

HUMAN RIGHTS WATCH

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September 13, 2015

His Excellency Abdullah Ensour
Prime Minister
Hashemite Kingdom of Jordan

Your Excellency,

I write to share with you the main findings of a Human Rights Watch review of the proposed amendments to Jordan's 1960 penal code that are, we understand, currently under review by Jordan's Legislation and Opinion Bureau, which is under the prime minister's office.

Human Rights Watch conducted an extensive review and analysis of the proposed penal code amendments that, if adopted, would amend over 180 penal code articles. We focused both on proposed changes and on areas of omission that impact human rights in Jordan.

We respectfully request that you instruct the Legislation and Opinion Bureau to give attention to and address the problems we identify below before submitting the draft amendments for parliamentary review and adoption.

Alternatives to Prison

Some of the proposed amendments, we are pleased to note, are a clear step forward. For example, the proposed amendment to article 25 would allow judges, for the first time, to impose alternatives to imprisonment, such as community service, for crimes punishable by no more than one year in jail, and "social observation" (a term that should be defined in the law) for crimes punishable by imprisonment for between six months and three years. Rehabilitation programs "defined by the court that aim to correct the convicted person's behavior and improve it" would be a further alternative.

We welcome the draft proposal to allow judges to impose alternative sentencing options but, as currently worded, it is overly brief and unclear. It should set out in detail the specific crimes and circumstances in which judges would be able to use alternative sentencing, the forms that community service should take, and how it would be monitored.

As you will be aware, the proposed alternative sentencing options follow the release last April of the First Periodic Report on Conditions at Reform and Rehabilitation Centres, issued under the mandate of the governmental National Center for Human Rights. The Report [stated](#) “Most [prisons] in Jordan are plagued by overcrowding as a result of judicial and administrative detention decisions...” and called for the establishment of alternative sentencing measures to reduce overcrowding.

Human Rights Watch considers that persons with disabilities who face possible prosecution should be consulted throughout and able to fully participate in the legal process, and that any diversion of an individual to mental health services should be based on the principle of the free and informed consent of that individual, not only at the recommendation of family members or the court. Under international human rights standards, criminal courts should not have the authority to order the forced treatment or detention of people on mental health grounds.

Ending Impunity for Persons Accused of Rape or Sexual Assault

The proposal to amend penal code article 308 so as to end the exemption from investigation and prosecution that has applied to persons accused of rape and other sexual assault who agree to marry their victims for at least five years is welcome, insofar as it goes. However, the proposed amendment would leave the exemption in place for those – in practice, men – who are accused of consensual sex with a child over 15 years old if they marry the child; this exemption too should be struck out. Exempting adults from prosecution for consensual sex with children over 15 if they marry the child not only contravenes Jordanian laws that set 18 as the legal minimum age for marriage but opens children, particularly girls, to the risk of facing substantial pressure to marry, so limiting their ability to make a full, free, and informed choice.

In this connection, we note that Jordan is party to a number of international treaties and conventions that prohibit child marriage - in some cases explicitly and in others by interpretation - and that commit states parties to take measures to eliminate the practice. UN treaty-monitoring bodies that oversee implementation of the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child have [recommended](#) a minimum age of 18 for marriage.

We note that the proposed amendments fail to criminalize marital rape as they contain no proposal to change one of the current penal code’s sexual assault provisions, which limits criminalization to “[a]ny person who has forced sexual intercourse with a female, other than his wife...” The current penal code fails to criminalize the non-consensual violation of physical integrity; consequently, we urge you to address this deficiency and ensure that the proposed amendments are revised to include a provision that clearly defines and criminalizes marital rape.

Protections for Persons with Disabilities

The draft amendments strengthen protection of the rights of people with disabilities by increasing penalties for those who commit crimes against those with disabilities, such as negligence, abandonment, kidnap, rape, manslaughter, deprivation of liberty, financial deception, and violating a duty to rescue. We welcome these proposals. The 1960s penal

code did not identify people with disabilities as a protected category in relation to these crimes.

Limits on Free Expression and Assembly

Apart from these mostly positive aspects, there is a negative aspect to the proposed amendments in that they currently fail to address penal code provisions that the security services, prosecutors, and judges have long applied to curtail basic rights of free expression and peaceful assembly.

Article 118 of the current penal code, for example, stipulates a minimum sentence of no less than five year for anyone who commits “acts or writings the government did not authorize that expose the kingdom to the danger of hostile actions, disturb its relations with a foreign country, or expose Jordanians to acts of revenge targeting them and their assets.”

The vague and broad wording of this article allows authorities to imprison individuals merely for expressing opinions, including peaceful opinions that the government dislikes or of which it disapproves. This article prohibits not only what may be said during a time of war, but at any time, if the speech is deemed to “disturb relations with a foreign country.” Human Rights Watch has [documented](#) dozens of cases in which this article has been used by Jordanian authorities to jail [journalists](#) and citizens for peaceful criticism of foreign countries. In 2014, Jordan [added](#) the language of article 118 to the country’s anti-terrorism law, making such “crimes” also terrorism offenses.

Article 149, another current provision that falls under the terrorism section of the penal code, outlaws “undermining the political regime or inciting opposition to it,” a vague charge that has been [used](#) to jail and try dozens of peaceful political activists in Jordan’s State Security Court since 2011.

In addition, although Jordanian residents no longer require government permission to hold public gatherings, prosecutors continue to [charge](#) protesters with “unlawful gathering” following peaceful protests and marches, citing articles 164 and 165 of the penal code. The proposed amendments would leave these articles unchanged except that “blocking a public road” would be added to the list of proscribed acts and the fine for any offense would double to 50 Jordanian dinars (\$70).

The proposed amendments also fail to address other penal code articles that are vague or inconsistent with the right to free expression, including articles 122 (disparaging a foreign state, army, flag, national slogan, president, minister, or political representative), 132 (broadcasting false news outside the kingdom to harm prestige of the state), 191 (disparaging parliament, government agencies, courts, etc.), and 195 (insulting the king. We respectfully urge Your Excellency to ensure that Legislation and Opinion Bureau removes all of the above-cited penal code articles, or amends so as to prevent authorities from continuing to use them to limit basic rights or abolished.

As you know, article 15 of Jordan’s constitution guarantees freedom of expression, and the International Covenant on Civil and Political Rights (ICCPR), ratified by Jordan, protects the right to freedom of expression, including “freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form

of art, or through any other media of his choice” (article 19). The Human Rights Committee, the ICCPR treaty monitoring body, has stressed the importance under the covenant of “uninhibited expression” with respect to debate concerning public officials in the political domain and public institutions.

Labor Rights

A proposed amendment to article 183 of the penal code would also infringe on labor rights by prohibiting and criminalizing labor strikes by some categories of public and private employees. It would prohibit workers who provide “public or basic services to the public” from “abstaining from work with the goal of [creating] pressure to achieve a specific goal or inciting others to do so,” removing the right to strike of workers in sectors such as health care, electricity, water, telephone, education, the judiciary, and transportation. Those convicted under the amended article would face up to three months in jail and a financial penalty, with both sanctions doubled if the strike resulted in “strife between people,” a vague phrase that the amendment does not define.

Jordanian teachers who engaged in a two-week strike in support of higher pay demands at the beginning of the 2014-15 school year could have faced prosecution if the proposed amendment had been in force then. Jordan has been a leader on labor rights in the Arab world, and we urge Your Excellency to instruct the Legislation and Opinion Bureau to remove provisions that would limit labor strikes. While the right to strike is not absolute in international law, and thus may be subject to certain restrictions, the ILO’s Committee on Freedom of Association “has made it clear that [the right to strike] is a right which workers and their organizations (trade unions, federations and confederations) are entitled to enjoy,” that any restrictions on this right “should not be excessive,” and that the “legitimate exercise of the right to strike should not entail prejudicial penalties of any sort...”.

Torture, Corporal Punishment, and “Honor Crimes”

The proposed amendments also fail to modify penal code article 208 to bring the definition of torture into line with that contained in international standards. As the UN Special Rapporteur on torture noted in his 2007 [report to the Human Rights Council](#), “the definition in article 208, among other things, does not differentiate between private actors and public officials; it does not, or only partly, cover the infliction of mental pain or suffering; and does not impose sanctions that reflect the gravity of the crime, which is regarded as a misdemeanour.” Eight years on, the Jordanian authorities should not miss the opportunity provided by the penal code overhaul to address this criticism by bringing the definition of torture contained in Jordanian law into conformity with the internationally-accepted definition.

The amendments also fail to address the provisions that allow parental use of corporal punishment “in accordance with local customs” so long as the such punishment does not “cause harm or damage” (article 62), and do not remove provisions (articles 98, 340) that allow perpetrators of so-called “honor crimes” to receive mitigated sentences. We believe that these articles of the penal code should also be amended during this process to eliminate practices that contradict Jordan’s human rights commitments.

Human Rights Watch would welcome receiving Your Excellency's response to these points and will be pleased to assist in any appropriate way to help ensure that the process of penal code revision strengthens human rights in Jordan.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a long, horizontal, slightly wavy line.

Sarah Leah Whitson
Executive Director
Middle East and North Africa
Human Rights Watch