCP does not explicitly mention the right of arrestees to contact their family. On the contrary, the prosecutor may decide to prohibit the suspect from “contacting others”, apart from his lawyer, for a renewable period of ten days.³⁷ This provision violates international human rights law, particularly rules 43(3) and 58 of the United Nations Standard Minimum Rules on the Treatment of Prisoners (the Nelson Mandela Rules). In cases of arrests by the GID, individuals were systematically denied access to their relatives for periods ranging from several days to several months.³⁸

³² Article 100, 103 and 112 of the Criminal Code of Procedure.

³³ Article 113 of the Criminal Code of Procedure.

³⁴ Alkarama Foundation, Report submitted to the Human Rights Committee in the context of the review of the fifth periodic report of Jordan, September 18, 2017.

³⁵ Article 113 of the Criminal Code of Procedure.

³⁶ Human Rights Watch, *Guests of the Governor: Administrative Detention Undermines the Rule of Law in Jordan*, 26 May 2009.

³⁷ Article 66 of the Criminal Code of Procedure.

³⁸ Alkarama Foundation, Report submitted to the Human Rights Committee in the context of the review of the fifth periodic report of Jordan, September 18, 2017.



Jordanian law does not include any provision protecting the right of individuals deprived of their liberty to contact their family.

The CCP also does not guarantee the right of suspects to contact their lawyer from the moment of their arrest, but instead only once they are brought before the prosecutor. Although a detainee has the right not to reply to the charges unless in the presence of a lawyer, the prosecutor can interrogate the suspect “in case of urgency”, such as in terrorism cases.³⁹ As a consequence, most detainees are not represented by a lawyer during the arrest, investigation, and trial, unless the case involves a felony punishable by the death penalty or life imprisonment.⁴⁰

Administrative detention has been systematically used by the Jordanian authorities within the context of the country’s counter-terrorism strategy. One of the most important cases of the past years occurred in May 2017, when the United Nations Working Group on Arbitrary Detention (WGAD) transmitted to the Jordanian government a communication concerning Hatem Al Darawsheh. In January 2016, Al Darawsheh, a 17-year-old, was arrested at his house by members of the GID without an arrest warrant, and was brought before the Public Prosecutor of the SSC, who charged him with being “a supporter of Islamic State”. During his first three weeks of detention, he was held incommunicado with no contact with the outside world, including his family. Incommunicado detention, which places detainees completely outside the protection of the law, is a prima facie form of arbitrary detention that violates his right to be recognized as a person before the law under article 16 of the ICCPR, and is highly conducive to torture. After three weeks of arrest, he was allegedly forced to sign a document that included statements extracted under torture.

Al Darawsheh was denied access to legal counsel for the entire duration of his detention on the premises of the GID from 19 January to 10 March 2016. He was not allowed to have his lawyer present during his interrogation nor to have legal assistance at that stage. Under Jordanian law, a person held in custody has no right to speak to a lawyer before being brought before the Prosecutor, who may decide to interrogate the suspect

³⁹ Articles 63 and 64 of the Criminal Code of Procedure.

⁴⁰ Alkarama Foundation, Report submitted to the Human Rights Committee in the context of the review of the fifth periodic report of Jordan, September 18, 2017.



without the presence of a lawyer until the completion of the investigation. This violated Al Darawsheh's right to defense under article 14(3-b) and 14(3-d) of the ICCPR. On December 2016, the SSC sentenced him to three years of imprisonment for "promoting a terrorist organization" through his alleged support to ISIS, pursuant to articles 3.5 and 7.3 of anti-terrorism law No. 66. The source alleges that Al Darawsheh was indicted on the sole basis of information extracted from him under torture.⁴¹

On December 2017 and January 2018, a teacher and a 19-year-old student, Qais Anan Mohammed Suwan and Yaseen Hasan Salim Abu Zaid, were arrested by members of the GID, and subsequently detained incommunicado, tortured, and coerced into making confession for "supporting terrorism". Both of them were forced to sign incriminating confessions. In Abu Zaid case, he was arrested without warrant, and to April 2018, his lawyer had not been permitted to visit him nor to access his case file.⁴²

⁴¹ Working Group on Arbitrary Detention. "Opinion No. 46/2017 concerning Hatem Al Darawsheh (Jordan)". Human Rights Council. September 21, 2017.

⁴² Alkarama Foundation, "Jordan: Alkarama requests intervention of un special rapporteur after two men are detained, tortured and forced to confess to crimes of terrorism". April 25, 2018. <https://www.alkarama.org/en/articles/jordan-alkarama-requests-intervention-un-special-rapporteur-after-two-men-are-detained>.



3.4: The right to a fair trial

The Right to a Fair Trial is protected by the ICCPR under Article 14. The violations of the rights to Liberty and Security and prohibition of torture and inhuman or degrading treatment or punishment directly impact the right to a fair trial.

In this regard, in Jordan, suspects are arrested by the GID without any warrant, brought to their headquarters, detained incommunicado for several weeks, and severely tortured in order to extract confessions. These self-incriminating statements are then used by the SSC Prosecutor to charge the suspects and were later admitted as the sole source of evidence during trials.

In addition, alleged terrorists are prosecuted by military judges in the SSC instead of regular courts. Jordan's SSC has often been criticized by Human Rights organizations for violating basic guarantees of fair trial for civilians. Constitutional amendments passed in 2011 restricted the cases in which civilians can be tried before military judges, and the corresponding law was amended in 2013 to reflect that. The only cases in which civilians can be tried by military judges are treason, espionage, terrorism, drugs, and currency counterfeit.⁴³

Besides, the ICCPR states that trying civilians under a military court may raise problems regarding the *"equitable, impartial, and independent administration of justice concerned."* This is why the ICCPR goes on to say that *"Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials."* It implies that trying civilians under military courts should be the exception and not the norm, especially when those being tried are charged with crimes that can be handled by civilian judges. In most democratic nations, civilians are tried before civilian courts where their cases are heard by civilian judges even where they are charged with terrorist acts.⁴⁴

⁴³ Article 101 of the Jordanian constitution, section 2.

⁴⁴ 7iber, "Jordan's Anti-Terrorism Law: Another Step Against Reform". June 25, 2014, <https://www.7iber.com/2014/06/jordans-anti-terrorism-law-another-step-against-reform/>.



There are numerous testimonies of victims that highlight this dynamic between the GID and the SSC. Indeed, one of those cases involve a 21-year-old Polish and Jordanian student, Adam Al Natour, who was sentenced to four years of imprisonment by the SSC after a flawed trial. He was arrested on 12 August 2015 by GID's officers without any warrant, and detained incommunicado for several weeks, during which time he was beaten and subjected to electric shocks. His father was only allowed to visit him three weeks after his arrest. In late September 2015, he was brought before the SSC Prosecutor and forced to sign a paper written in Arabic, a language he neither understands nor speaks. A month later, he was formally indicted under the anti-terrorism law. It was only in mid-November 2015, one week before his first trial hearing, that he was allowed to meet with his lawyer. His demands for a translator were not taken into consideration until his fourth hearing. On February 2016, Al Natour was sentenced by the SSC to four years of imprisonment for "joining an armed group and terrorist organization" on the sole basis of the statements he signed under duress, and after a trial held in a language he does not understand. His appeal before the Cassation Court was rejected in August 2016.⁴⁵ The WGAD has issued an opinion on Al Natour's case, qualifying his detention as "arbitrary" and calling upon his release.⁴⁶ The WGAD concluded that "as the SSC does not meet the fundamental principles of independence and impartiality, it fails to uphold Al Natour's right to a fair and public hearing by a competent tribunal in the determination of any charge against him."

Another case is the one of Amer Jamil Jubran, an activist for the Palestinian cause and an anti-war advocate, was arrested on 5 May 2014 by GID's officers without any warrant. After his arrest, he was detained incommunicado for almost two months at the GID headquarters, during which time he was subjected to torture, including threats against his family members, long interrogations lasting 72 hours, sleep deprivation, and severe beating. He signed a confession that he was not allowed to read before signing, which was used to charge him in August 2014 with a series of terrorism-related offences, including "harming the relationship with a foreign government".

⁴⁵ Alkarama, "Jordan: Student Adam Al Natour Detained Arbitrarily According to United Nations Experts", 3 November 2016.

⁴⁶ Opinion No. 39/2016 concerning Adam al Natour (Jordan), 9 November 2016, A/HRC/WGAD/2016/39.



On July 2015, Jubran was sentenced to 10 years in prison following an unfair trial before the SSC. During the trial, his forced confessions were used as the sole evidence against him. Motions brought by Jubran’s lawyer to bring evidence exculpating him were ignored, as was his right to question the witnesses presented by the prosecution, including the GID officers who arrested and tortured him.⁴⁷

In April 2016, the WGAD issued an opinion on Jubran’s case qualifying his detention as “arbitrary” and calling upon his release.⁴⁸ The Jordanian authorities have yet to implement decision.

⁴⁷ Alkarama, Jordan: Human Rights Activist Sentenced to 10 Years in Prison After Unfair Trial Before State Security Court, 5 October 2015, <https://www.alkarama.org/en/articles/jordan-human-rights-activist-sentenced-10-years-prison-after-unfair-trial-state-security>.

⁴⁸ Opinion No. 9/2016 concerning Amer Jamil Jubran (Jordan), 10 October 2016, A/HRC/WGAD/2016/9.



3.5: Freedom of assembly and association

Freedom of assembly and association is a distinct and powerful form of democratic action. Article 20 of the UDHR grants individuals the freedom to peaceful assembly and association, and protected under the ICCPR. The Organization for Security and Cooperation in Europe defines “assembly” as: *“intentional and temporary presence of a number of individuals in a public place for a common expressive purpose.”*

The physical gatherings are more powerful than online activism, often being more transformational for the participants themselves. Thus, these assemblies create collective capacity which reinforce a common opinion - good or bad - that may threaten the stability of a society and government. The right of individuals to gather in a public space peacefully to share ideas and express opinions is becoming endangered throughout the world. Within the 21st century, we have seen steady assaults on this freedom, particularly in countries fighting terrorism within and surrounding its borders. Therefore, countries like Jordan place heavy restrictions on the right to assembly or associate by exploiting anti-terrorism laws regardless of its applicability to the situation.

In Jordan’s 2006 anti-terrorism Law no.55 - also known as the Prevention of Terrorism Act - leaves a broad definition of terrorism, allowing authorities to exploit the rights of individuals prosecuted for “disturbing public order”, particularly those who exercised the right to freedom of expression and peaceful assembly.⁴⁹ This changed in the wake of the Arab Spring, when Jordan experienced numerous peaceful protests that placed a lot of pressure on the government. In response, King Abdullah II adopted a new amendment entitled “Public Gatherings Law” in March 2011.⁵⁰ The provisions of the law rid of written proposals for the organization of a demonstration, but requires a twenty-four-hour advanced notice to the governor. The names, details, address, and purpose of the gathering must be provided to the governor.

On June 1, 2014 Jordan amended the 2006 anti-terrorism law, to broaden the definition of terrorism. Added to Article 2, any act that “cause disorder by disturbing the public

⁴⁹ Alkarama Foundation, Report submitted to the Human Rights Committee in the context of the review of the fifth periodic report of Jordan, September 18, 2017.

⁵⁰ Public Assemblies Law No. 5 of 2011.



order” is defined as terrorism.⁵¹ The minimum punishment for this provision is “five years of hard labor.” Additionally, Article 3 categorizes certain criminal acts under the Penal Code to be considered terroristic acts, particularly “disturbing relations with a foreign country” that carries a minimum punishment of “temporary hard labor.”⁵² This new article can be used against individuals who may organize an initiative or assemble in solidarity with activists in boycotting issues that occurred in a foreign nation. Therefore, if a group of Jordanians organizes a protest to promote the boycotting of journalist in Egypt, the government has the right to arrest and charge these individuals under the anti-terrorism law. Also, if a student organization launches an initiative to boycott the importation of Israeli mangos, the government can deem this as a “terrorist act” under this article.⁵³ Unfortunately, authorities continue to use the anti-terrorism law as a scapegoat for evading the decriminalization of peaceful assembly then trying the protesters under the SSC. Overall, these changes make Jordan’s fight against terrorism easier yet revolutionizes the way in which human rights activists, journalists, and political opponents are characterized and punished.⁵⁴

Often, the government exploits citizens’ right to peaceful assembly as a means to limit their freedom of speech. Evidence of this issue is illustrated in Mohammad Sayer Baker’s case. In September 2014, Bakr, a senior official of the Muslim Brotherhood Sura Council, was arrested for a speech he gave a month earlier at a Brotherhood celebration in Jordan for the Palestinian resistance to Israeli invasion in Gaza.⁵⁵ Bakr sarcastically spoke about Jordan’s role in regional conflicts by saying: *“Thank you, you stupid [people], if even the least of us were tasked to develop a plan to diminish Hamas*

⁵¹ Article 2 reads as follow: “[A]ny deliberate act or abstention of an act, or threat of an act, regardless of its causes, uses, or means committed to carry out a criminal act collectively or individually that could jeopardise the safety and security of society; or cause disorder by disturbing public order or causing terror among the people, or intimidating them, or jeopardizing their lives; or cause harm to the environment, or facilities, or public or private property, or facilities of international or diplomatic missions, or occupy any of them; or jeopardise national resources, or pose economic risk; or to force the legitimate authority or an international or regional organisation to do any work or abstain from it, or disable the application of the constitution, laws, or regulations.” Unofficial transcription from the Arabic version.

⁵² Article 3(b) of the Anti-Terrorism Law No. 55 of 2006. In its State report, the Jordanian authorities refer to “acts designed to spoil the good relations that Jordan maintains with foreign countries” (p. 4).

⁵³ 7iber, “Jordan’s Anti-Terrorism Law: Another Step Against Reform”. June 25, 2014, <https://www.7iber.com/2014/06/jordans-anti-terrorism-law-another-step-against-reform/>.

⁵⁴ Ferguson, David, “Silencing the Arab Spring with Co-Opted Counterterrorism”. Berkeley Journal of Middle Eastern Studies and Islamic Law, 7(1). May 01, 2016, <https://escholarship.org/uc/item/0416k4dv>.

⁵⁵ Al-Monitor, “Jordan Arrests Brotherhood Leader, Youth Activist Over Incitement Fears”. September 17, 2014, <https://www.al-monitor.com/pulse/politics/2014/09/jordan-reforms-brotherhood.html>.



the plan would have been wiser than your plans you fools... Who of you is embarrassed to be part of an army or the armies of Arabism today? I ask God's forgiveness because it is a sin to be part of an army that does not come to the aid of flowing blood [in Gaza]."

Baker was charged under provision no.149 in the Penal code which deems "undermining the political regime in the Kingdom or inciting opposition to it" as an act of terrorism.⁵⁶ This is one of the many cases in which the government uses citizen's freedom of assembly to limit their freedom of speech, and justify these actions with these anti-terrorism law.

The most recent event occurred in November 2018, when the Masarat Center and Mouminoun (Believers) Without Borders' conference entitled "The Obstructions of Islamic Societies and Modern Islamic Narratives" was canceled by Jordan's Minister of Interior. The government's decision came as a response to Islamic Action Front MP, Dima Tahboub, who wrote an inciting letter that opposed the conference, seeing it as a threat and blasphemous. The situation worsened as vicious and unjustifiable campaigns spread throughout social media by the Islamists, spreading false information about the conference. Now former-director of Believers Without Borders, Younis Qandil, was allegedly abducted and brutally assaulted in consequence for planning the conference. The Jordanian government later arrested Qandil for supposedly faking the incident. Younis Qandil faces blasphemy charges.⁵⁷

Though the conference was approved by the government ahead of time in accordance with the legal procedure, the conference was justifiably banned according to provisions under the anti-terrorism law "disturbing public order" and "harming relations with foreign states." The Jordanian government believed the conference - ideological enlightenment and expression of modern Islamic thought - would cause sectarianism and backlash among conservative groups like the Muslim Brotherhood.

⁵⁶ Human Rights Watch, "Assault on Free Expression". December 11, 2014, <https://www.hrw.org/news/2014/12/11/jordan-assault-free-expression>.

⁵⁷ Jordan Times, "Activist Accused of Faking Abduction, Torture". November 17, 2018, <http://www.jordantimes.com/news/local/activist-accused-faking-abduction-torture>.

**Amman Center
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مركز عمان
لدراسات حقوق الإنسان

حاصل على وضع استشاري خاص لدى
المجلس الاقتصادي والاجتماعي للأمم المتحدة

Aside from the risks internally, the government faced concerns from surrounding nations that do not support such ideological, scientific discussions.⁵⁸ Therefore, the Jordanian government cancelled the conference in adherence with the anti-terrorism law, thus limiting the freedom of speech and assembly.

⁵⁸ Jordan Times, "Cancelled Conference Files Lawsuit After 'Lots of Threat Messages'". November 13, 2018. <https://jordantimes.com/news/local/cancelled-conference-files-lawsuit-after-lots-threat-messages>



4: Conclusion and Recommendations

Both Terrorism and counter-terrorism measures implemented by governments have a destructive impact on the enjoyment of all human rights. **A human-rights-compliant state does not pick and choose the rights that apply to it but must promote and assert all human rights, especially in time of emergencies.**

The OHCHR has stressed the importance of achieving global security objectives in line with concerted efforts towards the realization of international human rights standards. Hence, in the fight against terrorism, states must reaffirm their commitment to human rights as core values and should integrate this component in every counter-terrorism strategy and not set aside in favor of illegal practices which clearly undermine the effectiveness of their action.

Regarding Jordan, many human rights violations have been reported since the enactment of the anti-terrorism law, the national legal framework overseeing the fight against terrorism. In addition, the recent amendment of this law has extended the definition of “**terrorist act**” and increased the government’s ability to repress, with impunity, any kind of public contestation. Hence, under the pretext of countering terrorism, the government has clearly **exploited** the threat of regional terrorism to pass counter-terrorism measures that increase its power of repression and “**legalize**” illegal practices resulting in a deterioration of its citizen rights.

In sum, the impact of terrorism has always been a concern for the international community and it seems that national counter-terrorism strategy compelled both the enjoyment of all human rights and the effectiveness of the rule of law. The Jordanian government must take all necessary measures to ensure that international human rights principles and standards are rigorously respected in order to address a coherent and effective response to terrorist threats. Counter-terrorism and the assertion of human rights are complementary and mutually reinforcing goals, therefore, in time of crisis, upholding all human rights is crucial and must not be sacrificed at any cost.



Recommendations:

The recommendations made below follow the S.M.A.R.T. (Specific, Measurable, Achievable, Relevant, Time-bound) system defined by the UN.

1. Increase efforts towards the progressive realization of economic and social rights;
2. Amend Article III of the amended terrorism Act No. 18 of 2014 to provide for a clear, restrictive definition of “terrorist acts”;
3. Re-establish an official moratorium on the death penalty in all circumstances, including in terrorism cases;
4. Enshrine the principle of absolute prohibition of torture into the Constitution and incorporate a clause on the non-applicability of the statute of limitation in torture cases;
5. Guarantee that confessions obtained under torture and the subsequent proceedings are declared null and void;
6. Ensure, in law and in practice, that all detainees benefit from the right to access and communicate with a lawyer immediately upon the arrest;
7. Abolish administrative and incommunicado detentions;
8. Repeal the domestic legislation providing for the General Intelligence Department’s powers to arrest without warrant, extend pre-trial detention, and delay the assistance of a lawyer;
9. Abolish all the special courts, including the State Security Court and the Police Court, that do not meet the principle of an independent and impartial judiciary;
10. Review Jordanian legislation and practices with the aim to ensure that all persons and civil society actors, including human rights defenders and journalists, can freely exercise their rights to freedom of expression, both online and offline, association and peaceful assembly, as provided for by the international human rights law