

I fear that the expression “security reform” has earned a place in modern political dictionaries that weakens the general concept of democracy by dividing it into fragments, such as women’s rights, children’s rights, and the protection of the environment. These dictionaries ignore the general basis of democracy in equality and the rule of law. Democracy cannot be achieved by empowering one particular component of society separately from others. To the contrary, any defect in any part of the concept is a deficiency in the whole. Empowerment of women in a certain society, for example, postulates that men also enjoy full rights in that society. Children will benefit from legal protection only if all members of the community are equal before the law. The environment cannot be rescued by a judicial system that is dominated by polluting industries and their allies in a corrupt political community.

The major defect of this fragmented concept of reform is its attempt to treat symptoms without addressing the underlying problem from which they arise. In fact, this approach sometimes provides a kind of cover, if not legitimacy, for those who break the law, creating an illusion of democracy and rule of law. A good example of this is the way in which reform schemes of third-world governments purport to fight corruption and protect human rights. Governments establish institutions for these purposes, allocate them large amounts of money and staff, and give them wide scope to monitor, criticize, and issue reports on corruption and violation of human rights by government agencies. Sometimes such institutions have the authority to contact offending agencies directly. However, all of this ignores the essential nature of such violations: they are crimes that must be punished by the law, and the judicial authority is the appropriate authority to prosecute them. But where is this authority? And what does it mean to paralyze the proper judicial authority and transmit some of its mandate to special institutions such as those for combating corruption, which enjoy their own judicial power? [1] Why isn’t the judicial system given the support, money, and capacities needed to carry out its constitutional monitoring and to prosecute corruption and human rights crimes committed by government officials and others? [2]

The rule of law is based on three pillars: an independent judiciary with jurisdiction over all; a parliament elected under a just election law and in clean elections; and an accountable executive branch, answerable to parliament for performance of its duties. These three pillars function within a system of checks and balances where no side overwhelms the others. When the system loses its balance, which usually happens in favor of the executive branch, corruption spreads throughout the state, and especially in the security sector. This general corruption, usually manifested by a misuse of power and a breakdown in the balance that exceed individual crimes, weakens the state’s ability to function and concentrates power in the security apparatus. [3]

Before speaking about reform of the security sector, therefore, it is necessary to discuss the root of the problem. The security sector is corrupt because the executive branch has overpowered the other branches of government and cannot be monitored effectively. As monitoring the executive branch is the major duty of the judiciary and the parliament, the crisis of the security sector in any country is simply a crisis of democracy and weakness in the rule of law. Hence, it is important to keep in mind that security reform can only be achieved within a democratic system. If this hypothesis is not the basis of the approach, it is useless to speak about reform: an authoritarian state lacking rule of law, is what needs reform, not its security system.

For this reason, three interrelated questions must be answered when discussing security reform: (1) whether the executive authority can be held accountable; (2) whether the judicial system is independent and able to expand its constitutional monitoring; and (3) whether the legislative authority is able to exercise its theoretical power over the executive. Jordan is no exception. The above three questions, and the imbalance among the three authorities, are the same. Consequently, the executive branch's appropriation of power and its domination of the judiciary and the parliament are the core of all disorders and crises, including those of the security sector. These concepts, including reform of the security sector, can be addressed effectively only through objective, bold, and detailed research, to which this paper is only an introduction.

Unlike many countries, Jordan is not overcrowded with security and intelligence apparatuses. [4] The security sector crisis in Jordan is mostly limited to the General Intelligence Directorate. Nonetheless, it is a manifestation of the crisis of democracy and rule of law in Jordan and the area where the flaws of the state's authorities intersect, resulting in many deficiencies that require essential reform in the constitutional, legal, and administrative structure of the country. This certainly does not mean that the other two apparatuses - the General Security Directorate and the General Directorate of the Gendarmerie - do not have their defects and violations, but they do not so clearly embody the democratic crisis. They are simply two more products of the mental status that dominates Jordanian society in the absence of democracy and the rule of law.

Forty-five years have passed since the establishment of the General Intelligence Directorate. [5] Today it exerts exceptional influence on the government, the parliament, and the judiciary, as well as on individuals. In addition to the intelligence mission which the law has mandated to it, GID performs other internal security tasks in which it claims the role of judicial police, with all the power and procedural authority usually given to the latter, including evidence collection, surveillance, arrest, and wiretapping. It cooperates in this with the Prosecutor's Office of the State Security Court and runs a detention center inside its premises. Moreover, it interferes in parliamentary elections, starting with supporting certain candidates and fighting others, through manipulating the voters' will before and during the election process, and ending with influencing the performance of members of parliament and instructing them on how to legislate in areas where GID seeks particular parliamentary positions.

GID interferes in both print and electronic media and uses whomever it can within the media community. GID has, de facto and without legal support, arrogated missions to itself, such as the issuance of "good behavior certificates" for citizens who apply for jobs or to schools. In fact, these are de facto political good behavior certificates. [6] GID also issues approvals for certain government and non-government jobs and for many other purposes, such as entry visas, publications, acquisition of property by non-Jordanians, establishment of particular companies, and weapon licenses.

At a certain stage, the government put GID in charge of specific issues that should be judicial matters. In 1996, a special unit was formed at GID, on the orders of the prime minister, the Unit for Combating Corruption, to "follow cases of hidden administrative and financial corruption which the state's monitoring agencies have

failed to discover and control." A Ministry of Justice general attorney and officers from the General Security Directorate were assigned to work for the new unit as members of the Judicial Police Force, in order to give the unit the legal authority needed to follow those suspected of corruption crimes.

These extraordinary authorities and the misuse of power in many other domains have made the General Intelligence Directorate a reality in Jordanian political and legal life and an arbitrator in all state issues. This has necessarily had negative social and moral effects on Jordanians and has restricted the natural scope for development in all aspects of the Jordanian state, whether political, economic, scientific, or social.

Where Reform Should Start

There is no ready-made recipe for reform. Reform is a process that occurs at a unique historical moment in which a collective will coincides with a level of morality that reflects the essence of that moment. Just as defects are the outcome of accumulated corruption and interests, mixed with assumptions that have developed and become established over long periods, so, too, reform requires effort and time. The defects have come to be reflected in the constitution and in rules and regulations.

The Jordanian constitution stipulates that the system of government is "parliamentary with a hereditary monarchy," that the nation is the source of authority in the country, and that the king is the head of state, with immunity from all consequences and responsibilities. [7] The executive power, according to the constitution, is "vested in the king, who shall exercise his powers through his ministers." [8] The Council of Ministers is entrusted with the responsibility of administering all affairs of the state, internal and external, and controls all the agencies of executive power. The prime minister and ministers are collectively responsible to the Chamber of Deputies –which should be elected through general, direct elections - for the public policy of the state and for the affairs of their ministries. Members of the upper chamber (the Senate, or Chamber of Notables) are appointed and usually include the conservative class of present and former prime ministers and ministers, senior retired government officials, and military officers, in addition to tribal leaders and businessmen. The independence of the judiciary, whose judgments are pronounced in the name of the king, is guaranteed by the constitution, and its judgments are determined solely by the law. The constitution has been amended a number of times since the 1950s, mostly to give the king and the government wider authority at the expense of the two chambers of the National Assembly: the Chamber of Deputies and the Senate.

To deepen our understanding of the deficiencies of GID, their causes, and the reforms needed, we believe that the activities of the Directorate must be examined in light of the three pillars mentioned above: an independent judiciary with broad jurisdiction; a freely and legitimately elected parliament; and an executive branch accountable to parliament.

Accountability of the Executive Power

An examination of the letter and spirit of the Jordanian constitution leaves no doubt that it provides for a parliamentary system with a hereditary monarchy: a constitutional monarchy in which the king reigns but does not govern. The king's

immunity from any consequences and from questioning is a further indication that the constitution envisions a constitutional monarchy, since the constitutional monarch can do no wrong; he delegates all responsibility and accountability to the Council of Ministers, which is responsible and accountable for all executive branch activities. The king's orders, whether written or oral, do not exempt ministers from their responsibility. [9]

Jordanian reality, however, says the contrary. It is the king who forms and dismisses governments. He exercises broad authority. Governments either carry out the king's desires, or are dismissed, although, according to the constitution, they are responsible to the Chamber of Deputies. The issue of correlation between authority and accountability raises a significant question about the meaning and application of the constitution and casts a shadow over all details of the Jordanian system of government. The executive branch is constitutionally responsible for all of its activities and is subject to various kinds of accountability, including withdrawal of confidence and questioning of its president and members. However, it can also be held responsible, in certain circumstances, for acts and decisions that were not its own, which contradicts the simplest principles of democracy. There can be no doubt that this paralyzes political activity in any country, as such a distribution of the state's power contradicts the fundamental objective of a parliamentary system, namely, that powers watch each other to guarantee democratic rule and the sovereignty of the law.

The same problem exists in the relationship between GID and the government. The GID law stipulates that it is a government agency affiliated with the prime minister, receiving orders and instructions from him. [10] Again, however, reality says otherwise. GID reports firstly to the king, and it plays an influential role in the formation and performance of cabinets. It can even monitor ministers, including the prime minister himself. [11] This means that the government is responsible before the Council of Deputies for the acts of an agency that is affiliated with it only theoretically, as the constitution makes the government responsible for all activities of the executive branch and the agencies affiliated with it.

The government, hence, is not a real partner in ruling the country or in decision-making, as it is subject in one way or another to the reality created by the complicated relationships among the government, the king, and the intelligence institution.

On the other hand, GID, notwithstanding its complicated constitutional relationship with the government and the king, is not subject to any kind of liability or accountability as a branch of the executive power, despite its wide responsibilities and activities.

The Independence of the Judiciary and its Monitoring Ability

According to the constitution, the judiciary is one of three ruling authorities in Jordan, alongside the executive and legislative authorities. The judiciary is supposed to monitor the executive authority and hold it accountable. It is also supposed to oversee the legislative authority by monitoring elections and reviewing electoral challenges, to guarantee a freely and honestly elected parliament that is able to carry out its mission and constitutional duties. However, judicial oversight has been blocked in many sensitive areas where it is needed. A quick scan through the constitution and the laws

reveals many carefully drafted provisions specially enacted to shield the executive power from serious accountability.

The constitution establishes a special court, the Higher Council, to question ministers about crimes they may have committed in the performance of their duties. [12] While the constitution stipulates that five judges of the Court of Cassation, in order of seniority, shall be members of the Higher Council, the current Council is headed by the Speaker of the Chamber of Notables and has only three members of the Court of Cassation. [13] The constitution gives the Chamber of Deputies the responsibility of prosecuting [14] cases against ministers before the Higher Council. [15] Thus, the judiciary has been completely stripped of authority with respect to crimes committed by the prime minister or ministers during their terms.

The constitution also authorizes the Chamber of Deputies to determine the eligibility of its members. Challenges to the election of any deputy are raised to the Chamber itself. A deputy can be expelled by a two-thirds vote only of the total membership of the Chamber. [16] This means, simply, that the Chamber of Deputies itself, which is the subject of the challenge, decides the outcome, instead of the judiciary.

In addition, Jordanian law concerning security and military agencies provides that members of such bodies can be tried for criminal offenses only before military courts established specially for them. An example is the Intelligence Law, which stipulates that members of the intelligence services can only be tried before a special intelligence court called the Military Council. The Military Council must be headed by an officer who is senior to the person subject to the trial. Sentences issued by the Military Council cannot be appealed to any other court.

As a hypothetical example, consider if the Minister of Interior were to be charged with misconduct in his role in parliamentary elections, keeping in mind the fact that the Minister himself is the one who has overseen the elections, in accordance with the parliamentary election law. Suppose further that the GID has interfered, in cooperation with the Minister of Interior, in all phases of the election. The result is a parliament with a large number of members who have been elected through what the election law calls "election crimes." In this hypothetical example, the first step is to collect evidence and investigate the Minister of Interior to bring him before the court, in this case the Higher Council. According to the constitution we will have to entrust this mission to the very parliament in whose formation the minister has played a role. This means that the general prosecutor who investigates the defendant, collects evidence against him, and then brings him before the court is a dependent of the defendant himself. As for the GID Director, since he is responsible for the performance and activities of GID, he cannot be tried until the Military Prosecution at GID, whose officers are under his authority, investigate him and bring him before the GID Military Court, which must be chaired by an officer higher than himself. This series of steps in reality cannot be fruitful, for the law has created this vicious circle to immunize GID against accountability and to block constitutional, judicial monitoring of its activities. As for the newly born parliament, challenges before it can only be a joke, because the defendant is his own judge.

It would be more sensible for the constitution to entrust this responsibility to the judiciary, as an example of one of the most important functions of a proper judiciary.

The Ability of Parliament to Monitor the Executive

The Jordanian constitution gives the Chamber of Deputies (the legislature) the right to monitor the performance of the prime minister and ministers, who are in charge of running all state affairs, whether internal or external, and all activities of the executive power. The Chamber has the right to take a vote of confidence on the government upon its formation. It also has the right to withdraw confidence from the government as a whole or from particular ministers. Moreover, it can bring charges against ministers and bring them before the Higher Council if any of the charges were to be confirmed.

The internal regulations of the Chamber of Deputies stipulate that the body should form parliamentary committees for all sectors and major issues, which are defined by the constitution. However, the constitution excludes the security and intelligence sector and does not require a committee for them. [17] The internal regulations allows the Council's committees to summon a concerned minister or whomever else (whether a civil servant or otherwise) the committees chooses, to testify about matters at issue. [18] It is well known that the legislatures of democracies form committees for security and intelligence in order to facilitate coordination between the legislature and security and intelligence agencies and to monitor their performance, while taking into consideration the importance of privacy and confidentiality for such agencies. Such committees are usually composed of experienced members who can be relied upon to maintain the confidentiality of sensitive information that national interests require not be discussed publicly. Notwithstanding the foregoing, it is, in practice, impossible to form such a committee and to summon any senior government or security official before it, for the simple reason that deputies cannot investigate and hold accountable the very agency that brought them to power and seated them illegally in the first place. More needs be said on this last point.

Conclusion

The deficiencies of the security sector are a consequence of the overall unbalance of power. Reform can only start when there is political will on all the sides of the formula, or among the parties that are able to tip the scale toward reform. In addition, the parties which benefit from the status quo must realize that the rule of law can bring comprehensive security, not the opposite, and that political legitimacy does not depend on maintenance of security. Rather, security is a result of political legitimacy. Additionally, everybody needs to realize that security agencies must be subject to the law. This can only be achieved by empowering the institutions of the legislature and the judiciary to exercise their full constitutionally required oversight. Otherwise, the situation of the security sector will remain as it is, preserving the status quo and defending the executive power's monopoly of authority and decision-making.

In sum, security reform in Jordan can only be achieved through a serious, sustained effort to strengthen institutions and the rule of law, crowned by bold constitutional and legislative reforms. Reform can only be achieved through reform.

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Footnotes:

[1] The Law of the Commission to Combat Corruption, Law Number 26 for the year 2006, provides for the formation of an independent commission to combat corruption, which was charged with prosecuting crimes that were defined as crimes of corruption. The law permitted the transfer of some public attorneys from the judicial system and the transfer of some officers from security and military institutions. The head and members of the commission were granted the status of Judicial Police.

[2] In situations where there is a serious trend toward democracy, civil society organizations can be credible and helpful in the transitional process.

[3] Lisan al Arab Dictionary defines corruption as the opposite of uprightness.

[4] There are three security agencies in Jordan: The General Intelligence Directorate, the General Security Directorate, and the General Directorate of the Gendarmerie.

[5] The General Intelligence Directorate was established in 1964, by the General Intelligence Law, Law Number 24 for the year 1965. Hereafter, it will be referred to as the Intelligence Law.

[6] The General Intelligence Directorate says on its website (www.gid.gov.jo) that this certificate is given upon the request of some embassies and Arab and foreign entities working in Jordan, for the purpose of jobs and visa issuance, and that GID does not force anyone to obtain it. In fact, however, the authority to issue such certificates provides an opportunity to pressure people, as GID determines whether a person is politically well-behaved or not, which means that GID keeps political records on citizens.

[7] The Jordanian Constitution, Article 30.

[8] The Jordanian Constitution, Article 26.

[9] The issue of the constitutional monarchy is controversial, due to the numerous constitutional amendments in favor of the king and the government, and because of the long-standing tradition of exercise of power by the king. However, the author maintains that the constitution was written originally in favor of a constitutional monarchy. In any case, this is a subject for independent research.

[10] The Intelligence Law, Articles 2, 8, and 10

[11] Ali Muhafazah, "The Restricted Democracy- The Case of Jordan 1989-1999," The Center of Arab Unity Studies: Markaz Dirasat al Wihda al Arabiya, page 90.

[12] The Jordanian Constitution, Article 55.

[13] Article 57 of the Jordanian Constitution, before its amendment in 1958, stipulated that the Higher Council should be headed by the head of the Supreme

Ordinary Court in Jordan, and its members should contain a number of Notables. It is also worth mentioning that the Higher Council, according to Article 122 of the constitution, has the mission of interpreting the provisions of the constitution, at the request of the cabinet, or the Chamber of Deputies, or the Chamber of Notables.

[14] The constitution stipulates that the Chamber of Deputies has the right to bring charges before the Higher Council but the Higher Council, which was entrusted with the authority to interpret the provisions of the constitution, decided that the Chamber must assume the authorities of charging, investigating, and collecting evidence. (See Interpretation Decision number 1, 1992, taken by majority, dated 29/2/1992, published on page 509 of the Official Gazette, Issue 3811, dated 16/3/1992.

[15] The Jordanian Constitution, Article 56

[16] The Jordanian Constitution, Article 71

[17] The internal regulations of the Chamber of Deputies and its amendments for the year 1996, Article 35.

[18] The internal regulations of the Chamber of Deputies and its amendments for the year 1996, Article 58.