

A Study entitled

The Relationship between Freedom of Expression and Security in Jordan

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Introduction

Freedom of expression is regarded as one of the fundamental freedoms of man, recognised internationally and nationally, and one cannot speak of a society in which human rights flourish without passing through these freedoms, which are in truth the real gateway to the exercise of many public intellectual and cultural freedoms and rights and others, such as the right of criticism, freedom of the press, printing and publication, and freedom of scientific research and creativity.

All States seek to guarantee a minimum of rights to their citizens and to the individuals residing on their territory generally. However, the positions of States vary as regards guaranteeing and safeguarding human rights: some have travelled a long way in this respect and have become an example to be followed in this field, while others remain hesitant in guaranteeing and safeguarding the fundamental rights of citizens. It is to be observed that this matter has ceased to be an internal affair; rather, it has become one of the most important criteria for classifying States into democratic States and authoritarian States, quite apart from its being subject to internal and international monitoring to verify the extent to which States guarantee human rights. Indeed, it may be a pretext for interfering in the internal affairs of States under the banner of protecting human rights, just as it may be linked to the provision of assistance to certain States to strengthen their human rights system. Hence the concern of all States without exception to defend their position and the clarity of their record in the field of human rights before the international system.

It is to be hoped that this contest - between widening the space of freedom of expression at the expense of security, and narrowing the space of freedom of expression for the benefit of security - will result in achieving national security within the framework of the rule of law and respect for freedom of expression in particular and human rights in general.

The Importance of the Study:

The importance of this study emerges through its raising of an issue that has come to trouble many States on the one hand, and the organisations concerned with human rights and their defenders on the other. The ceiling of freedom of expression has begun to retreat and decline in many States under numerous pretexts and arguments, most of them connected with the security of the State and society, to the point where national security has become one of the most important determinants of freedom of expression, and in its name mouths have been gagged and freedoms confiscated. Jordan has not been isolated from this, for the conflict between freedom of expression and the requirements of security is still at its height and its arena has moved from practices to legislation: the authority seeks to codify its practices that limit freedom of expression, while the organisations and bodies concerned with human rights - including freedom of expression - and the activists in this field seek to confront this in exaltation of freedom of expression of opinion, and in embodiment of the principle of "preferring freedom".

The Problem of the Study:

The problem of this study consists in achieving a balance between two human rights which may at first glance appear contradictory, namely: the right to freedom of expression and the right to security. Unfettering freedom of expression may lead to the forfeiture of the right to security; conversely, excessive strictness in preserving security may lead to the forfeiture of freedom of expression. The matter appears as though one of them must necessarily be sacrificed for the benefit of the other; yet that is not possible, for the two must necessarily be brought together - that is, freedom of expression without prejudice to security. This precise balance between the two rights, however, requires precision in legislative drafting and caution in practical application, under strict oversight by the judicial authority. This is what this study seeks to answer and to set out how it may be achieved.

The Objectives of the Study:

This study aims at the following:

1. Defining the concept of freedom of expression in national legislation and in the international standards.
2. Ascertaining the concept of security as a right of citizens and a traditional function of the State.
3. Setting out the pillars and dimensions of national security.
4. Determining the nature of the relationship between freedom of expression and security from the perspective of the Jordanian case.
5. Setting out how a balance may be achieved between freedom of expression and the right to security.
6. Setting out the role of electronic means in strengthening freedom of expression.
7. Setting out the role of electronic means in threatening community security.
8. Determining the position of the Jordanian legislator on restricting freedom of expression in order to preserve security.

Previous Studies:

Previous studies at the national level have focused upon studying each of the two rights separately, and no study has been devoted to the relationship between freedom of expression and security and the effect of each of them upon the other. There are, however, studies - some at the national or Arab level - that have touched upon this, albeit partially, such as:

- ❖ The study of Mamdouh Suleiman Al-Amri, "The Relationship between the Jordanian Press and National Security", master's thesis submitted to the Department of Media / Middle East University, Jordan, 2008. The study focused upon the relationship of the Jordanian press with national security and did not address freedom of expression generally, unlike what this study seeks to do.
- ❖ The study of Dr Ridha Hamis, New Media between Freedom of Expression and the Protection of National Security (a legal study), published on the electronic site: <http://repository.nauss.edu.sa/bitstream/handle/123456789/6002284> . The study focused upon the new media represented by electronic means and their connection with national

security in Algeria and in a number of Arab States, whereas our study focuses upon freedom of expression by its various means and its relationship with security in the light of the Jordanian case, while addressing the international standards whenever the matter so requires.

The Methodology of the Study:

This study adopts the descriptive-analytical methodology, resting upon collating the legal provisions connected with the relationship between freedom of expression and security and thereafter analysing them in the light of practical application - all of this in the light of the international standards, such as the International Covenant on Civil and Political Rights, the Siracusa Principles, the Johannesburg Principles on National Security and Freedom of Expression, and the Camden Principles on hate speech.

The Plan of the Study:

Chapter One: The Nature of Freedom of Expression and National Security

Section One: The Meaning of Freedom of Expression and National Security

Section Two: The Importance of Freedom of Expression and its Connection with National Security

Section Three: Freedom of Expression in National Legislation in the Light of the International Instruments

Chapter Two: National Security as a Restriction upon Freedom of Expression in Jordanian Law Compared with the International Standards

Section One: The Restrictions Imposed upon Freedom of Expression in the International Covenant on Civil and Political Rights.

Section Two: Security as a Restriction upon Freedom of Expression in Jordanian Legislation

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Chapter One

The Nature of Freedom of Expression and National Security

Freedom of expression is closely connected with national security, given that each of them affects the other, and the protection of one of them may require the forfeiture of the other or at least its restriction. We shall therefore address in this Chapter the nature of freedom of expression and national security by setting out the meaning of each of them in a first Section, while we discuss in a second Section the importance of freedom of expression and its connection with national security.

Section One: The Meaning of Freedom of Expression and National Security

Determining the meaning of freedom of expression and national security requires us to set out the concept of each of them, which is what we shall do in this Section through two consecutive Sub-sections, the first of which we devote to the concept of freedom of expression, while we discuss in the second the concept of national security.

Sub-section One: The Concept of Freedom of Expression

Man by his nature yearns for freedom of speech and utterance, for through them he nourishes his instinct and through them he is able to bring forth the depths of his thought in order to address others and to communicate with them by way of expression, whether by word, by writing, by signs or by any other means. Societies search for freedom of expression and for attaining an open society not fettered by regimes and authorities; yet the authority in all countries interposes itself in the scrutiny of, and the censorship over, the various means of expression in all their images and forms, on account of the effects they produce - for the instinct of freedom of expression is met by the instinct of censorship. Governments therefore resort to imposing penalties upon expression that departs from the law, as where it prejudices national security, the social order or public morals. Man regards freedom as absolute and unrestricted, and regards freedom as one of the complements of human dignity; he therefore strives to obtain his dignity by freeing himself from the restrictions imposed upon freedom of expression, whatever the motives.

Freedom of expression is defined as: the freedom to express ideas and opinions by way of speech, writing or artistic works without governmental censorship or restrictions¹. Freedom of opinion and expression is also defined as: the ability of the individual to express his opinions and ideas in complete freedom and by the means he desires (direct communication with people, writing, postal and telegraphic messages, radio, the theatre, cinematic or television films, and so forth)². It has likewise been defined as "the freedom of a person to say what he thinks without being pursued; and the freedom includes the freedom to seek out news, to receive it and to broadcast it by any means whatsoever, without being bound by geographical borders, and in any form, whether written, oral or printed, and by any means the person chooses"³. It has also been defined as "the ability of a person to adopt the opinions and ideas he desires without any pressure or compulsion, in addition to the ability to express these

opinions using all means and methods"⁴. One school of thought has held that it is "the guarantee that every person shall enjoy the right to express his opinion and to receive information without the interference of others"⁵. It has also been said that it is the ability of man to adopt the opinions he wishes without compulsion, and the ability to express them using various means, subject to the necessity of observing two conditions for the exercise of this freedom, namely: the absence of restrictions upon the desired activity, and the absence of a threat that cannot be resisted; and that this freedom includes the right to obtain information and to publish it⁶.

Freedom of opinion differs from freedom of expression. Freedom of opinion is an intellectual process undertaken by the mind, and it depends upon several successive factors beginning with premises, then hypotheses, then the drawing of conclusions; or the mind may connect a number of objective or non-objective events in order to form a view, or an attempt - whether correct or mistaken - to interpret these phenomena that occur successively. Opinion has two pillars, namely: the sender and the recipient, and it presupposes the existence of a purpose or an object in expressing the opinion. That is to say, the individual may embrace whatever ideas, opinions or doctrines he wishes; and whether this belief relates to political, economic, social or religious convictions, he may believe whatever he pleases to believe, without restriction or condition. This flows from the reality of this freedom, for it is an absolute freedom, since opinion is no more than a matter between man and himself - it is an internal matter latent within the human soul. Accordingly, freedom of opinion does not require legislation to guarantee its protection, just as there is no way of exercising censorship over freedom of opinion so long as it remains dormant within the conscience of its holder; for the law does not begin to regulate and to enable except in the case of the expression of the opinion and its emergence into the external sphere⁷.

As for freedom of expression, it means bringing the opinion out to people through the various means of expression: it may be in writing, or in art, or through body language, or by any other means devised by the holder of the opinion and expressing its substance⁸. Another writer has defined it as "the faculty or ability of a person to disclose his opinions, leaving to him the choice of the means or method by which he wishes to make this disclosure, whether by word, by act, by image, by sign or otherwise; and it is limited by no restriction save by virtue of law, provided that this freedom includes the right to seek information, to receive it and to publish it"⁹. For its part, the Egyptian Supreme Constitutional Court defined it as "enabling the presentation of opinions in all their diversity, and their receipt and dissemination by all means"¹⁰. One school of thought considers that freedom of opinion is absolute, so that man may embrace such opinions and ideas as he is personally persuaded of; whereas freedom of expression is used to express these opinions, and it is subject to legal restrictions given that it may be abused¹¹.

The international instruments have guaranteed freedom of opinion and expression. Article (19) of the Universal Declaration of Human Rights provides that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Sub-section Two: The Concept of National Security

Security means everything by which man is reassured as to himself and his property¹², and the opposite of security is fear. Of this is the saying of the Almighty: "And He will surely substitute for them, after their fear, security"¹³; and likewise His saying: "Who has fed them against hunger and made them safe from fear"¹⁴. Security generally is achieved if man is reassured as to his person, his property and his honour against the danger of assault, whether its source is nature - such as floods, earthquakes, volcanoes, fires and the collapse of buildings, tunnels and bridges - or its source is man, such as the depredations of criminals, the folly of the insane, violent demonstrations, and road and vehicle accidents, and so forth; or whether it is attributable to predatory or unrestrained animals and the disturbances they cause, such as stray dogs and snakes.

The need for security is a fundamental need for the continuation and permanence of life and for the cultivation of the earth over which God Almighty made the sons of Adam His successors. The absence of security leads to anxiety and fear and prevents stability and construction; it prompts migration and displacement and the cessation of the means of livelihood, which leads to the collapse of societies and of the elements of their existence. It has been said: "There are two great blessings whose value man does not appreciate until he loses them: health in bodies and security in homelands."

Hence the administrative policing bodies, for example, must take the measures and procedures aimed at achieving security, facilitating the movement of traffic on roads, streets, public places and squares, repairing and demolishing buildings liable to collapse and dangerous buildings, in addition to preserving security in cases of public gatherings such as demonstrations, marches, festivals, public occasions, public markets and public celebrations¹⁵.

Within the scope of our study of the definition of security, we must first clarify the definition of national security, then determine the pillars of national security and their connection with freedom of expression, and finally the dimensions of national security from a human rights perspective - and this in the following Branches:

Branch One: The Definition of National Security

National security is viewed as the provision of protection to citizens and to the individuals present on the territory of the State. It is also defined as the use of security means to preserve the proper course of daily life, far from the occurrence of any crises that lead to causing harm to the human and material components of society. The concept of national security rests upon two fundamental levels, namely: the first level, known as (the traditional level), which depends upon the role of the State in applying security; and the second level, which is connected with the effective role of local institutions that contribute to strengthening the security presence, such as companies that provide trained individuals to furnish security protection to important personages, or major commercial establishments.

National security and state security share the same concept, for numerous views and theories have emerged concerning the concept of state or national security and the bases upon which it rests, and a group of terms has appeared, such as strategic security founded upon the theories

of deterrence, balance, potential dangers, pre-emptive action and the containment of crises. The definition of security according to this concept has become, as set out by the Encyclopaedia Britannica, "the protection of the nation from the danger of subjugation at the hands of a foreign power". Some researchers, by contrast, have considered that security means "preserving the right of the nation to life". One doctrinal school considers that the comprehensive concept of security is "the capacity by which the State is able to unleash the sources of its internal and external, economic and military power in the various fields in order to confront the sources of danger at home and abroad, and in both states of peace and war, with the continued secured unleashing of those powers in the present and the future"¹⁶.

National security is thus the capacity of the State to repel any aggression to which it may be exposed on the part of another State, whether by using military defence or any method that contributes to preserving the application of the external and internal security of the State, without the existence of any control or authority of another State or party over it. National security is thus the totality of the plans, means, preparations and arrangements adopted by a State in order to secure the national objectives, interests and values of the State, to preserve its entity, to guarantee its stability and sovereignty against any internal or external threat, and to safeguard its citizens and their safety¹⁷.

The concept of human security, by contrast, focuses upon the individual human being and not upon the State. This concept considers that the fundamental objective of any policy must be to achieve the security of the individual alongside the security of the State; for the State may be secure while some of its citizens lack security for several reasons - owing to imbalance in the distribution of wealth, or the emergence of ethnicity in societies of multiple races, or owing to natural and climatic conditions that constitute a permanent challenge for them, such as earthquakes, volcanoes and floods, or owing to conflicts and secessionist disputes - which requires the intervention of regional or international bodies in order to provide security. Humanitarian organisations become active in providing care and relief when the State is unable to provide such requirements. In the report issued by the United Nations Development Programme in 1999 entitled *Globalization With a Human Face*, seven fundamental challenges threatening human security in the age of globalisation were identified, namely: financial instability; the absence of job security, represented by the instability of income; the absence of health security, particularly with the spread of lethal epidemics; the absence of cultural security through the lack of parity between the dissemination of cultures and the dominance of the prevailing culture; the absence of personal security through the spread of organised crime, narcotics and innovative means of fraud, deception and forgery; the absence of environmental security through the spread of pollution, global warming and the alteration of the features of the natural structure; in addition to the absence of political and community security through the ease of the movement of weapons and the means of destruction, violence, extremism and mass killing amounting to genocide¹⁸.

The concept of human security rests fundamentally upon safeguarding human dignity and the dignity of man by meeting his moral needs alongside his material needs.

Branch Two: The Pillars of Jordanian National Security and Freedom of Expression

Jordanian national security rests upon internal and external pillars:

First: The internal pillars of Jordanian national security:

Jordan, as a democratic State, seeks to balance between guaranteeing freedom of expression and ensuring national security, given that each of them strengthens the other and increases the fortitude and solidity of the State in confronting the dangers surrounding it. Jordan traversed the stage of the Arab Spring by approving a package of political reforms and constitutional amendments, which spared the Jordanian State the fate of neighbouring States that lost their national security and from which freedom of expression of opinion disappeared. Perhaps the most prominent features of this achievement, which must be preserved and built upon so that they become a permanent approach and not transitional measures, are:

- ❖ The approval of constitutional amendments that strengthen the democratic approach and encourage popular participation in decision-making, which included the establishment of a Constitutional Court that undertakes oversight of the constitutionality of laws and ensures their respect for the Constitution, and the establishment of an Independent Election Commission that supervises the elections held in the Kingdom in isolation from the interference and oversight of the executive authority represented by the Ministry of the Interior, as was previously the case.
- ❖ The issuance of a number of pieces of legislation that strengthen and encourage popular participation in public affairs, such as: the Law on the Election of the House of Representatives of 2016, the Decentralisation Law of 2015, the Municipalities Law of 2015 and the Political Parties Law of 2015.

Second: The external pillars of Jordanian national security:

In view of Jordan's geographical location in an inflamed environment, it is incumbent upon it to follow a foreign policy that serves its national interest and is reflected positively upon its national security within a focus of rolling regional conflicts. Jordan must therefore pursue a foreign policy that approaches neutrality with the various parties to the conflict in the region, retain its historic role as a factor of stability for the region, and be keen to develop balanced relations with the States of the world in order to support the Jordanian political position and to sustain Jordanian development - thereby preserving its national security through international support for its position and backing for it.

Branch Three: The Dimensions of National Security from a Human Rights Perspective

First / The political dimension, which consists in preserving the political entity of the State, protecting the higher interests, respecting the national symbols and the constants upon which the majority of the members of society are agreed, refraining from resorting to seeking the patronage of foreign parties or acting in accordance with a non-national agenda whatever the justifications and pretexts, and exercising freedom of expression in accordance with the laws and regulations that guarantee it, and by peaceful means that take into account the security and stability of the homeland.

Second / The economic dimension, which aims at providing the means of a decent life, meeting basic needs, raising the level of services, working to improve living conditions,

and creating job opportunities for those of working age, while taking into consideration the development of capacities and skills through programmes of education, qualification and training, and opening the field for the practice of self-employment within the framework of legislation capable of keeping pace with the spirit of the age and the requirements of contemporary life.

Third / The social dimension, which aims at providing security to citizens to the extent that increases the development of the feeling of belonging and loyalty, working to increase the capacity of the institutions of national guidance to instil morale, increasing the national sense of the homeland's achievements and respect for its heritage, which represents its identity and its civilisational belonging, making use of the national occasions that contribute to deepening belonging, and working to encourage the establishment of civil society institutions so that they may perform their role in discovering talents, directing energies, strengthening the idea of voluntary work and promoting human rights and freedom of expression, so that these institutions may be able to discharge their duty as a companion, supporter and auxiliary to the official effort in the various fields.

Fourth / The moral or doctrinal dimension, through respect for religious belief in its capacity as the fundamental element in the unity of the nation, which professes Islam and whose sentiments are united towards it, while having regard to the freedom of minorities in their belief. This dimension also requires respect for thought and creativity, the preservation of commendable customs and inherited traditions, in addition to the values that have settled in the collective conscience and which people have come to believe in.

Fifth / The environmental dimension, which aims at protecting the environment from the dangers that threaten it, such as pollution - particularly in residential communities close to factories from which gases are emitted that contribute to air pollution and harm the other elements of the environment such as plants and water - in addition to combating marine pollution, which harms aquatic life and fish resources that constitute a source of national income. This is what is provided for in the legislation relating to the protection of the environment and in the procedures followed to limit the sources of pollution.

Section Two: The Importance of Freedom of Expression and its Connection with National Security

We discuss in this Section the importance of freedom of expression and its connection with national security through two Sub-sections: we address in the first of them the importance of freedom of expression, while we discuss in the second the reciprocal effect between freedom of expression and national security.

Sub-section One: The Importance of Freedom of Expression

The importance of freedom of expression at the individual level lies in the fact that it is regarded as a principal matter for the life, dignity and development of every person, for it enables every person to understand what surrounds him and the wider world through the free exchange of ideas and information with others. It thereby makes him more capable of planning his life and his activities; moreover, a person's ability to express the ideas that pass

through his mind affords him a wide space of personal and social security. At the social and national level, freedom of expression ensures that any new policies and legislation which the State intends to enact are examined with precision, through the participation of citizens and the taking of their ideas and observations. Freedom of expression assists in respect for the law and its implementation, since it enjoys in advance the support and endorsement of the people. Freedom of expression likewise supports the concept of good governance by enabling citizens to raise their concerns with the authorities, and thereby improving the quality of government by entrusting the task of administering the State to the most competent and upright persons. Freedom of expression contributes to revealing the points of strength and weakness among the supporters and opponents of the authority, and this enables voters to take their informed decisions as to who is the person most qualified to manage public affairs, and to vote accordingly. Freedom of expression and freedom of access to information also affect the implementation of other human rights, and enable journalists and activists to draw attention to human rights issues and violations and to persuade the Government to take measures in respect of them, in addition to other benefits of freedom of expression of opinion¹⁹.

It may be said that freedom of expression, as regards individuals, is a fundamental matter for the development of the independence and dignity of persons, through the free exchange of ideas, information and opinions with others, which makes them capable of planning their lives and their work, and which gives the individual a feeling of security; and States respect them if they are able to express what passes through their thoughts. As for States, freedom of expression is a necessity for democratic governance and for economic and social progress, and it contributes considerably to the quality of government in several ways, among them, by way of example²⁰:

1. It assists in ensuring that the tasks of administering the State are entrusted to persons possessed of a sufficient measure of competence and integrity. This is achieved by way of democracy, which enables voters to choose the most competent; moreover, the oversight bodies assist in uncovering corruption and areas of dysfunction.
2. Such policies enable citizens to raise all their concerns with the authorities, by permitting them to express their ideas without impediment or fear of punishment; and by informing the Government of them, it is able to find the remedy.
3. The citizen's expression of his opinion serves as a path through which a citizen who holds useful views on a particular issue may put them to the Government, and the Government chooses from among those views what is suited to the issue raised. This discussion assists in the people's respect for the decisions taken by the Government and their compliance with the laws it issues.
4. Improving governmental policies in all fields, including human rights, and persuading the Government to take measures against violations.

Sub-section Two: The Reciprocal Effect between Freedom of Expression and National Security

National security is a vital necessity and perhaps the supreme objective, not only for the State and the political system but for society and the citizen at one and the same time. Hence the provision in international humanitarian law on the necessity of respecting it and of treating a threat to it as one of the justifications for restricting particular rights, and in particular the most prominent of these rights, namely the right to freedom of expression and likewise the right to peaceful assembly²¹. However, the concept of state or national security has been misused over the years in order to impose broad and unjustified restrictions upon freedom of expression, and this matter has come to constitute a major problem in the aftermath of the September 2001 attacks and the renewed efforts exerted to combat terrorism²².

Social security is regarded as the fundamental pillar for building modern societies and a principal factor in protecting their achievements, and the path to their advancement and progress, because it provides a safe environment for work and construction, instils reassurance in souls, constitutes an incentive for creativity and for advancing towards the horizons of the future. Security is achieved through concord and faith in the national constants that unify the social and cultural fabric that highlights the national identity and defines its features, whereby it becomes easy to direct energies towards reaching the objectives and goals that fall within the framework of the values and high ideals, in order to strengthen the national spirit and to achieve justice, equality, equality of opportunity and the complementarity of roles. It must be emphasised what is stated in the preamble to the Universal Declaration of Human Rights, namely that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ... whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind ... whereas it is essential that human rights should be protected by the rule of law so that man is not compelled to have recourse, as a last resort, to rebellion against tyranny and oppression". The Member States of the United Nations have therefore pledged to ensure the continued observance of and respect for human rights and fundamental freedoms, and "to take national and international measures to secure the universal and effective recognition and observance of these rights"²³.

It is worth noting that the establishment of security contributes to the social cohesion that contributes to laying down the rules of equality in rights and duties, regardless of religion, race and sect, while preserving the cultural particularities that embody the principle of diversity within the framework of unity - and in this there is a safeguard for freedom and respect for the right of man to belief and worship in a manner that does not affect the rights of others in this context.

Just as the establishment of security creates an atmosphere of democracy and strengthens human rights at the level of practice and thought, freedom of expression is a necessity for the establishment of national security and a factor of stability for society; for the suppression of freedoms, and in particular freedom of expression, will lead to congestion among the general body of the people, which may drive them to rebellion, to departing from the law and to undermining national security. A person who finds no lawful and public means through which to express his opinion will resort to unlawful and secret means, which will at some moment lead to an explosion whose consequences it is difficult to avert. The Arab Spring, which

recently swept through many Arab States, was nothing but a consequence of the absence of freedom of expression and its lawful means, and of the dominance of the instruments of repression and the policy of gagging mouths over the public scene, in the light of a reality rejected by the people which it was not possible to reject by lawful means - a matter which drove the people to devise means of expressing opinion more violent than those which it would have been possible to follow had the approach been democratic and respectful of human rights and of man's freedom of expression.

Perhaps the devising of new means of expression in harmony with the electronic language of the age has made their effect upon national security more dangerous if they are misused. It is fitting here that we address the most prominent electronic means of expression, which have become a double-edged weapon: on the one hand they have strengthened freedom of expression, facilitated it, made it cross-border and defiant of restrictions, soaring in electronic space; but on the other hand they may constitute a threat to national security in its comprehensive sense, through the encroachment upon the rights and freedoms of others, and in particular the right to the inviolability of private life, the infringement of which constitutes a grave threat to social security. Expression of opinion in the spaces of the World Wide Web and on electronic sites is no longer of the same simple character in which it was initially understood by the amateurs among the pioneers of the internet; rather, it has become one of the most dangerous issues, soaring beyond the walls of the law, sheltered by the development which technology extends to it on the one hand, and by modest national laws on the other, in addition to the absence of the element of keeping pace in many countries and ignorance of the reality of electronic publication offences, and in particular journalistic ones. Voices have therefore recently been raised sounding the alarm as to what have come to be known as electronic publication sites and social media sites, which cling to the exercise of freedom of the media and the right of expression of opinion guaranteed by the constitutions; yet these sites, by the material they publish, may enter the arena of what is legally prohibited and encroach upon the freedoms and privacies of others - indeed, they may commit one of the offences that require publicity, for example.

Today the world is entering a new era of great change by reason of the production of vast and rich quantities of information and knowledge capable of growth and increase in an unprecedented manner, and the future has become contingent upon our ability to store, retrieve and transmit information with high efficiency and the requisite effectiveness.

The new media represent an ideal field for freedom of expression and for the dissemination of ideas and opinions, since the internet permits users to express their opinions and to put forward their shared ideas. This global platform provides an additional means of expression, better than the distribution and posting of leaflets and printed matter. The internet has likewise made every connected user or subscriber able to access any electronic site in order to give his opinion and to express his ideas as he wishes. It goes without saying that the internet is the most powerful and most widely used means of expressing opinion and of the exercise by individuals of their rights and freedoms, in addition to its being the most free, widespread and interactive media window²⁴. It has therefore become possible for man to broadcast his ideas, feelings and interests with complete ease and facility and to share them with others through

images or video clips. It may be said that the margin of freedom of expression of opinion has expanded under the technological revolution and has surpassed description by comparison with traditional means. However, the restrictions upon social networks and electronic communication tools are a clear threat to the fundamental right of users to access the internet, particularly since the United Nations Human Rights Council had ratified a historic resolution in July 2016 for the promotion and protection of human rights on the internet, treating this as one of the human rights. The resolution called upon States and other bodies to prevent the deliberate jamming and shutdown of internet services²⁵.

Perhaps the most important electronic means through which a person may express his opinion are the following:

First: Electronic publication sites:

The electronic site is regarded as the address of the person or entity in the virtual world on the World Wide Web. It consists of pages designed in a particular manner by specialised bodies, containing data and information belonging to that person or entity and subject to his control. This site may be reached directly by typing the address of the site (Domain name) in the place designated for that purpose on the internet page (Browsing Location); and in the event that the address of the site is not known, the name of the site may be entered by way of search engines such as Google, for example. These sites have come to compete in advancing in the ranking on the network in order to demonstrate the breadth of their spread and their reach to those browsing the network. The Google search engine provides a tool called (Google Analytics) which may be subscribed to free of charge and which furnishes the owner of the site with all the readings and statistics concerning his site, including numerous indicators such as the number of visitors, an analysis of the most important pages of the site, the quality of the visitors, the sites linked to the site, the most important engines used to enter the site, the geographical distribution of the site's visitors, and others²⁶.

The electronic site is defined as a set of subjects and files existing on a web server. It is also a set of electronic spaces purchased from companies specialised in that field, and it is regarded as a means owned by the party that undertakes to finance it, and thereby becomes a means of serving the interests of that party which undertakes its supervision²⁷. The Jordanian legislator defined the electronic site in the Electronic Crimes Law²⁸ as "a space for making information available on the information network through a specified address".

Electronic publication sites do not depart from what has been mentioned above concerning electronic sites. Electronic newspapers have emerged clearly on the internet and have spread rapidly in a manner suited to the speed on this network, benefiting from the capabilities afforded by the internet, such as the continuous updating of news at the time of its occurrence, the use of interactive links and discussion forums, the possibility of commenting upon news and reports, and the possibility of uploading video clips of current events. There are now independent electronic newspapers in their own right. They are thereby among the most widely used electronic means for expressing opinion on public affairs specifically, through the news, opinions and articles they publish and the comments and contributions that follow.

Second: Social media:

Social media or social communication means (Social Media) are among the most recent developments that have occurred on the internet. It may be said that social media represent a great leap in communication through the World Wide Web, in a far more interactive manner than previously, when communication was limited to the sharing of very small quantities of information and to greater control by data administrators. They are sites used by individuals for the purpose of social communication, forming relationships, making acquaintances and forming friendships around the world, and building virtual communities according to shared interests or affiliations. Through them the user may create his personal page and publish on it his biography, his pictures and his personal information, and write articles and reflections and publish videos. They thereby constitute an effective means of expressing opinion, for they rest upon participation in their content on the part of users by way of additions and replies that contribute to increasing their content; they permit them to reply, to comment and to evaluate the content by way of voting and the giving of opinions and observations, and likewise the exchange of information with complete freedom and transparency²⁹.

It should be noted that the Jordanian administrative judiciary has recognised the lawfulness of disciplinary decisions issued against employees on account of what they publish on the pages of the social media site (Facebook). The Jordanian High Administrative Court held: "We find that it is established from the papers of the action that the applicant, after appearing before the investigation committee on 2/8/2015, refused to have any question put to him relating to the subject of the investigation and requested the postponement of the investigation and the grant of a period for this purpose until the morning of 4/8/2015; that the committee acceded to his request to furnish him with all the papers and documents, being what had been published on his page on the social media site belonging to him, until his appearance before it at the session of 4/8/2015; and that the investigation committee had regard to the applicant's right of defence by postponing the investigation upon his request and until the completion of the investigation procedures. However, the applicant did not attend that session and did not give any reason justifying his non-attendance, from which it is to be inferred that the respondent had no intention of attending before the investigation committee and of answering any question put by it or of presenting evidence in defence. Accordingly, what the investigation committee - which was constituted correctly and lawfully in accordance with the provisions of article (49) of the Regulation on Employees of the Hashemite University No. (50) of 2003 and the amendments thereto - arrived at was founded upon what had been published on the applicant's page on the social media site; the offence committed by the applicant is one of the offences provided for in article (45/a/3) of the said Regulation; the decision complained of was issued by a person who possesses the right to issue it pursuant to article (46/b) of the same Regulation; and the penalty is among the penalties prescribed for the commission of this offence"³⁰.

For its part, the French Court of Cassation issued a decision to the effect that statements recorded through Facebook are private statements and cannot constitute a ground for prosecution. The Court of Cassation in France rejected an earlier judicial decision convicting a French citizen who had published defamatory words about her employer on her page on the social media site Facebook and requiring her to pay material and moral compensation. The Court considered that this argument and the ground upon which the action was founded could

not be regarded as public, since it had been placed on a personal page of limited following, and those who viewed it were persons linked only by simple social ties; and that the space in which these accusations had been placed was personal and private, unlike institutional and associative platforms which include a large number of followers and which satisfy the condition of publicity. Since the post was regarded as non-public - because only close friends were the only ones able to view it - the Court refused to pursue the grievance and likewise refused the employer's petition to fine the employee from whom this conduct had issued³¹.

Third: Electronic blogs³²:

These are electronic sites owned by individuals (usually) and by institutions and groups, in which writing takes place in various styles, most of them approaching the journalistic style, for they always seek to achieve a journalistic scoop and to write on subjects and issues that arouse controversy. Articles and recordings are published on them, and readers and users may comment upon them. The blog is a platform for the exercise of freedom of expression and opinion, for freedom of publication in blogs has afforded many people the opportunity to speak about everything that is prohibited, thanks to absolute freedom and the absence of censorship in publishing information.

It is thereby regarded as an effective tool in expressing personal and public concerns, and a means that works to reveal what is passed over in silence³³.

Fourth: Video broadcasting sites:

The YouTube site is a web site that permits its users to upload visual recordings free of charge, to view them by live streaming (rather than downloading), to share them, to comment upon them and so forth. These are sites that afford the possibility of broadcasting audio clips (podcasting) or visual clips, which may even be downloaded and viewed. There are several very famous sites, to the degree that they have come to sell clips of their content to the media outlets - indeed, the latter themselves broadcast their programmes through these sites. Individuals frequently resort to expressing their opinions and putting forward their ideas through a video broadcast over the internet.

Fifth: Collaborative editing sites:

These are sites of collaborative content, relying upon Wiki software which permits users to edit their content collectively, by adding material, altering existing material or even deleting it - such as the Wikipedia encyclopaedia.

Thus the electronic means have today come to constitute platforms for the exercise of freedom of expression and the giving of opinion, which has led to the emergence of a new generation of human rights known as digital rights. The spread of these media and their penetration into the daily life of many people, and their connection with the exercise of their rights and freedoms, have likewise prompted the international community, represented by the United Nations, to protect and promote these rights and freedoms³⁴. In this regard, the United Nations Human Rights Council affirmed, in its resolution on the promotion and protection of human rights on the internet of the year 2012, "that the same rights that people have offline must also be protected online, in particular freedom of expression"³⁵. This resolution is regarded as the

first ever resolution of the United Nations affirming that human rights in the digital world must be protected and promoted to the same degree and with the same obligation with which human rights in the physical world are protected. That protection was enshrined anew and once again by the resolution adopted by the United Nations General Assembly No. 68/168 dated 18 December 2013 relating to the right to privacy in the digital age, in which the United Nations affirms "that the same rights that people have offline must also be protected online, including the right to privacy".

In conclusion to this Sub-section, we refer to what was stated in the address of the Commissioner General for Human Rights in Jordan before the "Second Conference on the Challenges of Security and Human Rights in the Arab Region" in Tunis in 2015, to the effect that the most prominent matters that must be taken into consideration are:

1 - The absence of a definition or a correct understanding of the nature of security in the Arab reality. The concept of security is by its nature flexible and changing, and it is therefore necessary to define or determine its nature - in particular, to determine whose security is to be achieved, and which values are to be protected. Is what is meant the security of the political system? Or the security of the ruling elite? Or of the ruler? Or the security of society? The modern concept of security goes beyond the mere defence of the sovereignty of the State and the protection of the government, to reach what is known as the security of society. What is worth mentioning here is that there are those who believe that the protest and demands-based movements in Arab societies aim principally at destroying the Arab States, which such persons regard as the bond that maintains the cohesion of society; whereas citizens - and they are the majority - view the Arab State as the source of repression, the threat to rights and the protector of corruption and the corrupt, and as the greatest danger to security just as it is the sole danger to human rights³⁶.

2 - The existence of a manifest gap in the concept of security between the Arab rulers and the ruling elites on the one hand, and the citizen and the "societies" or "groups", "associations" and "collectivities" - or what has recently come to be termed the "components" of the various Arab societies - on the other. This disturbance in the national consensus as to the concept of security and the role of the parties therein (society and the State) has gone beyond the axis of the relationship between the regimes and their societies and has transcended the question of the relationship between ruler and ruled, to the point of reaching the components of society itself; for the latter, by reason of divisions and fragmentation, has become neither a formula nor an expression nor a term, nor even a mere "virtual" reality. The gravest manifestation of this gap between the two camps of security and human rights - the State and society - has been the mutual demonisation between them, or between the ruling elites and the various groups outside the authority on the one hand, and between these groups themselves, with their sects and their ethnic, political, regional and even cultural denominations, against one another.

3 - The low level of conviction and belief, and to a certain extent of awareness, of human rights among officials and the agencies and among the citizen as well, particularly as to the importance of the rule of law and the correlation of rights and duties. By contrast, many groups in our Arab States are troubled by the concern that the fear of chaos and the

instilling of fear of violence, terrorism, partition and fragmentation will be exploited in order to justify curtailing civil liberties, detracting from rights, distorting the opposition and reducing public participation, and the aversion to genuine reform and to empowering citizens to govern themselves, to participate in determining their future and to make their choices. This is confirmed by the growing tendency to enact laws that curtail freedoms and to expand the protection of security at the expense of rights and freedoms. These fears appear most clearly in the field of the expansion of the definitions of terrorism, the affirmation of the importance of imposing the prestige of government, the entrenchment of authority, the combating of criticism, the refusal to accept accountability, and reliance upon the power of security and hard power instead of the power of the law and of the endeavour to establish governance upon the basis of consensus, justice and participation.

4 - This negative duality - depriving of rights and threatening security - has resulted in the emergence of perplexing problems and phenomena in the Arab reality, to the degree that some regard the demand for reform, democracy and the rights of citizenship - such as equality, non-discrimination, the exercise of fundamental freedoms and a free and independent media - as being among the sources of the threat to security in many Arab States. Indeed, the decision-making circles in many Arab States are not free of those who consider that the Arab Spring is responsible for the state of collapse suffered by such States, and for the disturbance and chaos that grip the present Arab condition.

5 - This reality has in turn led to the emergence of what may be described as the particularity of the problem of security in the Arab region. The individual citizen can no longer be reassured that any existing political system is able to provide him with the protection of his rights and freedoms; and therefore the State has ceased to be the safe incubator of the individual, entitled to define the higher interests and the national interest, and possessed of the right to monopolise the use of legitimate force in the country. This State in several places has begun to dissolve, to be replaced by the sect, the clan, the region, the denomination, the group or the organisation. In truth, apart from those directly benefiting from the advantages of authority and its gains, those who believe in the Arab State as a guarantor of rights are but a minority of innocent and idealistic individuals.

Freedom of expression in the Arab world may be the first victim of the various political systems, and it may be regarded as the common denominator of all the member States of the Arab League to varying degrees. The relationship with freedom of expression in Arab culture goes beyond the authoritarian nature of the political systems to constitute an important part of the structure of the societies governed by these systems, resting upon a cultural, religious and social legacy and an accumulation of customs and traditions. The subject is therefore far more complex than its being merely a relationship between ruler and ruled.

Section Three: Freedom of Expression in National Legislation in the Light of the International Instruments

The Jordanian legislator has been keen to guarantee freedom of expression and has devoted to it particular laws and provisions regulating it. With a view to ascertaining the position of the Jordanian legislator on freedom of expression, we shall discuss this in two Sub-sections:

we devote the first of them to freedom of expression in the Jordanian Constitution, while we discuss in the second freedom of expression in Jordanian laws - all of this in the light of the international instruments and standards.

Sub-section One: Freedom of Expression of Opinion in the Jordanian Constitution

Article (15/1) of the Jordanian Constitution provides that: "The State shall guarantee freedom of opinion; and every Jordanian shall be free to express his opinion by speech, writing, photography and the other means of expression, provided that he does not exceed the limits of the law."

We find that the provision obliged the State to guarantee freedom of opinion, in addition to its containing a negative obligation requiring non-interference in the freedom. This is what is provided for in the international instruments relating to human rights, in which it is stated that "everyone has the right to hold opinions without interference"³⁸. Freedom of opinion, according to the text of Article (15), is not subject to any restrictions that prevent its exercise without justification. The provision continued by stating that "every Jordanian shall be free to express his opinion" - that is, it used the singular form and not the plural form, as is the case where the Constitution addressed the remaining rights³⁹. This matter is justified by reason of the special nature of this right, for it is natural that the opinions of Jordanians and of persons generally should differ.

As regards the Constitution's requirement that the limits of the law not be exceeded when exercising freedom of expression, it must be noted that the role of the law in regulating the exercise of freedom of expression must not lead to emptying this freedom of its substance or to confiscating it; otherwise that law would be regarded as contrary to the Constitution. Its role must be confined to regulating its exercise only, for this freedom cannot be absolute but is restricted by the non-infringement of the rights and freedoms of others. The constitutional provision may be criticised for not addressing the right to obtain, to seek, to receive and to impart information as appurtenances of freedom of expression, so as to be consistent with the international standards in this respect⁴⁰.

It is likewise to be inferred from the provision that the State is obliged to intervene positively in order to elicit the opinion of the Jordanian citizen, when it provided for the State's guarantee of this freedom. It must undertake to encourage him to express his opinion, to ensure that he is not harmed or subjected to prejudice on account of that, and to remove all the impediments that prevent him from expressing his opinion⁴¹. The Jordanian Constitution may, however, be criticised for not specifying the restrictions imposed upon the exercise of freedom of expression, leaving them instead to the law. It thereby departed from the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which permitted the restriction of freedom of expression but specified the restrictions, which may not be extended⁴².

Legal doctrine has differed as to the Constitution's referral of the regulation of the rights and freedoms constitutionally established to the law for their regulation. One school held that it is not sufficient for the Constitution to establish the rights and freedoms and then to refer the

matter to laws that may forfeit them; rather, the Constitution must undertake their complete regulation⁴³. Another school, by contrast, held that among the most important constitutional guarantees is treating the law as the instrument for restricting freedom, since it is an expression of the will of the representatives of the nation and it is inconceivable that they should approve anything other than what achieves its interest and reconciles the conflicting interests relating to it⁴⁴.

The expression of opinion does not require a particular means; it may be by writing, by speech, by photography, by drawing, by a gesture with a particular movement or by humour; and it may also be by the individual's adopting a negative attitude towards some matter⁴⁵. Hence the internet has provided a wide field for expressing opinion through publication in its electronic spaces.

While the Constitution confined the right to express opinion to Jordanians alone, treating this as among the political rights restricted to the nationals of the State who hold its nationality, it nevertheless set out the means of expressing opinion by way of example and not of limitation⁴⁶, leaving the field open to any means that may appear in the future as an instrument for expressing opinion, as is the case with the electronic means on the internet. The preceding paragraph required that freedom of expression of opinion not exceed the limits of the law - that is, that this right is restricted and not absolute. This is what all the international instruments agree upon when they addressed this right; the international instruments, however, specified exhaustively the cases in which this right may be restricted by virtue of a provision of law⁴⁷.

Article (15) of the Jordanian Constitution placed upon the State a constitutional obligation to guarantee freedom of expression and opinion for Jordanians. Accordingly, its duty extends beyond guaranteeing this right to ensuring that it is facilitated for citizens. This freedom was stated in absolute terms, with no restriction upon it - neither in form, nor in time, nor in means. The Constitution, however, required that it not exceed the limits of the law. It is important to note that this condition of not exceeding the limits of the law may not overthrow this freedom or deal with it arbitrarily; for if a law is issued that overthrows or abolishes the right to freedom, then, and on the basis of the provisions of the Constitution itself, it is regarded as an unconstitutional provision. We find that the Jordanian legislator has placed in various laws determinants upon the exercise of freedom of expression, the philosophical basis of which is that guaranteeing the exercise of this freedom does not constitute an assault upon the honour, reputation and beliefs of others, or upon the security and stability of the State. Among these determinants are⁴⁸:

- 1 - Defamation, slander and contempt of individuals and of the institutions of the State.
- 2 - Using the information network to publish any terrorist acts or to promote the ideas of any terrorist group, or to expose Jordanians or their property to the danger of hostile or retaliatory acts.
- 3 - Contempt of any foreign State, its flag or its head.

4 - Publishing matter containing defamation or slander of one of the religions, or constituting an insult to religious feeling and belief, or the stirring up of sectarian or racial strife.

5 - Broadcasting any false or exaggerated news that is liable to detract from the prestige of the State.

We conclude that the first paragraph of Article (15) has remained without amendment since its original drafting, and still reads: "The State shall guarantee freedom of opinion; and every Jordanian shall be free to express his opinion by speech, writing, photography and the other means of expression, provided that he does not exceed the limits of the law." Even the amendment of 2011 retained the text of the first paragraph and added two paragraphs each beginning with the word "guarantees", namely: the State guarantees freedom of scientific research and literary creativity; and the State guarantees freedom of the press, printing and publication, and so forth. The amendment abolished the method of censorship over the resources of newspapers. The importance of this amendment is that the legislator used in the two added paragraphs the expression "guarantees". It is observed that the legislator used this expression to the exclusion of any other; he did not use, for example, the expression "the State may not prejudice or restrict freedom of opinion", or the expression "the State grants the Jordanian the right to express his opinion", or other such expressions. If we adhere to what men of the judiciary and of the law repeat, namely that the legislator does not speak in vain, then the Jordanian legislator's use of the word "guarantees" was intended in itself and carries a legal significance of special importance in the context of freedom of expression, freedom of scientific research and literary creativity, and freedom of the press.

Guarantee (kafala) in law, by its nature, its origin and its application, is a contract accessory to a principal obligation - that is, the guarantee is not a principal obligation but follows the principal obligation and comes in its train. If a person goes to a bank to borrow a sum of money and the bank agrees to his request on condition that he provide a guarantor to secure the repayment of the loan, the loan contract is the principal obligation and the contract of guarantee is a contract accessory to the principal contract; and if the loan contract is extinguished, the guarantee necessarily falls away.

Applying this to the Jordanian constitutional provision with which we are concerned, the State "guarantees" freedom of opinion, and its obligation of guarantee is an obligation that follows the principal obligation, which is the right of the Jordanian to freedom of expression and to the giving of opinion - a right that is older than, and antecedent to, the enactment of the Constitution and the emergence of the State into existence. As soon as the State was formed and constituted, and laid down a social contract for Jordanians - as expressed by the Constitution of 1952 - it undertook to "guarantee" rights that pre-existed it and pre-existed its Constitution, as though freedom of expression were one of the natural rights that are born with man and precede the existence of the State. Did not the Rightly Guided Caliph Umar ibn al-Khattab say: "Since when have you enslaved people when their mothers bore them free?" It is worth mentioning that there is a consensus of opinion among jurists of the law that freedom of opinion and expression is the most important freedom, for without it the other freedoms are always under threat.

It is no coincidence that the amendments to the Constitution did not touch Article (15/1); and when the amendment was made in 2011 it came to affirm it and to expand upon its various aspects, from the "guarantee" of freedom of the press to the "guarantee" of freedom of scientific research and artistic creativity - both of them freedoms at the very core of freedom of opinion and expression. Indeed, it may be said that the Jordanian legislator has remained aloof from prejudicing freedom of opinion, not by reason of its being a right guaranteed by the Constitution, but by reason of freedom of opinion being a natural right; and the Constitution came in order to guarantee the continuation of its position as it was before it was provided for.

The word "guarantees", apart from what is set out in the amendment of Article (15), occurs originally in only three places in the Constitution; the word occurred twice in Article (6/3), the first where it provided that the State "guarantees" education and work "within the limits of its possibilities", and the State "guarantees" tranquillity and equality of opportunity - in addition, of course, to the "guarantees" contained in the original text of Article (15/1).

It is clear that the State's guarantee relating to education and work came qualified by the limits of the State's possibilities, given that the principal guaranteed right was not available on a wide scale at the period when the Constitution was drafted - unlike what is set out concerning tranquillity, equality of opportunity and freedom of opinion, in respect of which the guarantee came free of restriction.

Article (15) provided that "every Jordanian shall be free to express his opinion by speech, writing, photography and the other means of expression ...". The provision was well drafted in terms of its comprehensiveness and its breadth to accommodate any future developments. The traditional means took the form of speeches and chants, or the writing of statements, slogans and leaflets; and photography was not confined to photographs but likewise includes caricatures, drawings of slogans, or the forms that carry a meaning or symbolise a matter which the protesters reject.

The means of expression have developed in the modern age and have become daily bread for generations of young people (WhatsApp, Viber, Instagram, Twitter, Facebook, and so forth). These modern instruments have become more effective and have largely remained beyond the oversight of the security agencies; and there is no better proof of this than that the movements known as the "Arab Spring" in the beginnings of the year 2011 were mobilised by means of these new instruments.

As for the last sentence of the first paragraph of Article (15), which provides that the exercise of freedom of opinion must "not exceed the limits of the law", it is not a licence for the authority to withdraw or to paralyse the right of opinion; for the limits of the law referred to mean the provisions laid down by the legislator to regulate the exercise of the right of opinion, and they are not there to paralyse that freedom or to impose restrictions upon it. If the law comes otherwise, it necessarily collides with the Constitution, for the Constitution is supreme and nothing is above it. There is no dispute that freedom of opinion may be regulated in matters relating to national security and public morals without expansion, since the principle is the protection of freedom of opinion. The law must likewise guarantee protection to the ordinary citizen more than it guarantees it to the public official who deals with the public⁴⁹.

Sub-section Two: Freedom of Expression in Jordanian Laws

This Sub-section addresses the position of the law on freedom of expression of opinion, and in particular through electronic means, by way of three Branches: we devote the first to the position of the Press and Publications Law, the second to the position of the Audiovisual Media Law, and the third addresses the Telecommunications Law.

Branch One: The Position of the Press and Publications Law

The Press and Publications Law defined the publication as "every means of publication in which meanings, words or ideas are recorded by any method whatsoever, including electronic, digital or technical means"⁵⁰.

It returned and provided in the same article that the electronic publication is "an electronic site having a specified electronic address on the information network which provides publication services, including news, reports, investigations, articles and comments, and which elects to register in a special register established at the Commission pursuant to instructions issued by the Minister for this purpose".

The Law affirmed that the press and printing are free and that freedom of opinion is guaranteed to every Jordanian, and that he may express his opinion freely by speech, writing, photography, drawing and the other means of expression and media⁵¹. The Law likewise guaranteed the journalist the right to obtain information, and required all official bodies and public institutions to facilitate his task and to afford him the opportunity to examine their programmes, projects and plans. It prohibited the imposition of any restrictions that impede freedom of the press in ensuring the flow of information to the citizen, or the imposition of procedures that lead to frustrating his right to obtain it. It likewise prohibited interference in any work performed by the journalist within the framework of his profession, or influencing him, or compelling him to disclose the sources of his information, including depriving him of performing his work or of writing or publishing without a lawful reason or justification - all of this without prejudice to what is customarily recognised as the authority of the editor-in-chief to take the decision to publish or not⁵².

The legislator regulated in the Press and Publications Law special provisions for the offences committed contrary to its provisions, with a view to affording particularity to the work of journalists, having regard to the nature of their work and distinguishing them from other persons. Article (42) of the Press and Publications Law provides that: "Notwithstanding what is contained in any other law:

a - There shall be established in every court of first instance a specialised judicial chamber for press and publications cases, which shall undertake the consideration of the following cases:

1. The offences committed contrary to the provisions of this Law and the offences committed by way of publications or licensed audiovisual media contrary to the provisions of any other law.
2. The civil actions brought by any aggrieved party claiming the compensation prescribed for him pursuant to the provisions of the Civil Law and the provisions of this Law, if the

harm resulted from any act committed by way of any of the publications or the audiovisual media.

b - The chamber for press and publications cases at the Amman Court of First Instance shall have exclusive jurisdiction to consider the following cases:

1. The criminal and civil cases referred to in paragraph (a) of this article, if they fall within the jurisdiction of the courts situated in the Capital Governorate.
2. The offences against the internal and external security of the State provided for in the Penal Code in force, if they are committed by way of publications or licensed audiovisual media.

c - The criminal cases referred to in item (1) of paragraph (a) and in paragraph (b) of this article shall be given the character of urgency; their sessions shall be held at least twice a week, and they shall be determined within four months from the date of their receipt by the registry of the court.

d - In the civil compensation actions referred to in item (2) of paragraph (a) and in item (1) of paragraph (b) of this article, the following provisions shall be observed:

1. Civil compensation actions in those cases shall be among the urgent actions, and all the periods for submitting and exchanging pleadings and evidence provided for in Article (59) of the Civil Procedure Law shall be reduced by half, and these periods shall not be capable of extension; the trial sessions therein shall thereafter be held at least twice a week, and they shall be determined within four months from the date of their receipt by the registry of the court.
2. The periods for appeal and for the submission and exchange of pleadings before the courts of appeal and the Court of Cassation shall be reduced by half.

e - There shall be established in every court of appeal a specialised judicial chamber to consider the appeals directed against the judgments appealed to it issued by the courts of first instance in respect of the criminal and civil cases referred to in paragraphs (a) and (b) of this article, provided that those appeals are determined within one month from the date of their receipt by the registry of the court.

f - The public prosecutor shall undertake the investigation of the offences committed by way of publications and the issuance of the appropriate decisions in respect of them within a period not exceeding fifteen days from the date of his commencing the investigation, and one of the public prosecutors shall be seconded for this purpose.

g - The public action in respect of offences committed by way of periodical publications shall be brought against the press publication, its editor-in-chief or the director of the specialised publication and the writer of the press material as principal perpetrators; and the owner of the publication shall be jointly and severally liable for the personal rights arising from those offences and for the costs of the trial, and no criminal liability shall attach to him unless his participation or his actual involvement in the offence is established.

h - The public action in respect of offences committed by way of non-periodical publications shall be brought against the author of the publication as the principal

perpetrator and against its publisher as his accomplice; and if its author or its publisher is not known, the action shall be brought against the owner of the printing press and its responsible director.

i - 1. Detention shall not be permissible as a result of the giving of opinion by speech, writing or the other means of expression.

2. Likewise, detention shall not be permissible in the offences referred to in paragraphs (a) and (b) of this article."

Among the amendments to the Press and Publications Law that met with wide opposition from the electronic media sector was the amendment of 2012. Pursuant to this amendment, hundreds of electronic publication sites were required to register, to regularise their position and to obtain a licence from the Press and Publications Department - the body concerned at that time, which was subsequently abolished as an independent body and its staff and functions merged with the Media Commission to form a single body, the Media Commission. That amendment came as a mixture of necessary and sound regulatory measures (from an objective point of view) and of restrictive conditions that narrowed the electronic space permitted to the electronic means of expression. It is to be noted that the National Center for Human Rights submitted a memorandum concerning those measures in which it stressed the necessity of not requiring a licence for the practice of the profession of journalism, together with the importance of these sites and others adhering to respect for human dignity by avoiding slander, defamation, distortion and vilification, and distinguishing between criticism and abuse or false accusation, in which some social media sites, electronic sites or any other means of publication had been engaging⁵³.

Article (49) of the Press and Publications Law, pursuant to the amendment of 2012, contained the provisions specific to electronic publication sites, providing: "Notwithstanding any provision contained in this Law or in any other legislation:

a - 1. If the activity of the electronic publication includes the publication of news, investigations, articles and comments relating to the internal or external affairs of the Kingdom, this publication shall be obliged to register and to be licensed by a decision of the Director, and the owner of the electronic publication shall regularise his position in accordance with the provisions of this Law within a period not exceeding ninety days from the date of his being notified of the Director's decision to that effect.

2. If the owner of the electronic site is unknown or his address is outside the Kingdom, he shall be notified of the Director's decision issued in accordance with the provisions of item (1) of this paragraph by publication in two local daily newspapers on one occasion.

3. The Director's decision issued pursuant to the provisions of item (1) of this paragraph shall be subject to challenge before the High Court of Justice.

b - If the electronic site becomes obliged to register and to be licensed in accordance with the provisions of paragraph (a) of this article, all the legislation in force relating to the press publication shall apply to it.

c - The comments published in the electronic publication shall be regarded as press material for the purposes of the liability of the electronic publication, its owner and its editor-in-chief, jointly and severally.

d - The electronic publication shall not publish comments if they contain information or facts unconnected with the subject of the news item, or whose accuracy has not been verified, or which constitute an offence pursuant to the provisions of this Law or any other law.

e - The electronic publication shall keep a special register of the comments published, provided that this register contains all the information relating to the senders of the comments and to the material of the comment for a period of not less than six months.

f - The punishment of the electronic publication, its owner, its editor-in-chief and the writer of the press material upon its violation of the provisions of this Law shall not exempt the writer of the comment from legal liability, in accordance with the legislation in force, for what is contained in his comment.

g - The Director shall block the electronic sites not licensed in the Kingdom if they commit a violation of the provisions of this Law or of any other law."

The Court of Cassation considered that the Press and Publications Law applied to electronic publication sites before this amendment, in the course of its consideration of a case relating to the commission by electronic sites of legal violations. The Jordanian Court of Cassation held in this judgment: "... Upon reference to the Press and Publications Law, we find that it provides in article two thereof as follows:

The following words and expressions, wherever they appear in this Law, shall have the meanings assigned to them below unless the context indicates otherwise.

The publication: every means of publication in which meanings, words or ideas are recorded by any method whatsoever.

The periodical publication: the press and specialised publication of all its types, which is issued at regular intervals, and includes:

a - Press publications: 1. The daily publication: the publication that is issued daily on a continuous basis under a particular name and with consecutive numbers and is prepared for distribution to the public.

2. The non-daily publication: the publication that is issued regularly once a week or at longer intervals and is prepared for distribution to the public.

3. The specialised publication: the publication that specialises in a defined field and is prepared for distribution to those concerned with it or to the public, in accordance with what is provided in the licence for its issuance.

Article five of the same Law provided as follows: "Publications shall respect the truth and refrain from publishing what conflicts with the principles of freedom, national responsibility, human rights and the values of the Arab and Islamic nation."

It is to be gathered from the text of article two referred to above that there are two types of publications to which the legislator referred in this article, namely:

The first type: which includes the publication generally, which the legislator defined as every means of publication in which meanings, words or ideas are recorded by any method whatsoever.

The second type: which includes the periodical publication, being the specialised press publication of all its types, which is issued at regular intervals.

We find that the determination of this action turns upon setting out whether the electronic site is regarded as a publication in accordance with the definition of the publication contained in the Press and Publications Law or not.

In this regard we find that, whereas the second type is not broad enough in scope to encompass electronic sites - given that this type, according to the legislator's definition of the periodical publication, is confined to press publications issued at regular intervals, and the electronic site is in no way whatsoever a press publication - the first type is broad enough in scope to encompass electronic sites, given that this type, according to the legislator's definition of the publication, is every means of publication in which ideas and words are recorded by any method whatsoever.

In this regard, the electronic site is one of the means in which ideas and articles are recorded and published; accordingly, electronic sites are regarded as among the publications in accordance with the definition of the publication contained in the Press and Publications Law and are subject to its provisions.

We likewise find that article five of the same Law, when it provided for what publications are obliged to do by way of respecting the truth and refraining from publishing what conflicts with the principles of freedom, provided for publications generally and in accordance with the general definition of the publication, and not as set out in the definition of the periodical publication. From this it is to be inferred that the legislator distinguished in this Law between two types of publications - publications generally and periodical publications in particular - and that electronic sites fall within the definition of publications generally, as we have set out, and are subject to the provisions of the Press and Publications Law"⁵⁴.

From the foregoing, it is to the credit of the Jordanian legislator in the Press and Publications Law that he did not permit the detention of journalists in cases relating to their journalistic work as a result of the giving of opinion by speech, writing or the other means of expression. This position, however, was retreated from upon the issuance of the Electronic Crimes Law of 2015, which restored the possibility of detaining journalists pursuant to Article (11) thereof, which provides: "Every person who deliberately sends, re-sends or publishes data or information by way of the information network, an electronic site or any information system, involving defamation, slander or contempt of any person, shall be punished by imprisonment for a period of not less than three months and by a fine of not less than (100) one hundred dinars and not more than (2,000) two thousand dinars." For, pursuant to an interpretative decision of the Bureau of Interpretation of Laws⁵⁵, journalists may be detained on the basis of this article, read together with Article (149) of the Code of Criminal Procedure, which provides that: "1. After interrogating the accused, the public prosecutor may issue against him

a detention order for a period not exceeding seven days if the act attributed to him is punishable by law by imprisonment for a period exceeding two years, and for a period not exceeding fifteen days if the act attributed to him is punishable by law by a felony penalty and the evidence connecting him with the act attributed to him is available; and he may extend this period whenever the interest of the investigation so requires, provided that the extension does not exceed one month in misdemeanours, three months in felonies punishable by law by a temporary penalty and six months in other felonies, and provided that the accused be released thereafter unless the period of detention is extended in accordance with the provisions of paragraph (3) of this article.

2. The provisions on detention and extension referred to in paragraph (1) of this article shall apply to an accused to whom is attributed one of the misdemeanours punishable by law by imprisonment for a period not exceeding two years, in either of the following two cases:

- a. If the act attributed to him is one of the misdemeanours of intentional injury, unintentional injury or theft.
- b. If he has no fixed and known place of residence in the Kingdom, provided that he be released if he provides a guarantor approved by the public prosecutor who guarantees his attendance whenever he is required to do so.

3. If the interest of the investigation requires, before the expiry of the periods set out in the two preceding paragraphs, the continued detention of the accused, the public prosecutor must submit the case file to the court competent to consider the action; and the court, after examining the submission of the public prosecutor, hearing the statements of the accused or his representative concerning the justifications for the continuation or otherwise of the detention, and examining the investigation papers, may decide, before the expiry of that period, to extend the period of detention for a period not exceeding on each occasion one month in misdemeanours and three months in felonies, provided that the total of detention and extension does not in any event exceed four months in misdemeanours and one quarter of the maximum penalty in a felony punishable by law by a temporary penalty; or it may decide to release the detainee with or without bail in any of those cases.

4. The public prosecutor may decide, during the investigation procedures in misdemeanour offences and in felony offences punishable by law by a temporary penalty, to withdraw the detention order, provided that the accused has a fixed place of residence in the Kingdom at which he may be notified of all the transactions relating to the investigation and to the enforcement of the judgment."

According to interpretative decision No. (8) of 2015:

1. The Press and Publications Law No. (8) of 1998, as regards the offences committed through periodical publications, the printed or non-printed daily newspaper, the electronic and specialised publication and the bulletin of the news agency, is a general law; and the legislator required in all these publications that the publishing entities be registered and licensed, and gave the electronic publication the option of registration in accordance with what is stated in the special decision of the Bureau No. (2) of 2012.

2. The Electronic Crimes Law No. (27) of 2015, which came into force on 1/6/2015, is a special law as regards the offences committed in accordance with the newly introduced provisions therein.

3. Since the legal rules require that the act be designated as an offence punishable by law, so that it is necessary to ascertain the provision regulating this offence; and since the Electronic Crimes Law is a special law that has re-regulated certain provisions relating to the offences of defamation and slander, this Law is the one that applies to them in accordance with the provisions of Article 11 thereof, read together with Article 57/2 of the Penal Code, which provides that "if a general description and a special description apply to the act, the special description shall be adopted".

Accordingly, and on the basis of the foregoing, we determine that the offences of defamation and slander committed or perpetrated contrary to the provisions of Article (11) of the Electronic Crimes Law through electronic sites and social media sites are governed by this article and by Article (114) of the Code of Criminal Procedure, and not by Articles (42) and (45) of the Press and Publications Law."

Branch Two: The Audiovisual Media Law

Article (20/1) of the Audiovisual Media Law No. 26 of 2015⁵⁶ provides that: "The licensee shall be bound by the following:

1. Respect for human dignity, personal privacy and the freedoms and rights of others and the plurality of expression.
2. Refraining from broadcasting what offends public decency or incites hatred, terrorism or violence, or the stirring up of strife and religious, sectarian and racial discord, or what causes harm to the economy and the national currency or prejudices national and social security.
3. Refraining from broadcasting false material that harms the relations of the Kingdom with other States.
4. Refraining from broadcasting media or advertising material that promotes charlatanry, deception, extortion and the misleading of the consumer."

Article (29/b): "b - 1. Every licensee who engages in broadcasting activities or recording for re-broadcasting in violation of the provisions of paragraph (1) of Article (20) of this Law shall be punished by a fine of not less than five thousand dinars and not more than thirty thousand dinars, together with his being obliged to pay compensation and to remove the harm arising from the violation.

2. The penalty provided for in item (1) of this paragraph shall be doubled in the event of the continuation or repetition of the violation; and the Council of Ministers may, upon the recommendation of the Minister based upon the proposal of the Director, revoke the broadcasting licence granted to the licensee after the issuance of a judicial judgment that has acquired the degree of finality."

Branch Three: The Telecommunications Law

Article (75) of the Telecommunications Law No. 13 of 1995⁵⁷ provides that: "a - Every person who, by any means of telecommunications, sends messages of threat or insult or messages contrary to morals, or transmits a fabricated news item with the intention of causing alarm, shall be punished by imprisonment for a period of not less than one month and not more than one year, or by a fine of not less than (300) dinars and not more than (2,000) dinars, or by both these penalties."

It is apparent from this provision that it criminalises every one of the acts set out in the provision if it is committed by electronic means, this being by reference to Article (2) of the Law, which defined telecommunications as "the transfer, broadcasting, reception or sending of symbols, signals, sounds, images or data, whatever their nature, by wire, radio or optical means or by any other means of electronic systems". Accordingly, certain acts that may be of the nature of expression of opinion may fall within this provision, particularly since the provisions of Article (75) contain such generality as permits this - for example, the expression "transmits a fabricated news item with the intention of causing alarm"; for news is frequently circulated and transmitted over the World Wide Web without verifying its source, and in particular through social media sites and even some news sites, which brings these acts within the arena of criminalisation if the matter is connected with causing alarm - a question subject to assessment and falling within the realm of intentions.

Chapter Two

National Security as a Restriction upon Freedom of Expression in Jordanian Law Compared with the International Standards

We have concluded that there is legal recognition, internationally and likewise in national legislation, of freedom of expression, and that it is regarded as among the most important freedoms and fundamental rights of man. By contrast, however, it contains restrictions, for freedom of expression is not absolute; rather, a set of legal restrictions is imposed upon it - that is, it must have controls. This is an accepted truth, for a freedom without controls turns into chaos and into abuse in a manner that prejudices the interests of States and affects the rights and freedoms of the members of society⁵⁸. This freedom must therefore be exercised responsibly, within legal controls, respecting the rights of others, and not conflicting with national security and public order in the State.

Freedom of expression, like any other right, is not absolute; it must be exercised in accordance with legal controls and may sometimes be subject to restriction if it exceeds its limits so as to prejudice the rights of others, or to threaten national security and public order in the State. The international instruments concerned with the protection of human rights, as well as national legislation, have addressed the protection of national security as a restriction upon the exercise of this freedom, whether directly or indirectly - and this is what we shall examine in the following two Sections:

Section One: The Restrictions Imposed upon Freedom of Expression in the International Covenant on Civil and Political Rights

This Section aims at comprehending the legitimate restrictions imposed upon human rights, through the study of those imposed upon freedom of expression.

Article 19 of the International Covenant on Civil and Political Rights provides as follows:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include 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.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Paragraph (3) of Article (19) specified exhaustively the restrictions imposed upon this right, namely that they "shall be provided by law and be necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order, or of public

health or morals". That is to say, in order to ensure the lawfulness of these restrictions, they must comply with the principles of legality and proportionality and must be imposed for one or more of the legitimate grounds referred to in this paragraph.

It is fitting to refer in this regard to the Siracusa Principles, drawn up by a committee composed of 31 international experts in the year 1984 with the aim of adopting a unified set of interpretations of the restrictions contained in the International Covenant on Civil and Political Rights. Although these Principles do not have the force of law, they nevertheless enjoy a special moral value, particularly as they were issued by the Commission on Human Rights of the Economic and Social Council, and they provide an interpretation of certain terms contained in the Covenant which the Human Rights Committee established in accordance with the provisions of the International Covenant on Civil and Political Rights has not addressed. What follows is a presentation of these restrictions in some detail:

First: That they be provided by law

As regards the interpretation of the expression "provided by law", the Siracusa Principles clarified that what is meant by this expression is that the law be clear, precise, consistent with the provisions of the Covenant and accessible to all; in addition, that the restrictions contained in the law not be arbitrary or unreasonable, with the availability of judicial safeguards against unlawful or arbitrary application⁵⁹. The Covenant specified exhaustively the grounds upon which the law is permitted to restrict this freedom, as is clear from the text of Article (19/3).

Second: That they be necessary

The Siracusa Principles clarify that where the Covenant requires that restrictions be necessary for the exercise of one of the rights, this means that they must be based upon one of the legitimate grounds contained in the article that regulated this right, must constitute a response to a pressing public or social need, must aim at achieving a legitimate purpose and must be proportionate to that purpose⁶⁰; and in all cases the restriction must be subject to objective considerations. When applying one of the restrictions, the State must use the appropriate procedures in order to achieve the objective for which this restriction was laid down, without expanding upon these procedures⁶¹.

The Human Rights Committee has previously stressed that the right to freedom of expression is of the utmost importance in any democratic society, and that any restrictions upon its exercise must be necessary in the sense that they are justified in a clear and precise manner. Where States Parties invoke one or more of the legitimate purposes referred to in paragraph (3) of the International Covenant on Civil and Political Rights in order to justify restrictions upon the exercise of freedom of expression, they must accordingly provide sufficient, specific and documented particulars in support of their arguments. General references to concepts such as national security and public order are not sufficient and are not accepted by the Human Rights Committee as a justification for restricting the exercise of freedom of expression⁶². Although States enjoy a margin of discretion in applying and giving effect to the rights protected by this Covenant, this does not mean that they have a free hand in this respect, since they are subject to the oversight of the Human Rights Committee⁶³. The Siracusa Principles indicate that the burden of proving that the restriction falls within the cases permitted under

the Covenant lies upon the State⁶⁴, and the Human Rights Committee has affirmed this on more than one occasion⁶⁵.

Third: Respect for the rights or reputations of others

The third paragraph permits restriction for the protection of the rights of others, and this provision should be read in the light of Article (20/2) of the Covenant, which prohibits any advocacy of national, racial or religious hatred, and Article (5), which excludes from the protection of the Covenant activities or acts "aimed at the destruction of any of the rights or freedoms recognised in the Covenant"⁶⁶. Account may also be taken of what is contained in Article (17) of the Covenant, which protects privacy and reputation, and Article (14), which guarantees the proper functioning of the judicial authority. Likewise, the laws that punish vilification, defamation and slander fall within the framework of this head⁶⁷.

What is worth noting is that the expression "the rights of others" came in absolute terms and is not confined solely to the rights contained in the Covenant, but extends to encompass the other rights for which no provision was made⁶⁸. Account must likewise be taken of the rights from which the State may not detract or derogate in any event whatsoever, for Article (4) of the Covenant provided that: "1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin⁶⁹. 2. No derogation from the obligations provided for in Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision"⁷⁰. These rights have priority in protection when they conflict with the right to expression.

It must be emphasised that the expression "the reputation of others" must not be used to protect officials of the State from the criticisms directed through the various media⁷¹. The Human Rights Committee has affirmed this on more than one occasion and has considered that legislative provisions restricting freedom of expression, such as those punishing disrespect for authority or criticism of the ruling party, are not consistent with the provisions of Article (19) of the Covenant⁷².

The Human Rights Committee has previously expressed its concern at the monopolisation of the media by a small group of investors, a matter which ultimately leads to affecting the rights of others to obtain information in an impartial manner⁷³. The same is the case where there is complete control over the media by the Government.

The principle of the best interest of the child (Best Interest of the Child), provided for in Article (3) and Article (40) of the Convention on the Rights of the Child of 1989, must be observed; and all the authorities and institutions within the State must take it into consideration when dealing with children, particularly as regards his privacy - such as prohibiting the publication of information concerning an offence and reference to his full name⁷⁴.

Fourth: National security

The Siracusa Principles affirm that States may not invoke national security to justify restricting the rights contained in the Covenant except where they are taken with the aim of ensuring the survival of the State or its territorial integrity or its political independence against the use of force or the threat of the use of force⁷⁵; national security may not be used as an argument for imposing restrictions merely to prevent local or relatively remote threats to security and order⁷⁶, or be used as an argument for imposing vague or arbitrary restrictions. Nor may national security be invoked save where there are sufficient and effective safeguards against abuse⁷⁷.

The Human Rights Committee has previously held⁷⁸ that the Italian Penal Code of 1952, which prohibits participation in any act aimed at the recognition of the dissolved Fascist Party, is valid, in application of the text of Article (5/1) of the Covenant, which states: "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant"⁷⁹.

Some indicate that among the acceptable examples of the restrictions imposed upon this freedom by reason of national security is the prohibition of the publication of State secrets⁸⁰; it must be emphasised, however, that these restrictions must be contained in a clear legal provision, without granting the State a discretionary power to determine what is regarded as prejudicial to national security without setting out the reasons⁸¹.

Fifth: Public order

The Siracusa Principles indicate that the expression public order (*ordre public*), as used in the Covenant, means the set of rules that ensure the proper functioning of the affairs of society, or the set of fundamental principles upon which society rests; and respect for human rights forms part of public order⁸². This expression must be interpreted in the context of the right concerned, and the bodies responsible in the State for maintaining public order must be subject to the oversight of the legislative authority and the competent judiciary⁸³. Among the legitimate restrictions upon this freedom on the basis of public order is the prohibition of media material that incites to crime or violence, or to causing alarm among the public⁸⁴, and likewise the prohibition of unlicensed broadcasting in order to prevent interference between broadcasting waves or their obstruction⁸⁵. The Human Rights Committee affirms that the protection of public order as a restriction upon freedom of expression must be understood as the protection of the whole of society within the State, and not the protection of particular bodies or categories only⁸⁶.

The Human Rights Committee has affirmed that the argument put forward by developing States that they may postpone their obligation in respect of certain political rights contained in the Covenant with the aim of maintaining public order and political stability is unacceptable⁸⁷. It is fitting to note in this regard that there is considerable overlap between the requirements of national security and public order, particularly where the matter relates to imposing restrictions upon political discourse⁸⁸.

Sixth: Public health

The Siracusa Principles indicate that the State may rely upon public health as a basis for restricting certain rights contained in the Covenant so that the State may take a set of measures in order to deal with serious threats to the health of the population or of the members of society; and these measures must aim at preventing disease or injury or at providing services to the sick and the injured⁸⁹. Special attention must be given to the instructions issued by the World Health Organization in this respect⁹⁰. Many States have prohibited media material relating to alcohol and tobacco on the basis of this restriction⁹¹, and a group of national courts has upheld the validity of these restrictions⁹².

Seventh: Public morals

The Siracusa Principles take into consideration that the concept of public morals is among the concepts that change from time to time and from one culture to another; a State that relies upon public morals as a ground for restricting the right of expression must therefore prove that these restrictions are necessary for the preservation of the fundamental values of society⁹³. In this regard, it is fitting to note that the Human Rights Committee upheld the decision of the Finnish authorities to censor a radio programme and a television programme that encouraged homosexuality, particularly since media such as radio and television are an unsuitable place for discussing such subjects and their broadcasting entails negative effects upon children. The Committee added that the State must be granted a margin of discretion to determine what is regarded as prejudicial to public morals, particularly since there are no accepted universal standards in this respect⁹⁴.

As for the Arab Charter on Human Rights, the Arab Summit Conference in Tunis approved the Arab Charter on Human Rights on (23/5/2004), and the Charter entered into force in 2008. The Arab States are obliged to take positive measures (positive obligation) to respect its entry into force, including the amendment of legislation so as to be consistent with its provisions. Article 32 of the Charter provides on freedom of opinion and expression as follows:

1. The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.
2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order, public health or public morals.

Article (19) of the Universal Declaration of Human Rights of 1948 affirmed the right to freedom of expression, which includes seeking, receiving and imparting information and ideas through any medium and regardless of frontiers. Article (19) of the International Covenant on Civil and Political Rights likewise provides that everyone shall have the right to hold opinions without interference, and that everyone shall have the right to freedom of expression, this right including his 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 medium of his choice. The exercise of the rights provided for in paragraph

(2) of this article carries with it special duties and responsibilities, and it may therefore be subject to certain restrictions, but these shall only be such as are provided by law or are necessary. Accordingly, respect must be had for the rights or reputations of others, and for the protection of national security, public order, health or public morals.

The regional instruments have repeated or expanded upon the guarantee and protection of freedom of expression: Article (10) of the European Convention on Human Rights protects freedom of expression at the level of the member States, and Article (9) of the African Charter on Human and Peoples' Rights guarantees the same right. Likewise, Article (13) of the American Convention on the Protection of Human Rights provides that: everyone has the right to freedom of thought and expression, and this right includes his freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, whether orally, in writing, in print, in the form of art or through any medium of his choice. It is clear that the text of the article approximates the text of Article 19 of the Universal Declaration and of the International Covenant on Civil and Political Rights⁹⁵.

It is clear from the foregoing international instruments that any restrictions upon freedom of expression must first be subjected to what is known as the three-part test:

1. Provided by law.
2. Necessary: meaning the existence of a "pressing social need" for the restriction, and that the restriction be proportionate to the objective sought thereby.
3. To achieve a legitimate aim more worthy of protection: national security, privacy.

Thus it becomes apparent that the International Covenant on Civil and Political Rights permits the imposition of certain restrictions upon freedom of expression if these restrictions are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order, or of public health or morals. However, under the "Johannesburg Principles", in order for the restriction to become legitimate and in the interest of national security, it must: "have the genuine purpose of protecting the State or its territorial integrity against the use or threat of force, or the capacity of the State to respond to such a threat by the use of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violence to overthrow the system of government ... In particular, a restriction justified on national security grounds does not become legitimate if its real purpose is to protect interests unrelated to national security, including, for example, protecting the government from embarrassment or the exposure of wrongdoing"⁹⁶.

For its part, the European Court of Human Rights has held that the intervention of States to restrict the right to freedom of expression of opinion and to the circulation of information should be connected with a "pressing social need", and that the exercise by States of their right to employ the concept of "pressing social need" requires legal disclosure and regulation in a manner that is easy for citizens to perceive, that is free of arbitrariness and that is devoid of exaggeration in the tendency of States to restrict freedom. In a famous judgment it issued in the year 1979 relating to a dispute between the British newspaper *The Sunday Times* and the British Government, the European Court gave precedence to the right to freedom of

expression of opinion over criminal contempt of governments and courts, by considering the publication by the said newspaper of material concerning a medicinal product, notwithstanding the order of a British court to refrain from publication, as a legitimate exercise of freedom of expression of opinion that did not cause harm to the national security of Britain, to the territorial integrity of the State or to public safety, and by negating any suspicion of its involvement in criminal contempt of court. In other words, the European Court gave precedence to freedom of opinion, publication and the circulation of information over arbitrary restrictions justified by no necessity, even where the source of these restrictions was the judgments and decisions of courts⁹⁷.

The European Court then returned in the year 1997 to hold that it was impermissible to impose punishment upon Belgian journalists who had criticised judgments issued by a number of appellate judges in their State. The Court entrenched in this regard the necessity of enabling the press, the media and politicians to address the judgments of courts by commentary and by the expression of opinion, and the imperative of giving effect to a greater measure of "tolerance" towards these categories, even where their expression of opinion is characterised by exaggeration or provocation. The European Court linked this view of its own with the "common good" and the "public interest", which consist in enabling the citizen to form an opinion on public issues by being exposed to diverse views, as well as in the monitoring by public opinion of the work of the public authorities, the evaluation of their practices and the prevention of their involvement in excesses or deviations⁹⁸.

Section Two: Security as a Restriction upon Freedom of Expression in Jordanian Legislation

We address in this Section security as a restriction upon freedom of expression in Jordanian legislation, by examining the laws that have referred to security as a restriction upon freedom of expression, whether the reference is direct or indirect - and this in the following Sub-sections:

Sub-section One: The Position of the Constitution on Restricting Freedom of Expression on Security Grounds

The Jordanian Constitution regulated freedom of expression in Article (15) thereof, in the manner previously referred to in Chapter One of this study. It did not, however, refer to national security as a restriction upon this freedom directly; this may nevertheless be inferred implicitly from the concluding part of the first paragraph of Article (15) of the Constitution, which states "... provided that he does not exceed the limits of the law". In this provision there is an implicit statement that freedom of expression may be restricted by law on grounds assessed by the ordinary legislator.

The same may likewise be inferred from certain other constitutional provisions. For example, Article (6/2) of the Constitution provides that: "2. The defence of the homeland, its land and the unity of its people, and the preservation of social peace, is a sacred duty upon every Jordanian." The preservation of social peace carries within it the meaning of protecting national security generally and social security in particular, for any prejudice to social peace

necessarily leads to prejudicing national security in its comprehensive sense. Likewise, Article (7/2) of the Constitution provides that: "Every assault upon public rights and freedoms or upon the inviolability of the private life of Jordanians is an offence punishable by law." There is no doubt that an assault upon public rights and freedoms or the violation of the inviolability of private life is an assault upon national security, and in the prevention of such conduct there is a preservation of national security. Such conduct cannot in any event be brought under freedom of expression; indeed, it constitutes restrictions upon freedom of expression laid down by the constitutional legislator.

The exercise of the right to freedom of expression may intersect with other rights, in particular the right to the privacy of individuals. The following are the most prominent violations monitored by the National Center for Human Rights⁹⁹ which prejudiced the right to private life:

- ❖ The criticism by a former deputy of the appointment of a lady as a minister, by publishing her private photographs with her family on social media sites and using offensive expressions - a matter which is regarded as a violation of the minister's right to private life¹⁰⁰.
- ❖ The publication by the press and by social media users of photographs and the circulation of information concerning girls under the age of eighteen who had left their families' homes, without adhering to the controls contained in the Charter of Press Honour, and in particular those relating to the obligation of journalists to defend the causes of childhood and not to publish what is offensive to them or to their families¹⁰¹.
- ❖ The publication by certain media outlets of photographs of two sisters whose bodies were found laid out in front of an abandoned building in Amman, thereby contravening the Charter of Press Honour, and in particular the articles that referred to the necessity of respecting the reputation of families and households and the confidentiality of citizens' private matters. Social media users likewise circulated these photographs and commented upon them without regard to the feelings of the relatives of the two girls and without relying upon documented information concerning the suicide incident¹⁰².

It is worth mentioning also that the restriction of freedom of expression has extended even to university students; and it is regrettable that the administrative judiciary (the protector of the rights and freedoms of individuals) has gone along with the administration in its decisions restricting freedoms and has regarded them as valid, even where the violations were merely the distribution of leaflets or the raising of banners within the university campus. The Jordanian High Administrative Court held: "... It is established from the papers of the action and from the statements of the appellant through the investigations conducted by the investigation committee that the appellant, at about noon on Wednesday 23/7/2015, distributed a leaflet and requested students to sign a cloth banner which two students were raising in her company within the campus of Yarmouk University in front of the entrance to the new Faculty of Economics and Administrative Sciences, without obtaining the approval of the competent university authorities, thereby contravening the provisions of paragraphs (a and g) of Article (3) of the Instructions on Disciplinary Procedures for Students at Yarmouk University No. 7 of 2009; and disciplinary penalties had previously been issued against her.

Whereas the conclusion reached by the investigation committee and adopted by the President of the University and the Deans' Council was a sound and acceptable conclusion drawn from the evidence contained in the action; and whereas our Court does not interfere in these convictions so long as they are derived from established principles in the papers of the action; and whereas the penalty imposed upon the appellant is among the penalties provided for in article four of the Instructions on Disciplinary Procedures for Students at Yarmouk University No. 7 of 2009, the decision of the Deans' Council at Yarmouk University is therefore issued by a body competent to issue it and within the limits imposed by the law, and is valid in its form and its substance; these grounds do not avail against it and their rejection is required. Whereas the judgment challenged reached the same conclusion as that which we have reached, it has therefore correctly applied the law"¹⁰³.

In exceptional circumstances, the Constitution permitted departure from the laws generally for the purposes of securing the safety of the State, as in the case of a state of emergency pursuant to Article (124), which provides that: "If anything occurs necessitating the defence of the homeland in the event of the occurrence of an emergency, a law shall be issued under the name of the Defence Law, by virtue of which power shall be given to the person designated by the law to take the necessary measures and procedures, including the power to suspend the ordinary laws of the State in order to secure the defence of the homeland; and the Defence Law shall come into force when it is proclaimed by a Royal Decree issued on the basis of a decision of the Council of Ministers."

And in the case of martial law pursuant to Article (125), which provides that: "In the event of the occurrence of a serious emergency in respect of which the measures and procedures under the preceding article of this Constitution are deemed insufficient for the defence of the Kingdom, the King may, upon a decision of the Council of Ministers, proclaim martial law by a Royal Decree throughout the Kingdom or in any part thereof. 2. Upon the proclamation of martial law, the King may, by virtue of a Royal Decree, issue any instructions that necessity may require for the purposes of the defence of the Kingdom, notwithstanding the provisions of any law in force; and all persons carrying out those instructions shall remain subject to the legal liability arising from their acts vis-a-vis the provisions of the laws until they are relieved of that liability by a special law enacted for this purpose." It is clear from these two provisions that freedom of expression of opinion may be suspended pursuant to the Defence Law or the instructions of the martial administration, according to the state proclaimed.

The Supreme Constitutional Court in Egypt states in this regard: "It is dangerous to impose restrictions that burden freedom of expression in a manner that turns citizens away from its exercise ... for no one may impose silence upon another, even if reinforced by law; and if freedom of expression is to breathe in the sphere without which it cannot live, then a measure of excess must be tolerated, and it is by no means permissible that extravagance in some opinions should warrant impeding their circulation"¹⁰⁴. It states in another case: "Freedom of expression, and the interaction of opinions generated thereby, may not be restricted by fetters that impede its exercise, whether by imposing prior restraints upon its publication or by subsequent punishment designed to suppress it. Rather, citizens must convey through it - and publicly - those ideas that circulate in their minds; they should not whisper them in secret but

should put them forward resolutely - even if the public authority opposes them - bringing about on their part, by peaceful means, a change that may be required. Truths may not be concealed, and it is inconceivable that access to them should be possible in the absence of freedom of expression"¹⁰⁵.

Sub-section Two: The Position of the Ordinary Laws on Restricting Freedom of Expression on Security Grounds

The laws that impose restrictions upon freedom of expression are numerous and varied, whether those relating to the regulation of this freedom or the penal laws generally. We shall address these laws in this Sub-section in turn.

First: The Press and Publications Law

The Press and Publications Law did not expressly address the question of national security as a restriction upon freedom of expression; it referred only to the fact that this freedom should be exercised within the limits of the law and within the framework of respect for public rights, freedoms and duties, and that the publication should refrain from publishing what conflicts with the principles of freedom and national responsibility. It likewise obliges the journalist to observe the ethics and morals of the profession of journalism by refraining from publishing anything liable to incite violence or to call for the stirring up of strife and division among citizens.

Article (7) of the Law provides that: "The press shall exercise its function freely in providing news, information and commentary, and shall contribute to the dissemination of thought, culture and the sciences within the limits of the law and within the framework of preserving public freedoms, rights and duties and of respecting the freedom of the private life of others and its inviolability."

Article (5), for its part, provides that: "The ethics and morals of the profession of journalism are binding upon the journalist, and they include:

- a - Respect for the public freedoms of others, the safeguarding of their rights and the non-infringement of the inviolability of their private lives.
- d - Refraining from publishing anything liable to incite violence or to call for the stirring up of division among citizens in any form whatsoever.

In practice, however, this Law may be used as a restriction upon freedom of expression. For example, (35) electronic publications were blocked in the year 2016 for not having obtained the licence required from the Commission, pursuant to the provisions of Article (49/a/1) of the Press and Publications Law No. (8) of 1998 and the amendments thereto¹⁰⁶. Likewise, ten warnings were issued to ten electronic publications out of a total of (181) publications, by reason of the failure to appoint an editor-in-chief owing to the vacancy of this position, on the basis of the provisions of Article (19/b) of the Press and Publications Law No. (8) of 1998 and the amendments thereto. The entry of (48) books into the Kingdom was also prohibited on the ground of their contravention of the provisions of Jordanian legislation relating to pornography and to offending the revealed religions¹⁰⁷.

Second: The Audiovisual Media Law

The Audiovisual Media Law obliges the licensee to the following¹⁰⁸:

1. Respect for human dignity, personal privacy and the freedoms and rights of others and the plurality of expression.
2. Refraining from broadcasting what offends public decency or incites hatred, terrorism or violence, or the stirring up of strife and religious, sectarian and racial discord, or what causes harm to the economy and the national currency or prejudices national and social security.
3. Refraining from broadcasting false material that harms the relations of the Kingdom with other States.
4. Refraining from broadcasting media or advertising material that promotes charlatanry, deception, extortion and the misleading of the consumer.

This provision may be criticised for the generality and breadth of its expressions and for the absence of any control or criterion defining their meaning, which leaves the door of interpretation wide open to determine their concept and to apply them in accordance with that concept¹⁰⁹.

Among the positive developments contained in the Audiovisual Media Law No. (26) of 2015, and specifically Article (4/y), is the formation of a committee of specialists to consider the complaints submitted by the public or by any other party relating to media content or to material broadcast or recorded for the purposes of display or circulation to the public, or by one licensee against another licensee. The establishment of this committee is regarded as among the positive matters which aim at advancing audiovisual content. The committee commenced its work in the year 2015, and the number of complaints it considered during the year 2016 amounted to (11) complaints, two of which were outside the competence of the committee and fell within the framework of labour complaints¹¹⁰.

The Law granted the Commission, in Article (8/s), the power to suspend the broadcasting of material or a programme in exceptional cases that harm national security, community peace or public order. It would have been more appropriate for the legislator to provide for referring the offending party to the judiciary and for the issuance of a judicial judgment in this respect¹¹¹.

Among the practical practices of the Media Commission with regard to media freedoms specifically, on 4/8/2016 it suspended the broadcasting of a programme on one of the radio channels, by reason of its unprofessional content consisting of an inappropriate comment upon a fatwa issued by His Eminence the Grand Mufti of the Kingdom; the programme was re-broadcast pursuant to a decision issued by the Media Commission after fourteen days, on condition that the violation was not repeated. Likewise, on 30/6/2016, the Media Commission suspended the broadcasting of a morning programme on one of the English-language radio stations, by reason of offence to official bodies and the failure to respect the customs of civil society.

The National Center for Human Rights clarifies in this regard that the Media Commission relies, in suspending programmes, upon the text of Article (8/s) of the Press and Publications Law, which grants the Commission the power to suspend the broadcasting of material or a programme in exceptional cases that harm national security or community peace or that broadcast pornographic material. The Center affirms in this respect the necessity of amending the Audiovisual Media Law so that the power to suspend the broadcasting of any programme belongs in the first place to the functions of the judicial authority, whose judgment is the hallmark of truth¹¹².

Likewise, on 9/8/2016 the Media Commission suspended one of the electronic news sites, on the ground that it is an electronic newspaper that must be subject to the same conditions to which printed newspapers are subject, including that all its owners be Jordanians; the site regularised this matter. As a result, the Media Commission resumed the broadcasting of the electronic news site on 18/8/2016. The National Center for Human Rights points out that the above-mentioned incident raises the problem of the registration of electronic sites so that they are not blocked - a matter which constitutes a contravention of the international human rights standards and a violation of the right to freedom of expression and to the circulation of information; for the principle is that the restrictions imposed should not constitute an impediment to the exercise of the essence of the right, a matter affirmed by Article (128) of the Jordanian Constitution. Moreover, international best practices in this field confine themselves to notification, and in the event of the publication's contravention of the laws the violations are referred to the judiciary, which has the final say, so that the executive authority is not both adversary and judge at one and the same time¹¹³.

Third: The Telecommunications Law

Article (29/h) of the Telecommunications Law No. 13 of 1995 provides that among the conditions of the licence contract is: "the undertaking of the licensee to provide the service to those requesting it or benefiting from it on an equal footing and without discrimination between them, save as required by national security or what is regarded as indulgence for operational, social or humanitarian reasons".

Article (75) of the Law likewise provides that: "a - Every person who, by any means of telecommunications, sends messages of threat or insult or messages contrary to morals, or transmits a fabricated news item with the intention of causing alarm, shall be punished by imprisonment for a period of not less than one month and not more than one year, or by a fine of not less than (300) dinars and not more than (2,000) dinars, or by both these penalties. b - Every person who provides or participates in providing telecommunications services contrary to public order or public morals shall be punished by the penalties provided for in paragraph (a) of this article, in addition to the application of the provisions stipulated in Article (40) of this Law."

Article (79) provides that: "Every person who uses a public or private telecommunications network in an unlawful manner, or connects his network with another telecommunications network without right, or obstructs the services provided by other telecommunications networks, or exposes the national interest to danger, shall be punished by imprisonment for a

period of not less than one month and not more than six months, or by a fine of not less than (2,000) dinars and not more than (5,000) dinars, or by both these penalties."

The National Center for Human Rights has monitored the issuance by the Telecommunications Regulatory Commission of communications to certain institutions containing a reference to the exploitation by certain parties of the social media platform (Facebook) to attack ideologies and to encroach upon races, lineages, national origins, religious belief and public morals, in addition to its use as a means of violating human rights, impersonation and fraud. The letter also contained a reference to the Commission's contact with the public policy representative for the Middle East and North Africa, and to the agreement that the Commission would coordinate with the company in order to report the offending pages for the purposes of blocking them, consistently with the community standards of the (Facebook) site. The Center affirms in this regard that the Commission used in its letter loose and broad terms that are extremely difficult to delimit. The Center likewise affirms the necessity of putting an end to any discourse involving hatred that takes place through social media sites, provided that this is done through the judicial authority, which is the body with original competence and whose judgments are the hallmark of truth¹¹⁴.

Fourth: The Anti-Terrorism Law

The Anti-Terrorism Law No. (55) of 2006¹¹⁵ and the amendments thereto defined the terrorist act as: "every deliberate act, or the threat thereof, or abstention therefrom, whatever its motives, purposes or means, committed in implementation of an individual or collective criminal enterprise, that is liable to expose the safety and security of society to danger, or to create strife, if that is liable to disturb public order or to spread terror among people or to intimidate them or to expose their lives to danger, or to cause harm to the environment, to public facilities and property or to private property, or to international facilities or diplomatic missions, or to occupy or seize any of them, or to expose national or economic resources to danger, or to compel a legitimate authority or an international or regional organisation to perform any act or to abstain therefrom, or to obstruct the application of the Constitution, the laws or the regulations."

Article (3) of the Law likewise provides that: "Without prejudice to the provisions of the Penal Code or any other law, the following acts shall be deemed to be prohibited terrorist acts: e - Using an information system or the information network or any means of publication or media, or establishing an electronic site, in order to facilitate the carrying out of terrorist acts or to support a group, organisation or association that carries out terrorist acts, or to promote its ideas or to finance it, or to carry out any act liable to expose Jordanians or their property to the danger of hostile or retaliatory acts against them."

In accordance with this provision, the Court of Cassation held: "The acts committed by the accused, consisting in following the news of the terrorist organisation (ISIS) through the World Wide Web, republishing its releases, exchanging its news with his friends and acquaintances, republishing a speech of the leader of that organisation and promoting it, constitute all the elements and components of the offence of promoting the ideas of a terrorist group contrary to the provisions of Articles (3/e and 7/c) of the Anti-Terrorism Law No. (55)

of (2006) and the amendments thereto"¹¹⁶. It likewise held: "The acts committed by the accused, consisting in:

- His following and surveying the releases of the terrorist ISIS organisation by means of social interaction media.
- His downloading photographs belonging to the terrorist ISIS organisation and other photographs of the fighters of this organisation and republishing them on his own page (Facebook).
- Downloading photographs carrying ideas and expressions adopted by the Islamic State organisation with the intention of promoting the organisation and gaining more supporters for it.
- Downloading a number of videos and chants belonging to the organisation onto his personal telephone -

constitute all the elements and components of the offence of promoting the ideas of a terrorist organisation contrary to the provisions of Article (3/e), read together with Article (7/c), of the Anti-Terrorism Law, as set out in the charge of the Public Prosecution and as concluded by the decision challenged"¹¹⁷.

It held, concerning a post by the Deputy Comptroller General of the Muslim Brotherhood on his personal page on Facebook: "... The acts committed by the accused, consisting in:

1. Publishing an article on one of the social media sites (Facebook), accessible to all.
2. Including expressions involving offence and defamation of another State linked by political and economic relations with the Hashemite Kingdom of Jordan, bearing in mind that social interaction media are open to comments upon them by others -

constitute all the elements and components of the offence attributed to him contrary to the provisions of Articles (3/b and 7/c) of the Anti-Terrorism Law No. (55) of 2006, as set out in the charge of the Public Prosecution and as concluded by the decision challenged - a matter which requires the rejection of these grounds, since the judgment satisfied its legal conditions as regards reasoning, justification, facts and penalty"¹¹⁸.

Although the foregoing judicial judgments, and in particular those connected with the terrorist ISIS organisation, are acceptable and cannot be regarded as a restriction upon freedom but rather as a matter of combating terrorism, which must be confronted and fought, other judgments unconnected with terrorist organisations issued pursuant to the Anti-Terrorism Law have not met with wide acceptance or welcome; on the contrary, many have viewed them as restrictions upon freedom of expression of opinion and as a gagging of mouths under the pretext of confronting terrorism.

Among these, by way of example, is the earlier judgment against the Deputy Comptroller General of the Muslim Brotherhood on account of a post on his page on the social media site Facebook in which he criticised the State of the Emirates. It was stated that the arrest came after an article written by the Deputy Comptroller General, Zaki Bani Irsheid, in which he criticised the Government of the United Arab Emirates after it classified the Muslim Brotherhood as a terrorist organisation. The Muslim Brotherhood commented upon the

decision to arrest Bani Irsheid by stating: "Arrest is not permissible on account of an article expressing an opinion"¹¹⁹. Likewise, the founder of the Saraya news site was detained in the year 2015 by the public prosecutor of the State Security Court on the charge of using media means to promote the ideas of a terrorist group and of carrying out acts liable to expose the safety of Jordanians to the danger of hostile and retaliatory acts, contrary to the provisions of Articles 3 and 7 of the Anti-Terrorism Law No. 55 of 2006 and the amendments thereto¹²⁰.

From the viewpoint of the Human Rights Watch organisation, the Jordanian authorities have increasingly used counter-terrorism provisions to arrest and pursue activists, opponents and journalists for offences of expression of opinion. They have also relied considerably upon the 2014 amendments introduced to the Anti-Terrorism Law, which expanded the definition of terrorism to include acts such as "disturbing (Jordan's) relations with a foreign State". It also indicated that Jordan curtailed media freedom in 2015 by arresting at least 9 journalists and writers and bringing charges against them, sometimes under the loose and vague provisions of the Kingdom's Anti-Terrorism Law¹²¹.

On the other hand, the Commissioner General for Human Rights points out that the Jordanian Parliament, three years after the outbreak of the Arab Spring, resorted to amending the Anti-Terrorism Law so as to expand the definition of the offence of terrorism to include "disturbing the tranquillity of Jordan's relations with a foreign State". The Government justified this amendment - which tightened the penalties provided for in the Penal Code upon freedom of expression guaranteed not only under the Constitution but also under Article (19/b) of the International Covenant on Civil and Political Rights - on the ground that it was made in order to enable Jordan to deal with the influx of fighters returning from Syria, as though the Government had anticipated events and imposed restrictions upon freedom of expression by way of precaution against the repercussions of preaching, media, intellectual and ideological activities whose features had begun to appear on the national horizon and which might constitute sources of threat to national security, public order and the rights and freedoms of others. Moreover, the amendment of the Anti-Terrorism Law came with articles that made it easy to try any person for simple offences by treating them as terrorist acts, which may make this right (the expression of opinion) the exception and the restrictions the rule¹²².

In the light of the competence of the National Center for Human Rights to monitor the reality of human rights, the Center observed during the year 2016 an increase in the numbers of those detained and tried on account of expressing positions and points of view of those citizens concerning subjects connected with the general policy of the State and relating to sensitive and important issues of concern to the whole of society, and this before the State Security Court pursuant to the Anti-Terrorism Law No. (55) of 2006 and the amendments thereto. The Center accordingly issued a statement on 7/7/2016 in which it called upon the authorities to guarantee the freedom of the citizen to exercise his right to peaceful expression of his opinion in the various forms and manners, including writing, publication, commentary and peaceful assembly. It noted that the marked expansion in holding persons to account and questioning them for various forms of expression of opinion and peaceful protest had reached a degree that had begun to affect the right of the citizen to criticise and oppose public policy. The Center likewise issued a statement on 25/2/2016 in which it expressed its concern at the

repeated prevention by the law enforcement agencies of citizens from exercising the right to peaceful assembly, and the obstruction of a number of peaceful activities¹²³.

According to the report of the National Center for Human Rights, the year 2015 witnessed the detention of eleven journalists, five of whom were detained by the public prosecutor of the State Security Court on the basis of the Anti-Terrorism Law on charges consisting either of using media means to promote the ideas of a terrorist group - Article (3/e) of the Anti-Terrorism Law - or of carrying out acts liable to expose Jordanians to the danger of hostile and retaliatory acts contrary to the provisions of article three of the Anti-Terrorism Law, and of disturbing the tranquillity of relations with a foreign State contrary to the provisions of Article (3/b) of the Anti-Terrorism Law¹²⁴.

According to the report of the National Center for Human Rights for the year 2015, the Law described terrorist acts in loose and broad expressions, such as "public order", "the safety of society", "creating strife", "the security of society", "spreading terror", "intimidating people"; for all these expressions are of broad connotation and it is possible to exercise latitude in their use when applying the legal provisions and in regarding any act or activity within their framework as a terrorist act. This is inconsistent with the international standards, and specifically Articles (4 and 14) of the International Covenant on Civil and Political Rights, which guaranteed that the authorities shall not take any measures liable to prejudice the guaranteed rights, or in consequence of which the guarantees of a fair trial are forfeited¹²⁵.

The United Nations Special Rapporteur on the protection of human rights has expressed his grave concern that the use of counter-terrorism procedures is frequently vague and therefore incompatible with the requirement of legality as contained in the International Covenant on Civil and Political Rights. Accordingly, these restrictions and procedures are not confined to combating terrorism but may also be used in relation to the expression of opinion free of violence¹²⁶.

Terrorism offences committed contrary to the provisions of the Anti-Terrorism Law No. (55) of 2006 are considered by the State Security Court, pursuant to Article (3/a/3) of the State Security Court Law No. 17 of 1959.

Fifth: The Electronic Crimes Law

The Jordanian legislator did not define the electronic offence in the Electronic Crimes Law No. 27 of 2015; he confined himself to regulating the provisions specific to it, leaving the definition to legal doctrine and the judiciary. The electronic offence is defined as "every unlawful conduct punishable by law, in which one or more of the electronic media is an instrument, an environment or a target for the commission of the offence"¹²⁷. It may also be defined as every unlawful conduct (an act or an abstention from an act) carried out using the means of information technology, the information network or information systems.

This Law is perhaps among the laws most productive of controversy in the sphere of restricting freedom of expression on security grounds, being regarded as a sword hanging over every person who expresses his opinion through the electronic means, which have become an outlet for many in giving their points of view on public affairs and on the performance of the persons concerned with them.

The detention of seven media activists on "Facebook" in October 2017 aroused wide controversy in Jordan. The prosecution authorities had detained the seven activists in connection with a case brought by the Secretary General of the Royal Court, Yousef Al-Issawi, against every person who had offended him and published false information about him. Wholesale demands were monitored for the release of the seven activists who had been detained on the charge of defamation and slander against Al-Issawi¹²⁸. In such practices there is a restriction upon freedom of expression of opinion, and in particular where the matter is criticism directed at the men of the authority and the officials therein - which is what the international standards permit in this respect.

Among the matters that raise doubts and fears of the Electronic Crimes Law violating freedom of expression is what is contained in the draft law amending the Electronic Crimes Law of 2017, which addressed what is termed "hate speech", defined in the draft law as "every statement or act liable to stir up strife, or religious, sectarian, racial or regional discord, or discrimination between individuals or groups". It is no secret that these expressions contain sufficient generality, vagueness and lack of clarity to refer any person to the judiciary as an accused of committing this offence, which will be reflected negatively upon freedom of expression; and perhaps the indications of this began even before the approval of the law and merely upon the announcement of the draft law.

It is to be mentioned that Principle Eleven of the Camden Principles¹²⁹, under the heading (Restrictions) on freedom of expression and harmful speech, states the following: "11.1 States should not impose restrictions on freedom of expression that do not observe the standards provided for in Principle 1.1 of these Principles¹³⁰; in particular, restrictions must be provided by law, must have as their purpose the protection of the rights or reputations of others, or national security, public order, public health or morals, and must be necessary in a democratic society to protect these interests¹³¹. This means that such restrictions: - must be clearly defined and must meet a pressing social need; - must be the least restrictive means available, meaning that there is no other effective means that would lead to imposing fewer restrictions upon freedom of expression; - must not be overbroad, that is, speech must not be restricted in a broad and indeterminate manner, and restrictions must be confined to harmful speech and must not go beyond it so as to restrict legitimate forms of expression; - must observe the principle of proportionality, meaning that the benefit accruing therefrom to the targeted categories outweighs the harm that may befall freedom of expression, including as regards the penalties permitted by these restrictions. 11.2 States should review their legal framework to ensure that all restrictions upon freedom of expression conform to what is mentioned above."

Principle Twelve, under the heading (Incitement to Hatred), states the following: "12.1 - All States should adopt legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (hate speech)¹³². National legal systems should make clear the following: - that the words "hatred" and "hostility" refer to intense and irrational emotions of opprobrium, enmity or detestation towards the target group; - that the word "advocacy" entails the existence of an intention to promote hatred publicly towards the target group; - that the word "incitement" refers to statements about

national, racial or religious groups which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups; - that the positive promotion of the identity of a particular group does not constitute hate speech.

12.2 - States should prohibit the denial of, or the condoning of, the crimes of genocide, crimes against humanity and war crimes only where such statements constitute hate speech as defined in Principle 12.1.

12.3 - States should not prohibit criticism of, or debate about, ideas, beliefs, ideologies, religions or religious institutions, except where this constitutes hate speech as defined in Principle 12.1.

12.4 - States should ensure that persons who have suffered actual damage as a result of hate speech, as defined in Principle 12.1, have a right to an effective remedy, including a civil remedy for damages.

12.5 - States should review their legal framework to ensure that any controls relating to hate speech observe what is mentioned above."

If the Government wishes to contribute to combating hate speech and to fight it in practice and in law, it must rely first upon the International Covenant on Civil and Political Rights, and in particular Articles (19, 20), and upon the International Convention on the Elimination of Racial Discrimination; and it must adhere to the Camden Principles, Article 19, which laid down 12 principles for drawing the dividing lines between freedom of expression and hate speech - even though the latter are of a moral rather than a legal character.

In this context, the National Center for Human Rights monitored during the year 2016 the continued detention of individuals on account of expressing their opinions. The great majority of those detained had expressed their opinions principally through their accounts on the social media site (Facebook). The detention issued by the judicial bodies, the administrative bodies or even, on some occasions, the security agencies, included activists in the popular movement, artists, writers and others. In this context the Center monitored (16) cases, the majority of which were pursuant to the Electronic Crimes Law No. 27 of 2015¹³³.

The number of cases relating to the offence of sending, re-sending or publishing data or information by way of the information network, an electronic site or any information system involving defamation, slander or contempt of any person, on the basis of the provisions of Article (11) of the Electronic Crimes Law No. (27) of 2015, for the year 2016 amounted to (456) cases, whereas the total of these cases for the year 2015 amounted to (48) cases. The Center observes in this regard a marked increase in the number of cases relating to Article (11) of the Electronic Crimes Law for the year 2016 by comparison with the year 2015¹³⁴, a matter which confirms that this article has constituted a new restriction upon freedom of expression and the giving of opinions in the electronic sphere¹³⁵.

Likewise, one of the journalists was detained on 15/2/2016 pursuant to Article (11) of the Electronic Crimes Law No. (27) of 2015, on account of his publishing press material on the electronic site of the newspaper for which he works under the title "Judges and court employees rise up". He was released on 16/2/2016 on bail submitted by the President of the Press Association. Another journalist was also detained on 18/5/2016 pursuant to Article (11)

of the Electronic Crimes Law No. (27) of 2015, against the background of his publishing an article entitled "The building of death .. a security burden in Amman". He was released on the same day on bail likewise submitted by the President of the Press Association¹³⁶.

According to the data of the Electronic Crimes Combating Unit, this pattern of offences is increasing, particularly those connected with freedom of expression and the exceeding of the limits of the law, as is apparent from the following¹³⁷:

Electronic offences recorded by the Electronic Crimes Combating Unit

Type of offence / Year	2013	2014	2015	2016	9/2017
Impersonation	190	341	321	884	194
Threat, insult and abuse, vilification	474	456	970	1023	2038
Fraud	98	93	91	159	104
Corrupting a marital bond	101	91	141	187	1009
Data theft	0	36	16	80	183
Hacking of sites	35	23	76	167	73
Telecommunications applications	401	467	686	1103	448
Abuse of children	21	23	4	51	0
Total	1320	1532	2305	3654	4049

Sixth: The Crime Prevention Law

Although the Crime Prevention Law No. 7 of 1954¹³⁸ is regarded as among the laws of administrative policing aimed at protecting public order, and its application has been left to the administrative governors, it nevertheless accommodates the idea of restricting freedom of expression in order to protect security, given that public security is one of the most important elements of public order. According to Article (3) of this Law: "If it comes to the knowledge of the Mutasarrif, or he has grounds to believe, that there is a person in his area of jurisdiction who belongs to one of the categories mentioned below, and he considers that there are sufficient grounds for taking the procedures, he may issue to the said person a summons in the form set out in the First Schedule to this Law, requiring him to appear before him in order to show whether he has grounds preventing his being bound by an undertaking, either with sureties or without, according to the form set out in the Second Schedule to this Law, in which he undertakes to be of good conduct during the period which the Mutasarrif deems appropriate to specify, provided that it does not exceed one year.

1. Every person found in a public or private place in circumstances which satisfy the Mutasarrif that he was about to commit any offence or to assist in its commission.
2. Every person habitually engaged in brigandage or theft or the possession of stolen property, or habitually protecting or harbouring thieves or assisting in concealing or disposing of stolen property.
3. Every person who is in a condition that makes his being at large without surety a danger to people."

Pursuant to Article (5/c) of the Law, "the undertaking shall not require of him more than the preservation of security, or abstention from committing acts liable to disturb the tranquillity of public order, or being of good conduct".

According to the annual report of the National Center for Human Rights for the year 2016, a decision was issued by the Governor of the Capital on 18/6/2016 ordering the blocking of six electronic sites belonging to a group of companies that provide the service of access to judicial and financial databases and to the data of legal legislation and its amendments, on the basis of the Crime Prevention Law No. (7) of 1954. The foregoing decision raises two questions of some importance. The first question: the issuance of an administrative decision by the Governor of the Capital blocking electronic sites on the basis of the Crime Prevention Law, which is regarded as an encroachment upon the judicial authority, which has the competence to determine the extent of the lawfulness of such sites. The second question: the existence of a legal gap relating to the protection of personal information and the security of individuals in the electronic sphere, and the pressing need for provisions criminalising the infringement of the right to privacy, particularly through information systems¹³⁹.

Likewise, one of the journalists was subjected to ill-treatment and to detention for three days on the basis of a decision of the administrative governor in the Governorate of Madaba, while covering the events of the Dhiban movement during the month of Ramadan of the year 2016; the law enforcement agencies cut up his press card, broke his camera and beat him¹⁴⁰. The National Center for Human Rights also monitored the detention of (104) persons against the background of their participation in sit-ins or labour demonstrations or in demands for certain economic rights, or for the purposes of denunciation and the expression of their rejection of certain policies and decisions relating to public affairs. The detention process took place in most instances pursuant to administrative decisions by the administrative governors, and their detention continued for short periods¹⁴¹.

Among the phenomena that have become striking this year (2017) is the resort of officials and holders of public office in the State to the judiciary and to the detention of activists on social media sites on the plea that they have committed acts contrary to the Electronic Crimes Law. The public prosecutor of Amman decided on 22/11/2017 to detain nine persons who had given offence through social media sites to the former Prime Minister and current President of the Senate, Faisal Al-Fayez. Al-Fayez had submitted an official complaint to the Public Prosecution Department against the persons who had given offence to him concerning the sale of land to the Social Security Corporation owned by Al-Fayez and his relatives, without verifying the accuracy of the information - which the public prosecutor found to be contrary to the Electronic Crimes Law, whereupon he decided to detain them in correction and rehabilitation centres¹⁴². The complainant then waived his right after a few days and they were released.

We consider that among the requirements of freedom of expression is the presentation of opinions relating to public affairs in their various fields and the criticism of the acts of those in charge of them, this being among the rights covered by constitutional protection; for freedom to criticise public work is a right guaranteed to every citizen. The freedom to present and circulate opinions is not intended merely for the critic to express himself; rather, its

ultimate purpose is to reach the truth by ensuring the flow of information from its diverse sources. It is not permissible for the law to be an instrument that impedes freedom of expression concerning manifestations of the breach of official, representative or public-service trust, or the aspects of deficiency in the performance of its duties. It is dangerous to impose restrictions that burden freedom of expression in a manner that turns citizens away from its exercise. This is what the Supreme Constitutional Court of Egypt expressed by stating: "The discourse of force therein involves the forfeiture of the sovereignty of reason and of the freedom of creativity, hope and imagination; it generates a dread that stands between the citizen and the expression of his opinions in a manner that reinforces the desire to suppress them and entrenches the aggression of the public authority hostile thereto, which ultimately forfeits his security and stability"¹⁴³.

Seventh: The Penal Code

The Penal Code is by its nature a restriction upon the rights and freedoms of individuals and at the same time a guarantee of them¹⁴⁴ through the criminalisation of certain acts and forms of conduct and their prohibition on pain of liability, so that all individuals may exercise their rights and freedoms without being disturbed by anyone, and thereby national security generally is preserved. This restriction may naturally include freedom of expression.

In the chapter on offences against the security of the State, Article (114) provides that: "Every Jordanian who attempts, by acts, speeches, writings or otherwise, to sever a part of the Jordanian territory in order to annex it to a foreign State, or to grant it a right or a privilege belonging to the Jordanian State, shall be punished by temporary hard labour for not less than five years."

Article (118/2) provides that: "Shall be punished by temporary detention for a period of not less than five years: 1. Whoever violates the measures taken by the State to preserve its neutrality in war. 2. Whoever carries out acts, writings or speeches not authorised by the Government that are liable to expose the Kingdom to the danger of hostile acts, or to disturb its relations with a foreign State, or to expose Jordanians to acts of reprisal against them or against their property."

Article (122) provides that: "Shall be punished by the same penalties set out in the preceding article, upon the complaint of the injured party, for the following offences, if they are committed without sufficient justification: 1. Publicly showing contempt for a foreign State, its army, its flag or its national emblem. 2. Slander, defamation or contempt occurring publicly against the head of a foreign State, its ministers or its political representatives in the Kingdom. It shall not be permissible to prove the act that was the subject of the defamation."

Article (130) provides that: "Whoever, in the Kingdom in time of war or in anticipation of its outbreak, engages in propaganda aimed at weakening national sentiment or awakening racial or sectarian discord shall be punished by temporary hard labour."

Article (131/1) provides that: "Shall be liable to the penalty set out in the preceding article whoever broadcasts in the Kingdom, in the same circumstances, news which he knows to be false or exaggerated and which is liable to weaken the morale of the nation."

Likewise Articles (147-149), specific to terrorism and conspiracy; and these offences are considered by the State Security Court pursuant to Article (3/a/3) of the State Security Court Law No. 17 of 1959.

Article (150) likewise provides: "Every writing and every speech or act intended to, or resulting in, stirring up sectarian or racial discord or inciting conflict between the communities and the various elements of the nation shall be punished by imprisonment for a period of not less than one year and not more than three years and by a fine not exceeding two hundred dinars." This article is perhaps among the articles most applied in practice to pursue persons who exceed the limits of freedom of expression as drawn by the law. This is in addition to the many provisions that criminalise many acts falling under the exceeding of freedom of expression and that aim at protecting national security.

It is observed that the Jordanian Penal Code contains a provision criminalising the carrying out of acts or writings liable to expose the Kingdom to the danger of hostile acts, or to disturb its relations with a foreign State, or to expose Jordanians to the danger of acts of reprisal with a foreign State (Article 118/2); and this offence falls within the jurisdiction of the ordinary judiciary. The Anti-Terrorism Law contains a similar provision that deems this act to be in the category of terrorist acts (Article 3/b), and accordingly it falls within the jurisdiction of the State Security Court - a matter which raises a question concerning the duality of criminalisation and the body competent to refer cases of this type to the State Security Court or to the ordinary judiciary, and the mechanism for taking this decision¹⁴⁵.

Finally, judicial precedent has defined permissible criticism as an act containing no defamation, slander or insult - that is, containing no prejudice to the honour, standing or reputation of another, but rather censure of his conduct or his work without the intention of prejudicing his person as regards his honour or standing. The distinction between the person and his acts is what determines the sphere of punishable aggression and the sphere of criticism in which there is no offence. It has stated that the right of criticism, and in particular in its political aspects, is regarded as a direct contribution to safeguarding the system of mutual oversight between the legislative and executive authorities.

The right of criticism requires for its existence the fulfilment of five conditions, namely:

1. The criticism must relate to an established fact known to the public.
2. The criticism must rest upon the established fact and be confined to it.
3. The fact that is the subject of the criticism must be of social importance.
4. The critic must use appropriate expressions in judging or commenting upon the fact.
5. The critic must be in good faith.

Eighth: The Defence Law

Work under this Law is proclaimed by a Royal Decree issued on the basis of a decision of the Council of Ministers, if anything occurs necessitating the defence of the homeland in the event of the occurrence of an emergency threatening national security or public safety throughout the Kingdom or in a region thereof, by reason of the outbreak of war, or the

existence of a situation threatening its outbreak, or the occurrence of disturbances or internal armed strife, or public disasters, or the spread of a scourge or an epidemic.

The Defence Law No. 13 of 1992 was issued in the year 1992 and work under it has not been proclaimed to date, owing to the absence of justifications for that in accordance with Article 124 of the Constitution. Although this Law is applied only in exceptional circumstances in the event of the proclamation of a state of emergency, work under it is undertaken only for the purposes of the defence of the Kingdom and of securing it against any internal or external danger. In the event of work being undertaken under it, it leads to a clear and manifest prejudice to freedom of expression for the purposes of national security; and pursuant to Article (4/j), among the powers of the Prime Minister is "the censorship of letters, newspapers, publications, bulletins and drawings and all means of expression, propaganda and advertising prior to their publication, and their seizure, confiscation and suspension, and the closure of the places of their preparation".

Such procedures taken pursuant to this Law are not subject to judicial review save within the scope of the two elements of the cause and the purpose of the decision, and the oversight of the judiciary does not extend to cover the remaining elements, the most important of which is the element of the subject matter and the defect attaching to it, consisting in the defect of contravention of the law. In this regard, and in the field of the oversight of the High Court of Justice over the element of cause, it stated: "If the acts attributed to the applicant are the defamation of honour, this being a question that arouses feelings, sentiments and strife among the members of a society that preserves the traditions of family honour, and being among the questions that touch upon public safety and tranquillity, the Governor is entitled to apply the provisions of Article /9/ bis of the Defence Regulation No. (2) of 1939 in respect of the applicant and to detain him in a vocational correction and rehabilitation centre"¹⁴⁶.

It appears that all this quantity of laws imposing restrictions upon freedom of expression on the grounds of preserving national security and other higher interests of the State - and in particular the successive amendments to these laws, which share a common thread, namely the narrowing of freedom of expression on security grounds - has led to a decline in Jordan's ranking in the field of press freedom. According to a report of the Reporters Without Borders organisation, issued in the month of November 2017, Jordan was placed 138th globally on the scale of press freedom, and 11th among the Arab States. Media practitioners consider that this came as "a logical consequence of the body of legislation recently approved that restricted freedom of opinion and expression generally and freedom of the press in particular"; for its part, the Government, through the Director of the Media Commission, cast doubt upon the accuracy of this report¹⁴⁷.

According to the report of the National Center for Human Rights for the year 2015, there continued during the year 2015 the detention and trial of persons on the charge of using an information system, the information network or any means of publication or media, or establishing an electronic site, in order to facilitate the carrying out of terrorist acts or to support a terrorist group or organisation or to promote its ideas, contrary to the provisions of the Anti-Terrorism Law (Article 3/e). The Center records in this regard the lack of clarity and precision of the expression "promoting a terrorist group" and its contravention of the relevant

international standards, in addition to its being a loose term for which there is no control or criterion. The Center monitored the detention and trial of approximately (50) persons on the basis of this offence. While the Center affirms the necessity of criminalising and trying whoever disseminates terrorist thought, given the gravity of this offence for society, it affirms - at the same time - the necessity of adhering to precise legal drafting of the acts that constitute terrorist offences, and of keeping away from loose terms that admit of interpretation¹⁴⁸.

In a related context, it is to be noted that the Human Rights Watch organisation issued its report on the situation of human rights in the world for the year 2016, in which it indicated that the Jordanian authorities had increasingly used the provisions of the Anti-Terrorism Law to arrest and pursue activists, opponents, journalists, politicians and persons participating in the various marches or protests. The report also referred to the narrowing of the space for media freedom during the year 2016¹⁴⁹.

According to the report on the situation of freedom of opinion and expression in the Arab world for the year 2016¹⁵⁰, the Jordanian authorities, pursuant to the Anti-Terrorism Law, incorporated legal provisions punishing offences of the expression of opinion which include the disturbance of the tranquillity of relations with sister and foreign States. The authorities also used the Electronic Crimes Law No. 27 of 2015 to arrest many citizens on account of posts on "Facebook" or tweets on "Twitter", which was considered a threat to activists on the internet. The said Law imposes strict restrictions and severe penalties upon those who contravene it through writings by which they express their opinions through social networks or internet sites. In the year 2016 many political activists were arrested on account of posts on social media sites, pursuant to the Electronic Crimes Law, the Anti-Terrorism Law, the Press and Publications Law and the Penal Code, on charges such as extending the tongue, exposing Jordan to the danger of hostile acts, or contempt of religions. The Jordanian authorities also increasingly narrowed, in the year 2016, the freedom of circulation of information by means of publication bans upon the press in order to prevent public reporting on matters which the authorities consider sensitive and which must not be circulated in the media.

Conclusion

The importance of freedom in the life of the individual and of society is great, and it consists in the following: Freedom is a means of satisfying human desires and innate needs in expressing opinion and in people sharing their problems, their concerns and what passes through their minds. When there is a margin of freedom for individuals, you see them feeling happiness, because they are able to express their opinions in complete freedom and to give vent to their problems and concerns without being subjected to pressure or compulsion from anyone.

Freedom is the path to the elevation and progress of societies; for wherever you turn your face in this vast world, you see that the States that enjoy freedom are the States most advanced in progress, refinement and civilisation, since freedom brings out all the skills and capacities that people possess, which they harness in the service of their homeland and its progress; whereas the societies that lack freedom are societies left behind by the march of civilisation and progress.

Freedom is a means of participating in decisions, of discussing them and of choosing the best and most suitable of them. Democracy, as a means of governance, is nothing but a form of freedom, whereby people come together in order to choose a number of the questions and fateful decisions in their lives, including the choice of their rulers and officials, and participation in the consultative councils that enact laws and regulations and submit them to the competent authority for their approval and application.

Freedom enables man to exercise positive criticism in order to correct the conduct of officials; for the ruler and the official are in continuous need of someone to give them advice and positive criticism so as to correct their course, to rectify and to guide their decisions; and the individual cannot exercise such criticism save in the presence of freedom. The Rightly Guided Caliphs were an example in accepting criticism and in giving people a large margin of freedom for that purpose, and the famous phrase "If I deviate, then set me straight" is nothing but an example of the freedom that existed in the era of the righteous forebears among the Caliphs. Freedom is also a means of creativity, for creativity neither exists nor flourishes save in the presence of a margin of freedom that enables man to think without limits or impediments; and it is likewise a means of devising solutions and creative ideas.

If freedom of expression is among the freedoms and rights recognised internationally and domestically - whether in the traditional media or the new media - its exercise or its misuse and the giving of free rein to it is liable to lead to prejudicing the rights and freedoms of others or to causing them moral or material harm; and it may threaten national security, particularly in the light of the wide spread of social media sites, news sites and radio and television stations that broadcast their material through the internet, which have become a mount for certain weak souls to vilify people, to prejudice their honour and reputation, to expose their shame and to interfere in their privacy; or to praise violence, or to incite hatred, racism and terrorism, or to prejudice public order or national security and defence in the State, through the establishment of electronic sites that incite the commission of offences against its security,

its territorial integrity and its stability, and against the system of government in the State. It is therefore necessary to set out the limits of freedom of expression.

The monitoring by the National Center for Human Rights of the violations that have occurred in the field of freedom of expression over a period of time has revealed that they were concentrated in two respects¹⁵¹: the first, the adoption of a number of pieces of legislation which, although limited, had a marked effect upon freedom of expression by narrowing the space that was previously available to citizens - whether journalists, political activists or merely peaceful protesters. The second consisted in the tightening of penalties and the intensification of pursuit against those who criticise the authorities (Jordanian or foreign States), and in particular leaders and officials and even institutions.

One may observe that the governmental strictness in penalties and restrictions upon freedom of expression came as a reaction to certain developments occurring in society and at the level of the exercise of this freedom, in which the holders of the right sometimes exceeded the framework or the ceiling permitted by the international standards. However, the procedures adopted by the Government, particularly in legislation, also contravene the standards, by referring the offenders to the State Security Court and by widening the scope of the misdemeanour so that it becomes a felony. All this permits it to be said that the procedures of the Government may be sound as regards the principle from which they proceed, but they are defective in the manner of their application.

This study has arrived at the following findings and recommendations:

First: The Findings

1. Freedom of expression is regarded as among the fundamental freedoms of man, recognised internationally and nationally; and one cannot speak of a society in which human rights flourish without passing through these freedoms, which are in truth the real gateway to the exercise of many public intellectual and cultural freedoms and rights and others, such as the right of criticism, freedom of the press, printing and publication, and freedom of scientific research and creativity.
2. Freedom of expression is closely connected with national security, given that each of them affects the other; it cannot, however, be accepted in any event that one of them should abolish the other.
3. The international instruments have guaranteed freedom of opinion and expression. Article (19) of the Universal Declaration of Human Rights provides that: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."
4. Among the pillars of the internal security of the Hashemite Kingdom of Jordan is the pursuit of balanced foreign policies that contribute to supporting internal stability and to preventing entry into external confrontations that threaten national security.
5. The importance of freedom of expression at the individual level lies in the fact that it is regarded as a principal matter for the life, dignity and development of every person, for it

enables every person to understand what surrounds him and the wider world through the free exchange of ideas and information with others.

6. Freedom of expression and freedom of access to information affect the implementation of other human rights, and enable journalists and activists to draw attention to human rights issues and violations and to persuade the Government to take measures in respect of them, in addition to other benefits of freedom of expression of opinion.

7. National security is a vital necessity and perhaps the supreme objective, not only for the State and the political system but for society and the citizen at one and the same time. Hence the provision in international humanitarian law on the necessity of respecting it and of treating a threat to it as one of the justifications for restricting particular rights, and in particular the most prominent of these rights, namely the right to freedom of expression.

8. The establishment of security creates an atmosphere of democracy and strengthens human rights at the level of practice and thought; for freedom of expression is a necessity for the establishment of national security and a factor of stability for society, since the suppression of freedoms - and in particular freedom of expression - will lead to congestion among the general body of the people, which may drive them to rebellion, to departing from the law and to undermining national security.

9. The new media represent an ideal field for freedom of expression and for the dissemination of ideas and opinions, since the internet permits users to express their opinions and to put forward their shared ideas. This global platform provides an additional means of expression, better than the distribution and posting of leaflets and printed matter. The internet has likewise made every connected user or subscriber able to access any electronic site in order to give his opinion and to express his ideas as he wishes. It goes without saying that the internet is the most powerful and most widely used means of expressing opinion and of the exercise by individuals of their rights and freedoms, in addition to its being the most free, widespread and interactive media window.

10. Much national legislation criminalises what is published on social media sites by way of news or comments if it involves defamation or slander, treating these sites as among the means of publicity; and the Jordanian judiciary has gone along with this - contrary to what has been settled by comparative judicial practice, which considers that these sites do not satisfy the requirement of publicity.

11. The absence of a definition or a correct understanding of the nature of security in the Arab reality. The concept of security is by its nature flexible and changing, and it is therefore necessary to define or determine its nature - in particular, to determine whose security is to be achieved, and which values are to be protected. Is what is meant the security of the political system? Or the security of the ruling elite? Or of the ruler? Or the security of society?

12. The existence of a manifest gap in the concept of security between the Arab rulers and the ruling elites on the one hand, and the citizen and the "societies" or "groups", "associations" and "collectivities" - or what has recently come to be termed the "components" of the various Arab societies - on the other.

13. Many groups in our Arab States are troubled by the concern that the fear of chaos and the instilling of fear of violence, terrorism, partition and fragmentation will be exploited in order to justify curtailing civil liberties, detracting from rights, distorting the opposition and reducing public participation, and the aversion to genuine reform and to empowering citizens to govern themselves, to participate in determining their future and to make their choices. This is confirmed by the growing tendency to enact laws that curtail freedoms and to expand the protection of security at the expense of rights and freedoms. These fears appear most clearly in the field of the expansion of the definitions of terrorism, the affirmation of the importance of imposing the prestige of government, the entrenchment of authority, the combating of criticism, the refusal to accept accountability, and reliance upon the power of security and hard power instead of the power of the law and of the endeavour to establish governance upon the basis of consensus, justice and participation.

14. Article (15/1) of the Jordanian Constitution guaranteed freedom of expression by providing that: "The State shall guarantee freedom of opinion; and every Jordanian shall be free to express his opinion by speech, writing, photography and the other means of expression, provided that he does not exceed the limits of the law." We find that the provision obliged the State to guarantee freedom of opinion, in addition to its containing a negative obligation requiring non-interference in the freedom. This is what is provided for in the international instruments relating to human rights, in which it is stated that "everyone has the right to hold opinions without interference".

15. The expression of opinion does not require a particular means; it may be by writing, by speech, by photography, by drawing, by a gesture with a particular movement or by humour; and it may also be by the individual's adopting a negative attitude towards some matter. Hence the internet has provided a wide field for expressing opinion through publication in its electronic spaces.

16. The Constitution confined the right to express opinion to Jordanians alone, treating this as among the political rights restricted to the nationals of the State who hold its nationality; it nevertheless set out the means of expressing opinion by way of example and not of limitation, leaving the field open to any means that may appear in the future as an instrument for expressing opinion, as is the case with the electronic means on the internet.

17. (Paragraph 1 of Article 15) of the Constitution required that freedom of expression of opinion not exceed the limits of the law - that is, that this right is restricted and not absolute. This is what all the international instruments agree upon when they addressed this right; the international instruments, however (Article 19/3 of the International Covenant on Civil and Political Rights), specified exhaustively the cases in which this right may be restricted by virtue of a provision of law.

18. The Jordanian legislator has placed in various laws determinants upon the exercise of freedom of expression, the philosophical basis of which is that guaranteeing the exercise of this freedom does not constitute an assault upon the honour, reputation and beliefs of others, or upon the security and stability of the State. Among these determinants are:

- 1 - Defamation, slander and contempt of individuals and of the institutions of the State.
- 2 - Using the information network to publish any terrorist acts or to promote the ideas of any terrorist group, or to expose Jordanians or their property to the danger of hostile or retaliatory acts.
- 3 - Contempt of any foreign State, its flag or its head.
- 4 - Publishing matter containing defamation or slander of one of the religions, or constituting an insult to religious feeling and belief, or the stirring up of sectarian or racial strife.
- 5 - Broadcasting any false or exaggerated news that is liable to detract from the prestige of the State.

19. The last sentence of the first paragraph of Article (15), which provides that the exercise of freedom of opinion must "not exceed the limits of the law", is not a licence for the authority to withdraw or to paralyse the right of opinion; for the limits of the law referred to mean the provisions laid down by the legislator to regulate the exercise of the right of opinion, and they are not there to paralyse that freedom or to impose restrictions upon it. If the law comes otherwise, it necessarily collides with the Constitution, for the Constitution is supreme and nothing is above it. There is no dispute that freedom of opinion may be regulated in matters relating to national security and public morals without expansion, since the principle is the protection of freedom of opinion.

20. Among the amendments to the Press and Publications Law that met with wide opposition from the electronic media sector was the amendment of 2012. Pursuant to this amendment, hundreds of electronic publication sites were required to register, to regularise their position and to obtain a licence from the Press and Publications Department - the body concerned at that time, which was subsequently abolished as an independent body and its staff and functions merged with the Media Commission to form a single body, the Media Commission. That amendment came as a mixture of necessary and sound regulatory measures (from an objective point of view) and of restrictive conditions that narrowed the electronic space permitted to the electronic means of expression.

21. The Electronic Crimes Law No. (27) of 2015, by virtue of Article (11) thereof, confiscated the immunity which journalists enjoyed against detention in press and publications cases under the Press and Publications Law of 1998; it has become possible to detain journalists on the basis of the provisions of Article (114) of the Code of Criminal Procedure and on the basis of the provisions of Article (11) of the Electronic Crimes Law, treating it as a special law, in accordance with interpretative decision No. (8) of 2015.

22. As regards the interpretation of the expression "provided by law" contained in Article (19/3) of the International Covenant on Civil and Political Rights, the Siracusa Principles clarified that what is meant by this expression is that the law be clear, precise, consistent with the provisions of the Covenant and accessible to all; in addition, that the restrictions contained in the law not be arbitrary or unreasonable, with the availability of judicial safeguards against unlawful or arbitrary application.

23. The Siracusa Principles affirm that States may not invoke national security to justify restricting the rights contained in the Covenant except where they are taken with the aim of ensuring the survival of the State or its territorial integrity or its political independence against the use of force or the threat of the use of force; national security may not be used as an argument for imposing restrictions merely to prevent local or relatively remote threats to security and order, or be used as an argument for imposing vague or arbitrary restrictions. Nor may national security be invoked save where there are sufficient and effective safeguards against abuse.

24. The European Court of Human Rights has held that the intervention of States to restrict the right to freedom of expression of opinion and to the circulation of information should be connected with "pressing social needs", and that the exercise by States of their right to employ the concept of "pressing social need" requires legal disclosure and regulation in a manner that is easy for citizens to perceive, that is free of arbitrariness and that is devoid of exaggeration in the tendency of States to restrict freedom.

25. The Jordanian Constitution did not refer to national security as a restriction upon freedom of expression, but this may be inferred from indirect provisions, such as the right to the inviolability of private life, and that the preservation of social peace is a sacred duty.

26. The Jordanian administrative judiciary has upheld administrative decisions imposing disciplinary penalties upon university students for their distribution of leaflets or their raising of banners within the university campus.

27. The Egyptian Constitutional Court upheld freedom of expression by stating: "It is dangerous to impose restrictions that burden freedom of expression in a manner that turns citizens away from its exercise ... for no one may impose silence upon another, even if reinforced by law; and if freedom of expression is to breathe in the sphere without which it cannot live, then a measure of excess must be tolerated, and it is by no means permissible that extravagance in some opinions should warrant impeding their circulation."

28. The Press and Publications Law has been used in Jordan to block dozens of electronic publication sites and to issue warnings to a number of others, according to what was monitored by the National Center for Human Rights.

29. The Media Commission suspended the broadcasting of a number of radio programmes on the basis of the Audiovisual Media Law, on the ground that they harm national security or community peace. The National Center for Human Rights affirms in this respect the necessity of amending the Audiovisual Media Law so that the power to suspend the broadcasting of any programme belongs in the first place to the functions of the judicial authority, whose judgment is the hallmark of truth.

30. The National Center for Human Rights monitored the issuance by the Telecommunications Regulatory Commission of communications to certain institutions containing a reference to the exploitation by certain parties of the social media platform (Facebook) to attack ideologies and to encroach upon races, lineages, national origins, religious belief and public morals, in addition to its use as a means of violating human rights, impersonation and fraud. The letter also contained a reference to the Commission's contact with the public policy representative for the Middle East and North Africa, and to

the agreement that the Commission would coordinate with the company in order to report the offending pages for the purposes of blocking them, consistently with the community standards of the (Facebook) site. The Center affirms in this regard that the Commission used in its letter loose and broad terms that are extremely difficult to delimit. The Center likewise affirms the necessity of putting an end to any discourse involving hatred that takes place through social media sites, provided that this is done through the judicial authority, which is the body with original competence and whose judgments are the hallmark of truth.

31. From the viewpoint of the Human Rights Watch organisation, the Jordanian authorities have increasingly used counter-terrorism provisions to arrest and pursue activists, opponents and journalists for offences of expression of opinion. They have also relied considerably upon the 2014 amendments introduced to the Anti-Terrorism Law, which expanded the definition of terrorism to include acts such as "disturbing (Jordan's) relations with a foreign State". It also indicated that Jordan curtailed media freedom in 2015 by arresting at least 9 journalists and writers and bringing charges against them, sometimes under the loose and vague provisions of the Kingdom's Anti-Terrorism Law.

32. The amendment of the Anti-Terrorism Law in 2014 came with articles that made it easy to try any person for simple offences by treating them as terrorist acts, which may make this right (the expression of opinion) the exception and the restrictions the rule, by reason of the legislator's use of loose, elastic expressions that admit of interpretation. The Law described terrorist acts in loose and broad expressions, such as "public order", "the safety of society", "creating strife", "the security of society", "spreading terror", "intimidating people"; for all these expressions are of broad connotation and it is possible to exercise latitude in their use when applying the legal provisions and in regarding any act or activity within their framework as a terrorist act. This is inconsistent with the international standards, and specifically Articles (4 and 14) of the International Covenant on Civil and Political Rights, which guaranteed that the authorities shall not take any measures liable to prejudice the guaranteed rights, or in consequence of which the guarantees of a fair trial are forfeited.

33. In the light of the competence of the National Center for Human Rights to monitor the reality of human rights, the Center observed during the year 2016 an increase in the numbers of those detained and tried on account of expressing positions and points of view of those citizens concerning subjects connected with the general policy of the State and relating to sensitive and important issues of concern to the whole of society, and this before the State Security Court pursuant to the Anti-Terrorism Law No. (55) of 2006 and the amendments thereto.

34. Among the matters that raise doubts and fears of the Electronic Crimes Law violating freedom of expression is what is contained in the draft law amending the Electronic Crimes Law of 2017, which addressed what is termed "hate speech", defined in the draft law as "every statement or act liable to stir up strife, or religious, sectarian, racial or regional discord, or discrimination between individuals or groups". It is no secret that these expressions contain sufficient generality, vagueness and lack of clarity to refer any

person to the judiciary as an accused of committing this offence, which will be reflected negatively upon freedom of expression; and perhaps the indications of this began even before the approval of the law and merely upon the announcement of the draft law - in a manner contrary to the Camden Principles, Article 19, which laid down 12 principles for drawing the dividing lines between freedom of expression and hate speech, even though the latter are of a moral rather than a legal character.

35. The National Center for Human Rights monitored during the year 2016 the continued detention of individuals on account of expressing their opinions. The great majority of those detained had expressed their opinions principally through their accounts on the social media site (Facebook). The detention issued by the judicial bodies, the administrative bodies or even, on some occasions, the security agencies, included activists in the popular movement, artists, writers and others. In this context the Center monitored (16) cases, the majority of which were pursuant to the Electronic Crimes Law No. 27 of 2015.

36. According to the annual report of the National Center for Human Rights for the year 2016, a decision was issued by the Governor of the Capital on 18/6/2016 ordering the blocking of six electronic sites belonging to a group of companies that provide the service of access to judicial and financial databases and to the data of legal legislation and its amendments, on the basis of the Crime Prevention Law No. (7) of 1954. The foregoing decision raises two questions of some importance. The first question: the issuance of an administrative decision by the Governor of the Capital blocking electronic sites on the basis of the Crime Prevention Law, which is regarded as an encroachment upon the judicial authority, which has the competence to determine the extent of the lawfulness of such sites. The second question: the existence of a legal gap relating to the protection of personal information and the security of individuals in the electronic sphere, and the pressing need for provisions criminalising the infringement of the right to privacy, particularly through information systems.

37. Among the phenomena that have become striking this year (2017) is the resort of officials and holders of public office in the State to the judiciary and to the detention of activists on social media sites on the plea that they have committed acts contrary to the Electronic Crimes Law.

38. It is observed that the Jordanian Penal Code contains a provision criminalising the carrying out of acts or writings liable to expose the Kingdom to the danger of hostile acts, or to disturb its relations with a foreign State, or to expose Jordanians to the danger of acts of reprisal with a foreign State (Article 118/2); and this offence falls within the jurisdiction of the ordinary judiciary. The Anti-Terrorism Law contains a similar provision that deems this act to be in the category of terrorist acts (Article 3/b), and accordingly it falls within the jurisdiction of the State Security Court - a matter which raises a question concerning the duality of criminalisation and the body competent to refer cases of this type to the State Security Court or to the ordinary judiciary, and the mechanism for taking this decision.

39. According to the report on the situation of freedom of opinion and expression in the Arab world for the year 2016, the Jordanian authorities, pursuant to the Anti-Terrorism Law, incorporated legal provisions punishing offences of the expression of opinion which include the disturbance of the tranquillity of relations with sister and foreign States. The authorities also used the Electronic Crimes Law No. 27 of 2015 to arrest many citizens on account of posts on "Facebook" or tweets on "Twitter", which was considered a threat to activists on the internet. The said Law imposes strict restrictions and severe penalties upon those who contravene it through writings by which they express their opinions through social networks or internet sites.

Second: The Recommendations

1. The Jordanian legislator must have regard, when issuing laws aimed at protecting national security, to Article (15) of the Jordanian Constitution, so as not to empty it of its substance and confiscate the right to freedom of expression, and in a manner contrary to Article (128/1) of the Constitution, which provides that the laws issued pursuant to this Constitution to regulate rights and freedoms may not affect the essence of these rights or prejudice their fundamentals.
2. The Jordanian legislator and judiciary must have regard to the new media and to the various electronic means, treating them as an outlet for citizens to express their opinions, and must keep away as far as possible from criminalising what is published through them even where the objective is for security reasons - this in application of the principle of preferring freedom.
3. The various bodies concerned, foremost among them the three authorities, must work to determine a clear and specific concept of national security, so that this term does not remain vague, employed according to conditions and circumstances far from objectivity.
4. The law enforcement authorities must not exploit the fear of chaos and the instilling of fear of violence, terrorism, partition and fragmentation in order to justify curtailing civil liberties, detracting from rights, distorting the opposition and reducing public participation, and the aversion to genuine reform and to empowering citizens to govern themselves, to participate in determining their future and to make their choices.
5. The necessity of limiting the expansion in the definitions of terrorism and in the affirmation of the importance of imposing the prestige of government, the entrenchment of authority, the combating of criticism, the refusal to accept accountability, and reliance upon the power of security and hard power instead of the power of the law and of the endeavour to establish governance upon the basis of consensus, justice and participation.
6. The necessity of adhering to the international standards in cases where the legislator wishes to restrict freedom of expression (Article 15 of the Constitution), and of adhering to the text of Article (19/3) of the International Covenant on Civil and Political Rights. Security considerations, however important, may not lead to violating freedom of expression and restricting it outside the framework of the considerations laid down by Article (19/3) above. There must likewise be adherence to the restrictions contained in the international human rights standards as regards the conditions that must be fulfilled when

restricting freedom of opinion and expression and the right to peaceful assembly, namely that the restriction be provided for in the law precisely, and that it serve a legitimate purpose consisting in: the protection of national security, public order, public morals, public health or the rights and freedoms of others.

7. The necessity of understanding the last sentence of the first paragraph of Article (15) of the Jordanian Constitution, which provides that the exercise of freedom of opinion must "not exceed the limits of the law", as not being a licence for the authority to withdraw or to paralyse the right of opinion; for the limits of the law referred to mean the provisions laid down by the legislator to regulate the exercise of the right of opinion, and they are not there to paralyse that freedom or to impose restrictions upon it. If the law comes otherwise, it necessarily collides with the Constitution, for the Constitution is supreme and nothing is above it. There is no dispute that freedom of opinion may be regulated in matters relating to national security and public morals without expansion, since the principle is the protection of freedom of opinion.

8. Working to reconsider the amendment made to the Press and Publications Law which required electronic publication sites to be licensed in accordance with particular procedures, so that the restrictive controls and conditions that narrowed the electronic space permitted to the electronic means of expression are eased.

9. A return to the immunity which journalists enjoyed against detention in press and publications cases under the Press and Publications Law of 1998, and which was taken from them pursuant to the Electronic Crimes Law No. (27) of 2015; and the trial of journalists and media practitioners on the basis of the Press and Publications Law and not their trial under any other law.

10. The necessity that national legislation have regard to the interpretation of the expression "provided by law" contained in Article (19/3) of the International Covenant on Civil and Political Rights, as clarified by the Siracusa Principles, namely that what is meant by this expression is that the law be clear, precise, consistent with the provisions of the Covenant and accessible to all; in addition, that the restrictions contained in the law not be arbitrary or unreasonable, with the availability of judicial safeguards against unlawful or arbitrary application.

11. The public authorities must appreciate that, in accordance with the Siracusa Principles, States may not invoke national security to justify restricting the rights contained in the Covenant except where they are taken with the aim of ensuring the survival of the State or its territorial integrity or its political independence against the use of force or the threat of the use of force; and that national security may not be used as an argument for imposing restrictions merely to prevent local or relatively remote threats to security and order, or be used as an argument for imposing vague or arbitrary restrictions. Nor may national security be invoked save where there are sufficient and effective safeguards against abuse.

12. We hope that the national judiciary will be guided by the judgments of the European Court of Human Rights to the effect that the intervention of States to restrict the right to freedom of expression of opinion and to the circulation of information should be connected with "pressing social needs", and that the exercise by States of their right to

employ the concept of "pressing social need" requires legal disclosure and regulation in a manner that is easy for citizens to perceive, that is free of arbitrariness and that is devoid of exaggeration in the tendency of States to restrict freedom.

13. The necessity of amending the Audiovisual Media Law so that the power to suspend the broadcasting of any programme belongs in the first place to the functions of the judicial authority, whose judgment is the hallmark of truth.

14. Working to reconsider the provisions of the Anti-Terrorism Law, and in particular the amendments of the year 2014, in view of the legislator's use of loose, elastic expressions that admit of interpretation; for the Law described terrorist acts in loose and broad expressions, such as "public order", "the safety of society", "creating strife", "the security of society", "spreading terror", "intimidating people" - all these expressions being of broad connotation, and it being possible to exercise latitude in their use when applying the legal provisions and in regarding any act or activity within their framework as a terrorist act. The Law must be consistent with the international standards, and specifically Articles (4 and 14) of the International Covenant on Civil and Political Rights, which guaranteed that the authorities shall not take any measures liable to prejudice the guaranteed rights, or in consequence of which the guarantees of a fair trial are forfeited.

15. Amending the Anti-Terrorism Law so that the criminal acts are clearer and more precise, so as to enable the individual to regulate his conduct in accordance with the criminal provision - and in particular amending Article (3/b), on the basis of which many journalists and holders of differing opinions have been tried, and Article (3/e), relating to using the information network to promote the ideas of a terrorist group.

16. Working to reconsider the jurisdiction of the State Security Court over the offences committed by activists through social media sites, so that they become within the jurisdiction of the ordinary judiciary - specifically those committed contrary to the Anti-Terrorism Law.

17. The necessity of reconsidering the proposed definition of hate speech in the draft law amending the Electronic Crimes Law, in a manner consistent with the Camden Principles; and laying down clear policies in the field of combating hate speech that focus upon the values of human rights and citizenship and that strengthen economic and social rights and public freedoms.

18. Emphasising to the administrative governors the necessity of respecting the principle of the separation of powers and of not encroaching upon the jurisdiction of the judiciary on the plea of applying the Crime Prevention Law, and of not resorting to the issuance of administrative policing decisions blocking electronic sites, notwithstanding that this is in principle within the jurisdiction of the judiciary in accordance with the Electronic Crimes Law.

19. We hope that the honourable judiciary will increase and strengthen the space of freedom of expression, treating it as among the fundamental rights; that it will keep pace with the jurisprudence of the European Court of Human Rights in permitting permissible criticism of institutions and officials; that the judiciary will not be a means of threatening freedom of expression for the benefit of other rights; and that it will draw inspiration from

the judgment of the Egyptian Constitutional Court in which it stated: "It is dangerous to impose restrictions that burden freedom of expression in a manner that turns citizens away from its exercise ... for no one may impose silence upon another, even if reinforced by law; and if freedom of expression is to breathe in the sphere without which it cannot live, then a measure of excess must be tolerated, and it is by no means permissible that extravagance in some opinions should warrant impeding their circulation."

20. The necessity of reconsidering the provisions of the Penal Code and the Anti-Terrorism Law; for the Jordanian Penal Code contains a provision criminalising the carrying out of acts or writings liable to expose the Kingdom to the danger of hostile acts, or to disturb its relations with a foreign State, or to expose Jordanians to the danger of acts of reprisal with a foreign State (Article 118/2), and this offence falls within the jurisdiction of the ordinary judiciary; while the Anti-Terrorism Law contains a similar provision that deems this act to be in the category of terrorist acts (Article 3/b), and accordingly it falls within the jurisdiction of the State Security Court - a matter which raises a question concerning the duality of criminalisation and the body competent to refer cases of this type to the State Security Court or to the ordinary judiciary, and the mechanism for taking this decision.

21. Reviewing the legislation that contains provisions conflicting with the provisions of the Constitution and with the general principles of the right to a fair trial, in order to harmonise it with the international conventions ratified by Jordan and published in the Official Gazette. Among this legislation are the Crime Prevention Law, the State Security Court Law and the Anti-Terrorism Law, since many activists are pursued judicially in accordance with these laws.

22. Strengthening the exercise of freedom of expression in the universities and not imposing penalties upon students or members of the teaching staff on account of expressing their opinions.

23. Reviewing the laws relating to media legislation and to freedom of expression generally, taking into consideration their review as a single legislative package, so as to avoid contradictions and inconsistency between the laws.

Endnotes

(The numbers below correspond to the superscript reference numbers in the text. References originally cited in English are reproduced as they appear in the Arabic original.)

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39. See for example Article 16 of the Constitution, which states "Jordanians have the right to assemble within the limits of the law ..."; Article 17, which states "Jordanians have the right to address the public authorities ..."; and Article 23, which states "Work is a right of all citizens ...". It is to be noted that the text of Article 11 of the Jordanian Constitution of 1928 provided that "All Jordanians shall have freedom to express their opinions and to publish them ... in accordance with the provisions of the law", unlike the position at present.
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46. It is to be noted that Article 17 of the Jordanian Constitution of 1947 provided that "Freedom of opinion is guaranteed, and every person may express his thought by speech and writing within the limits of the law" - that is, it granted this right to the citizen and the foreigner alike, although at the same time it confined the means of expression to speech and writing only.
47. Article 19/3 of the International Covenant provides that: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals." Article 10/2 of the European Convention on Human Rights provides that "The

exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary." Article 13/2 of the American Convention on Human Rights provides that "The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals."

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59. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, E/CN.4/1985/4, 28 September 1984, Annex, paras 15-18.
60. The Siracusa Principles, Op. Cit, para 10. This is what has been settled in the jurisprudence of the European Court of Human Rights; see for example: *Vogt v Germany*, (17851/91) [1996] ECHR 34 (2 September 1996); *Grigoriades v. Greece*, (121/1996/740/939), European Court, (1997) 27 EHRR 464, 25 November 1997.
61. The Siracusa Principles, Op. Cit, para 11.
62. See for example Communication No. 628/1995, *T. Hoon Park v. the Republic of Korea* (Views adopted on 20 October 1998), in UN doc. GAOR, A/54/40 (vol. II), p. 91, para. 10.3. The facts of the case may be summarised as follows: the complainant was convicted under the National Security Law on the basis of his membership and participation in the activities of the Korean youth movement. It appears from the decision of the national court that the conviction and the punishment were by reason of the complainant's support for certain slogans and political positions, or his sympathy with them, by participating in certain peaceful demonstrations. The Committee clarified that, in order to justify the restriction upon the exercise of this right, it had to be shown that it was necessary for the protection of national security; the State, however, referred only to the general situation in the country and to the threat posed by the communists of North Korea. The Committee considered that the State party had likewise failed to specify precisely the nature of the threat, and concluded that all the arguments advanced by the State party did not suffice to justify restricting the complainant's freedom, since the statements submitted by the State party did not establish that the conviction of the complainant was necessary to protect one of the legitimate aims. To the same effect see also: Communication No. 926/2000, *Hak-Chul Shin v. Republic of Korea*, para 7.2, CCPR/C/OP/8 Selected Decisions of the Human Rights Committee, Op. Cit., p. 175. See Also Communication No. 1119/2002, *Jeong-Eun Lee v. Republic of Korea*, 20 July 2005, Op. Cit., Para 7.2, p. 365.

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66. United Nations General Assembly, Note by the Secretary-General on the protection of human rights and fundamental freedoms while countering terrorism, document No. (A/61/627), dated 20/9/2006, p. 12.
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69. To the same effect is Article 27 of the American Convention on Human Rights of 1969. It is observed that the African Charter of 1981 did not come with such a formula, since the provision relating to the rights that may be prejudiced or limited came in a manner that permits the imposition of certain restrictions upon them, such as Articles 8 to 13, which provide that the individual has the right to enjoy a particular right, such as freedom of expression of opinion, but within the limits of the law.
70. These rights are: the right to life; the right that no individual be subjected to torture or to cruel, inhuman or degrading punishment or treatment; the right that a person not be imprisoned on the ground of his inability to fulfil a contractual obligation; the impermissibility of punishing a person for an offence that was not punishable at the time of its commission; the right of the individual to recognition as a person before the law; and the right of the individual to freedom of thought, conscience and religion.
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72. See for example Communication No. 727/1996, D. Paraga v. Croatia (Views adopted on 4 April 2001), in UN doc. GAOR, A/56/40 (vol. II), p. 66, para. 9.6, and UN doc. GAOR, A/56/40 (vol. I), p. 68, paras. 17-22, and UN doc. GAOR, A/53/40 (vol. I), p. 21, para. 105, and UN doc. GAOR, A/52/40 (vol. I), p. 61, para. 383.
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89. The Siracusa Principles, Op. Cit, para 25.
90. IBID., 26.
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103. High Administrative Court, judgment No. 144 of 2015, dated 8/9/2015.
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129. www.articl19.org - The Camden Principles on Freedom of Expression and Equality rest upon the idea that freedom of expression and equality are essential and fundamental rights. Freedom of expression and equality are rights fully complementary to one another which play a vital role in protecting human dignity, ensuring democracy and promoting international peace and security. The Camden Principles represent a progressive interpretation of international law and its standards, of accepted State practice, and of the general principles of law recognised by the international community. This document was drawn up in order to disseminate the greatest possible measure of global understanding of the relationship between respect for freedom of expression and the promotion of equality. These Principles, put forward by the organisation Article 19, in relation to Article 19 of the International Covenant on Civil and Political Rights, were prepared on the basis of discussions among United Nations and other officials, experts from civil society and academics specialising in international human rights law on the subjects of freedom of expression and equality, at meetings held in London on 11 December 2008 and on 23 and 24 February 2009. These Principles represent a progressive interpretation of international law and standards and of accepted State practice (as reflected in national laws, the judgments of national courts and other sources), and of the general principles of law recognised by the international community.
130. Principle 2.2 states: "In particular, States should ensure that domestic constitutional provisions clearly define the scope of the restrictions permitted upon the right to freedom of expression, provided that these restrictions are defined by a law that defines them precisely in order to serve a legitimate interest provided for in the Constitution, and that they are necessary in a democratic society to protect that interest."
131. These rules are based upon the text of Article (19/3) of the International Covenant on Civil and Political Rights.
132. This principle is based upon Article (20/2) of the International Covenant on Civil and Political Rights.
133. Thirteenth Annual Report on the State of Human Rights in Jordan for the year 2016, National Center for Human Rights, p. 62.

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