

# GLOBAL INFORMATION SOCIETY WATCH 2014

*Communications surveillance in the digital age*

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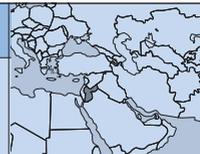


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### Introduction

Jordan is a small kingdom with around seven million people located in the turbulent Middle East. This small country has two famous features: Petra, one of the new Seven Wonders of the World, and the Dead Sea, which is the lowest sea on the planet (396 metres below sea level). Many historians believe that the Arabic calligraphy was shaped largely in Petra.

Jordan has a reputation for collecting information on every Jordanian from the day of his or her birth. The General Intelligence Department (GID) – known as the *mukhabarat* – is considered a megastore of information. Even before the so-called “defensive democratisation in Jordan”<sup>1</sup> started in the early 1990s, there was a strong belief that the “walls had ears” and that the GID collected daily data on Jordanian citizens, monitoring phone calls, emails, text messages and social media accounts. It then stores the information for years. Such surveillance is aimed at preserving “national security” in the broader sense of the phrase, or to trace particular criminal suspects – but it is also often political in nature.

While some governmental interference in communications may be necessary for preventing terrorism, *carte blanche* power may lead to the violation of users’ privacy. It is believed that security services closely monitor online content in Jordan. In a 2010 case that strengthened these suspicions, Jordanian college student Imad al-Ash was sentenced to two years in prison after security forces accused him of insulting the king in an instant message to a friend.<sup>2</sup>

### Policy and political background

Seventy-three years ago, Jordan passed a bylaw on carrier pigeons (No. 810 of 1941). Article 2 of the

bylaw – which was no doubt related to the eruption of World War II – established that, except for official bodies, it was prohibited for anyone to own carrier pigeons. Those that did were asked to hand them over at the nearest army base within ten days of the bylaw being passed.

The spirit of this bylaw is still behind many of the monitoring practices of the Jordanian government, whether the communication channel is old media like print and audiovisual or new media.

Like many countries in the region, Jordan was hesitant about exactly how to meet the challenge of new technology and whether to respond in a reactive or proactive way when it came to regulating the internet. With the increasing demand for social media, Jordan has expanded control over the internet. Despite suspicions of active monitoring, access to internet content in the kingdom remains largely unfettered, with filtering selectively applied to only a small number of sites. However, this access is tolerated by the government, rather than guaranteed by rule of law. Jordan ranked 38th out of 99 countries on the World Justice Project’s Rule of Law Index.<sup>3</sup>

### Harassment, intimidation and attacks

Jordanian journalist Alaa’ Fazzaa’ was arrested on 9 June 2011 by orders of the State Security Court (SSC), a special military court, over news he published on his electronic news site ([www.allofjo.net](http://www.allofjo.net))<sup>4</sup> sharing content from a Facebook page calling for the reinstatement of Prince Hamzah as Crown Prince. Fazzaa’ was harassed and intimidated until he was obliged to flee to Sweden in February 2012, seeking political asylum.<sup>5</sup> News websites have also been subjected to hacking attacks after posting controversial material. For instance, in February 2011, *Ammon News* had its website hacked after publishing a call for reform by tribal leaders. The hackers posted the following text on the website’s front page: “This site was hacked because you work against the security of Jordan.”<sup>6</sup> The Islamic Broth-

1 Robinson, G. E. (1998). Defensive democratization in Jordan. *International Journal of Middle East Studies*, 30(3), 387-410. [journals.cambridge.org/action/displayAbstract?fromPage=online&aid=5195724](http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=5195724)

2 [ar.ammannet.net/news/111695](http://ar.ammannet.net/news/111695)

3 World Justice Project. (2014). *Rule of Law Index 2014*. [worldjusticeproject.org/sites/default/files/files/wjp\\_rule\\_of\\_law\\_index\\_2014\\_report.pdf](http://worldjusticeproject.org/sites/default/files/files/wjp_rule_of_law_index_2014_report.pdf)

4 [khabarjo.net/jordan-news/10397.html](http://khabarjo.net/jordan-news/10397.html)

5 US Department of State. (2012). *2011 Human Rights Reports: Jordan*. [www.state.gov/j/drl/rls/hrrpt/2011/nea/186431.htm](http://www.state.gov/j/drl/rls/hrrpt/2011/nea/186431.htm)

6 [www.ammonnews.net/article.aspx?articleNO=79822](http://www.ammonnews.net/article.aspx?articleNO=79822)

TABLE 1.					
Freedom of expression indicators during the last five years					
	2010	2011	2012	2013	2014
<b>RSF press freedom ranking<sup>1</sup> (179 countries)</b>	120	128	128	134	141
<b>Freedom House media freedom ranking<sup>2</sup> (197 countries)</b>	140 Not free	141 Not free	144 Not free	145 Not free	155 Not free
<b>Freedom House internet freedom ranking<sup>3</sup> (91 countries)</b>	N/A	42	45	46	N/A
1. <a href="http://en.rsf.org/press-freedom-index-2011-2012,1043.html">en.rsf.org/press-freedom-index-2011-2012,1043.html</a>					
2. <a href="http://www.freedomhouse.org/report-types/freedom-press#.UzWLSaK9aag">www.freedomhouse.org/report-types/freedom-press#.UzWLSaK9aag</a>					
3. <a href="http://freedomhouse.org/report/freedom-net/2011/jordan#.UzW_BaK9aag">freedomhouse.org/report/freedom-net/2011/jordan#.UzW_BaK9aag</a>					

erhood website ([www.ikhwan-jor.com](http://www.ikhwan-jor.com)) has also been hacked several times.<sup>7</sup>

On 20 February 2012, in an incident reflecting an assault on free expression, an unknown assailant stabbed female blogger and university student Inas Musallam in the stomach with a knife. The assault occurred shortly after she published a blog post criticising Prince Hassan, a former crown prince and uncle to the King of Jordan, for derisive comments he made about pro-reform protesters. Local and international human rights watchdogs condemned the attack. The Public Security Directorate (PSD) confirmed the attack, but alleged Musallam had psychological problems and conflicts with other students, and insinuated that a small amount of drugs had been found in her possession. Human Rights Watch said in a statement that Jordanian authorities should focus on “finding Inas Musallam’s attacker”<sup>8</sup> – but at the time of writing, Jordanian police have not managed to bring the perpetrators to justice.

While websites usually receive “friendly calls” from officials or security persons requesting that some content be deleted, undesirable articles are forcibly deleted. It is also believed that some governmental agencies hire internet commentators to post comments favourable towards the government in an attempt to influence public opinion, glorifying the Jordanian leadership, criticising the opposition or attacking authors who criticise the government.

Moreover, citizens have reportedly been questioned and arrested for web content they have authored. Physical harassment and cyber attacks against bloggers and staff of online news websites

happen frequently. Such attacks have a chilling effect on internet users.

### Striking a balance with online freedoms

All the above-mentioned stories have negatively affected Jordan’s ranking in different freedom of expression indices. Jordan’s scores in the last five years in reports published by Reporters Without Borders (RSF) and Freedom House are illustrated in Table 1.

In October 2011, Jordan adopted amendments to its constitution to improve general freedoms in response to the Arab Spring demonstrations. The new amendments included the creation of a constitutional court, and more guarantees of civil rights and liberties. The amendments touched directly or indirectly on internet freedom. Specifically, terms such as “mass media” and “other means of communication”, which likely encompass online media, were added to provisions that protect freedom of expression and concomitantly allow for its limitation during states of emergency (Article 15).

How to strike the balance between competing rights: the right to privacy and protecting others’ rights and national security?

The Jordanian Constitution provides such balance in the following articles:

Article 7:

1. Personal freedom shall be guaranteed.
2. Every infringement on rights and public freedoms or the inviolability of the private life of Jordanians is a crime punishable by law.

Article 18: All postal and telegraphic correspondence, telephonic communications, and the other communications means shall be regarded as secret and shall not be subject to censorship, viewing, suspension or confiscation except by a judicial order in accordance with the provisions of the law.

7 [www.ammonnews.net/article.aspx?articleno=131313](http://www.ammonnews.net/article.aspx?articleno=131313)

8 Human Rights Watch. (2012, February 26). Jordan: Advocate of a republic jailed. *Human Rights Watch*. [www.hrw.org/news/2012/02/26/jordan-advocate-republic-jailed](http://www.hrw.org/news/2012/02/26/jordan-advocate-republic-jailed)

Article 128: The laws issued in accordance with this Constitution for the regulation of rights and freedoms may not influence the essence of such rights or affect their fundamentals.

The above-mentioned articles meet the first three principles of the International Principles on the Application of Human Rights to Communications Surveillance (IPAHRCS): legality, legitimacy and necessity.

Political news websites are flourishing in Jordan because the “old media” are considered less free in reporting corruption and wrongdoing by the government. However, the Press and Publications Law No. 8 of 1998 was amended in September 2012, requiring news websites to obtain licences in order to continue to operate in the country, which severely restricts free speech and expression online.

Whenever there is government there are laws to restrict dissent; but the law does not give the government a trump card to curb freedom of expression until it has proof of an overriding legitimate aim. The law requires all news websites to be legally registered and the editors-in-chief of the sites must be members of the Jordan Press Association. The result is a form of cloning old laws to control new media or a “recycling [of] old laws”.<sup>9</sup>

Online editors and site owners are liable for comments posted by other users on their platforms. Websites must keep a record of all comments for six months after initial publication and refrain from publishing any “untruthful” or “irrelevant” comments.

The amendments enable the director of the Press and Publications Department (PPD) to block any website for failing to obtain a licence. Historically, the PPD constituted the principal tool used by successive Jordanian governments to control the old media and control the content of new media as well. The PPD instructed internet service providers to block over 200 websites last year. The blocked websites were mostly critical of the government. Conversely, websites that are friendly to the government are tolerated.

Many national and international organisations condemned the decision.<sup>10</sup> Under international best

practices, states should refrain from adopting separate rules limiting internet content.<sup>11</sup>

In May 2011 the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, submitted a report to the UN Human Rights Council.<sup>12</sup> The Special Rapporteur considers cutting off users from internet access, regardless of the justification provided, including on the grounds of violating intellectual property rights law, to be disproportionate and thus a violation of Article 19, paragraph 3, of the International Covenant on Civil and Political Rights (ICCPR). The ICCPR is an international binding treaty for almost 167 state parties, including Jordan.

*Jafranews* publisher Nidhal al-Faraneh and editor Amjad Muala were arrested for more than three months in 2013, accused of harming relations with a foreign country for publishing the link to a YouTube video which showed a man – purportedly a member of the Qatari royal family – lounging, dancing and showering with several women.<sup>13</sup>

Many Jordanians do not have home internet. They depend on internet cafés to communicate with each other. The Jordanian government has passed regulations to monitor internet cafés. The Regulations Governing Internet Cafés<sup>14</sup> stipulate that internet café owners must be “Jordanians of good repute”, who have never been charged with immoral crimes or fraud. Internet café owners are obliged to monitor users by CCTV, register the names and identity numbers of users, allocate an IP address to each computer, and keep a monthly record of the websites browsed by visitors.

Article 29 g of Telecommunications Law No. 13 of 1995 and its amendments states that the licensees have a “commitment to offer the necessary facilities to the competent parties to implement the judicial and administrative orders related to tracing the telecommunications specified in those orders.”

Such regulations and practices clearly violate IPAHRCS, especially principle 13.

9 [www.jordanzad.com/print.php?id=93318](http://www.jordanzad.com/print.php?id=93318)

10 Jordan Open Source Association. (2013). The Jordan Open Source Association deploras censorship of news websites. [jordanopensource.org/article/jordan-open-source-organisation-deploras-censorship-news-websites](http://jordanopensource.org/article/jordan-open-source-organisation-deploras-censorship-news-websites); Greenslade, R. (2013, June 4). Jordan blocks 200 news websites. *The Guardian*. [www.theguardian.com/media/greenslade/2013/jun/04/freedom-of-speech-jordan](http://www.theguardian.com/media/greenslade/2013/jun/04/freedom-of-speech-jordan)

11 Joint London Declaration, 2001, UN Special Rapporteur, OAS, OSCE. [www.osce.org/fom/99558?download=true](http://www.osce.org/fom/99558?download=true)

12 Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Human Rights Council, Seventeenth session Agenda item 3, United Nations General Assembly, 16 May 2011. [www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)

13 [www.jfranews.net](http://www.jfranews.net)

14 Published in Official Gazette No. 5034 on 1 June 2010. [www.pm.gov.jo/arabic/index.php?page\\_type=gov\\_paper&part=3&id=5034](http://www.pm.gov.jo/arabic/index.php?page_type=gov_paper&part=3&id=5034)

## Conclusions

The media are often described as the public “watchdog” or even as the “fourth estate”. The power of the media to influence public opinion makes them an attractive target for illegitimate control. Governments often seek to transform the media from watchdog to lapdog. New media are part of the information society and offer a huge opportunity to consolidate democracy and to promote development. The government should not consider new media a challenge but rather an opportunity.

Despite *de jure* and Jordanian constitutional guarantees of freedom of expression and protecting citizens’ privacy, several *de facto* laws remain on the books. It seems that what the constitution gives with one hand, the government takes with the other, contrary to the positive obligations placed on the state to guarantee freedom of opinion and of the media.

Jordan reacted to the potential of new technology, especially seen during the Arab Spring, by using technology to trace the online activities of citizens and control the flow of information. Collecting data is not limited to those suspected of criminal wrongdoing, but extends to all citizens.

The government also uses laws to punish activists when they criticise it or top officials. Physical harassment and cyber attacks against bloggers and staff of online news websites hamper activists from expressing their views freely. Excessive sanctions exert a chilling effect on freedom of expression, which violates the principle of proportionality.

## Action steps

In emerging democracies, introducing good laws is the first step to promote independent, pluralistic and professional media as a fundamental infrastructure of good governance. It is time to take into consideration the following steps in Jordan:

- Jordan should respect its international obligations, especially Article 19 of the ICCPR and its interpretation.
- Government interference may be legitimate in exceptional cases if a “pressing social need” overrides others’ privacy to protect national security or prevent a crime. The government has to prove the legality of interference before a designated court to get permission to collect private information.
- Jordanian media laws need major surgery and comprehensive review; criminal law rules affecting freedom of expression, including laws protecting national security, should be clearly defined.
- The Regulations Governing Internet Cafés need to be abolished, as they broadly limit access to information without pressing social need.
- The Cyber Crimes Law must be amended to meet international standards in striking a fair balance between respecting freedom of information and penalties for abuse.
- Jordan should withdraw the need to license websites with the government, as it is unreasonable and restricts an individual’s access to the internet.
- Jordan should pass a data protection act to fill the existing gap in protecting citizens’ privacy.