

# كسر القوالب Breaking the mold

#Breaking\_The\_Mold

## Arab Civil Society Actors and their Quest to Influence Policy-Making

Case Study #15

Country Jordan

Keywords: **Gender, Women's Rights, Rape Laws, Legal Reforms, Feminist Movement**

### THE REPEAL OF ARTICLE 308, THE 'RAPE LAW' | Karim Merhej |

#### BACKGROUND AND TIMELINE

Jordan has a long history of women's activism: In the 1950s, women's activism was largely intertwined with progressive left-leaning pro-Palestine political activism, and women activists openly and forcefully advocated for their political rights (Lowrance, 1998). However, with the proclamation of martial law in 1957, the outbreak of the Six-Day-War 10 years later, and the events of Black September in 1970, a repressive political climate was established, deterring women from political activism, and largely confining them to the social realm (Pratt, 2015). Following the controlled political liberalization of Jordan in 1989, the international donor effect and neoliberal globalization led to a process of 'NGOization' (Alvarez, 1989). The women's movement in Jordan became depoliticized, with women's rights organizations operating under the confines of the state (Ferguson, 2017).

One of the many legal quandaries that Jordanian women have had to face is Article 308 of the Jordanian Penal Code which, among many of its provisions, "allows rapists to be pardoned if they marry their victim and remain married for at least three to five years" (Sisterhood is Global Institute – Jordan, n.d.). Civil society organizations (CSOs) in Jordan had brought the issue of Article 308 to the attention of the international community via the Universal Periodic Review (UPR) mechanism during the October 2013 session<sup>1</sup>, and the UPR Working Group had recommended Jordan to "strengthen its penal code regarding rape, in particular by removing Article 308"<sup>2</sup>, a recommendation which the Jordanian government agreed to<sup>3</sup>.

Considering the patriarchal structure of Jordanian society which entails implicit and explicit discrimination against women in all walks of life (Mango, 2017), and considering the fact that CSOs in Jordan, in spite of orchestrating debate "on sensitive issues" such as women's rights, do not have much influence on the political sphere (Arab Renaissance for Democracy and Development, 2016, p.1), the repeal of Article 308 in 2017 is a noteworthy event that deserves thorough examination. This case study will look at the confluence of factors that eventually led to the repeal of Article 308, highlighting how CSOs can maneuver within an undemocratic political system to achieve concrete gains in regards to the perceived advancement of women's rights. The present analysis, based on an extensive review of available literatures and interviews with significant stakeholders will also showcase how the story behind the article's repeal is much more nuanced and complex than what a senior member of the royal family called "a historic milestone" (Husseini, 2017c).

<sup>1</sup>A coalition led by the Arab Women Organization submitted a document to the UPR Working Group in February 2013 dealing with women's rights in Jordan, which shed light on Article 308, stating that «prosecution for rape ends in the event of marriage between the prosecutor and its victim» (p.7), and which recommended amending the article so that rapists who marry their victims are not pardoned. Retrieved from <https://bit.ly/2Yy8PVd>

<sup>2</sup>Retrieved from <https://bit.ly/2HJJSRD> (p.16)

<sup>3</sup>Retrieved from <https://bit.ly/2TFJPYG> (p.2)

## CIVIL SOCIETY ACTORS' ROLE AND INVOLVEMENT

Lawyer and longtime human rights advocate Asma Khader has launched and headed numerous organizations promoting and defending human rights, and served as government spokesperson and minister of culture in the early 2000s (Bahrani, 2016). One of these organizations, the Sisterhood is Global Institute - Jordan (hereafter as Tadamon, after its name in Arabic), was founded in 1998, and in its 20 years of existence has been among the major NGOs leading initiatives to improve women's conditions in Jordan on the legal level<sup>4</sup>. Funded by USAID, Tadamon launched the 'Najat: Stop impunity of perpetrators and protect survivors of sexual based violence (2014-2017)', a campaign which sought to mobilize public opinion on the need to abolish Article 308, and pressure law-makers and decision-makers to take steps in that direction<sup>5</sup>. Tadamon conducted a representative countrywide survey in 2015 which showed that around 72 percent of Jordanians are against letting perpetrators of sexual violence escape punishment, should they marry their victims (Al Ghad, 2015). This prompted Tadamon to establish a large, informal coalition of over 100 CSOs and community-based organizations (CBOs) located all across the kingdom, with the purpose of coordinating efforts to raise awareness on the need to repeal Article 308, and on pressuring the parliament to abrogate it. The coalition was informal in the sense that it was created on an ad hoc basis and involved mainly the coordination of awareness-raising activities as well as the sharing of information and provision of support across the involved CSOs and CBOs in a decentralized manner<sup>6</sup>. Civil society was thus mobilized and countless awareness-raising activities were held: Tadamon prepared a short film based on a victim's life which was posted and widely shared on YouTube<sup>7</sup>; university students held awareness-raising events in their respective universities<sup>8</sup> and CBOs invited their areas' MPs and local public officials to discuss the article<sup>9</sup>. Further, in both 2015 and 2016, Tadamon focused exclusively on raising awareness on Article 308 and the plight of victims during the annual '16 Days of Activism against Gender-based Violence' (Azzeah, 2015; Edaibes, 2016).

In October 2016, King Abdullah II published his sixth discussion paper entitled 'Rule of Law and Civil State', which broadly called on enhancing Jordan's judicial apparatus, stating that Jordan "cannot achieve sustainable development" without "enhanc[ing] the rule of law through strengthening the principles of justice, equality and transparency" (King Abdullah II, 2016). These discussion papers served as general frameworks that the king launched to accelerate policy-making, and less than a week following the paper's publication, the king established a Royal Committee tasked with amending and revising laws, and implementing the broad outlines provided in the discussion paper (Al Shuqayri, 2018). The informal coalition seized this opportunity to send a memorandum containing 15 recommendations, one of which was the need for a full repeal of Article 308<sup>10</sup>. Tadamon ensured that each member of the Royal Committee was contacted personally and presented with a copy of the memorandum<sup>11</sup>, and in February 2017, the committee agreed on a set of recommendations, one of which was the full repeal of Article 308<sup>12</sup>.



The recommendations were swiftly accepted by the king, duly accepted by the government – despite the fact that the government had long been very hesitant on a full repeal<sup>13</sup> – and eventually sent to the parliament for a vote in the summer of 2017.

Concomitantly with the efforts being exerted by the Tadamon-led informal coalition, several voices from civil society were expressing their discontent at the full repeal of Article 308, calling instead for an amendment. Among these voices was that of Reem Abou Hassane, who served as minister of social development (MoSD) from March 2013 to May 2016<sup>14</sup>. Abou Hassane had argued that a full repeal of the article would lead to new societal problems, such as an increasing number of illegitimate children and single mothers<sup>15</sup>. She insisted on the need to consider the heterogeneity of the cases, arguing that in many cases, the girl had consented to engage in sexual relations, and that repealing Article 308 will, in case of a resulting pregnancy, eliminate the marriage option and lead to children being born out of wedlock<sup>16</sup> (Bushnaq, 2017). During Abou Hassane's tenure as minister of social development, the government had established a committee comprised of experts from the MoSD, the Ministry of Justice and the Ministry of Interior to study the article and understand its flaws, and in 2016, the committee had determined that the article was actually protecting girls under the age of 18 who had consensual sexual relations that resulted in pregnancy<sup>17</sup>. The Legal Committee of the Lower House of the Parliament engaged dozens of CSOs, governmental officials and experts – among them Abou Hassane – in discussions on the matter, and eventually came to a similar conclusion – namely that an amendment to Article 308 is far more preferable than its full repeal, as it protects girls who had engaged in consensual sexual activities from any harm (Husseini, 2017a).

Pessimism prevailed among the pro-repeal CSOs when the time came for the parliament to vote on the article, as it was clear that the Legal Committee was leaning in favor of an amendment rather than a full repeal of the article<sup>18</sup>. This prompted CSOs and their allies in parliament to act: MP Khaled Ramadan, a strong proponent of the full repeal, shared a three-minute video via social media urging CSOs and women's rights activists to pressure their respective MPs and organize protests and sit-ins one week before the voting<sup>19,20</sup>; Dr. Salma Nims, the Secretary General of the Jordan National Commission for Women (JNCW), argued on an episode of the popular TV-talk show *Nabd Al Balad* in favor of the full repeal<sup>21</sup>, and organized, in coordination with large swaths of activists and CSOs, an 'electronic storm' that secured, in just a day, over 5,000 signatures on an online petition<sup>22</sup>; for more impact, activists made

<sup>4</sup>Retrieved from Tadamon's website: <http://sigi-jordan.org/ar/?p=980>

<sup>5</sup>Retrieved from [https://www.newtactics.org/sites/default/files/resources/SIGI\\_CaseStudy.pdf](https://www.newtactics.org/sites/default/files/resources/SIGI_CaseStudy.pdf)

<sup>6</sup>Interview with Asma Khader, founder and executive director of Tadamon and former minister of culture and government spokesperson, held on October 7, 2018.

<sup>7</sup>The film can be viewed here: <https://www.youtube.com/watch?v=belzQYQEUyA>

<sup>8</sup>For instance, students at the Zarqa University participating in the 'Ana Usharek' program carried out by the National Democratic Institute launched their own campaign on Article 308 which was then incorporated into the broader campaign led by Tadamon. See here: <https://bit.ly/2F159Zx>

<sup>9</sup>Interview with Asma Khader held on July 10, 2018.

<sup>10</sup>The memorandum can be viewed here: <https://royanews.tv/news/116055>

<sup>11</sup>Interview with Asma Khader held on July 10, 2018.

<sup>12</sup>The full report can be accessed here: <https://bit.ly/2v4xYIF> (p.56).

<sup>13</sup>Interview with Dr. Salma Nims, secretary-general of the Jordan National Commission for Women and longtime political activist, held on February 14, 2019.

<sup>14</sup>Retrieved from the Ministry of Social Development's website: <https://bit.ly/2UsaC-Mk>

<sup>15</sup>Episode of the show *Nabd Al Balad* on Roya TV, aired in July 2017. Retrieved from <https://bit.ly/2Yw34HC>

<sup>16</sup>In the referenced article, Abou Hassane states that in 2015, out of the 79 underage girls in MoSD-run care facilities assisting victims of domestic and sexual abuse, 69 had engaged in consensual relations and were not raped.

<sup>17</sup>Interview with Reem Abou Hassane, former MoSD minister and honorary president of the Society for Protecting Family Violence Victims (SPFVV), Dalia Al Farouki, board member of the SPFVV, and Ahmad Abou Rumman, legal expert and board member of the SPFVV, held on March 31, 2019.

<sup>18</sup>Interview with Dr. Salma Nims held on February 14, 2019.

<sup>19</sup>Interview with MP Khaled Ramadan representing the Third District of Amman, held on October 15, 2018.

<sup>20</sup>Video of MP Khaled Ramadan can be accessed here: <https://www.youtube.com/watch?v=HC1VyN5Z3c>

<sup>21</sup>Episode of the show *Nabd Al Balad* on Roya TV, aired in July 2017. Retrieved from <https://bit.ly/2OwBIBW>

<sup>22</sup>Interview with Dr. Salma Nims held on February 14, 2019.

it a point to attend the parliamentary session and watch it from the parliament's balcony (Husseini, 2017b).

The voting process on Article 308 itself was chaotic and confusing: Right before the voting began, then-Prime Minister Hani Mulki addressed the parliament and stated that the government is in favor of a full repeal of the article (Addustour, 2017). This prompted MP Mustafa Yaghi to accuse the prime minister of pressuring the Lower House to vote on a full repeal rather than on an amendment<sup>23</sup>. Not allowing any debate to take place, the speaker of the house called the vote and declared the article abolished in a rushed manner<sup>24</sup>. The voting session was criticized even by proponents of the repeal, such as MPs Hayat Mseimi and Dima Tahboub of the Islamic Action Front, who considered it as a 'play' (Husseini, 2017b), while MP Suleiman Zubn accused the prime minister of guiding the parliament to vote on repealing Article 308 (Sawaleef, 2017). Nonetheless, the article was effectively repealed.

## STRATEGIES AND TACTICS

The campaign to bring about the repeal of Article 308 adopted a long-term approach and relied on the effective usage of mass media outlets, both traditional and digital, to get the word across throughout the whole kingdom. The very structure of the informal coalition formed around Tadamon is worth examining: While major Jordanian women's rights organizations tend to be headed and staffed by the kingdom's socioeconomic elites and are usually largely based in the wealthy western part of Amman, detached from the rest of the country (Ferguson, 2017), Tadamon avoided such an elitist approach by ensuring a decentralized work strategy for the coalition: the fact that CBOs in the different governorates were free to design and run their own awareness-raising activities, with the assistance of Tadamon, ensured that support for the article's repeal was not confined only to a small coterie of like-minded activists<sup>25</sup>. Being fully aware of the conservative structure of Jordanian society, the coalition made sure not to sideline religious figures<sup>26</sup> and stressed on the fact that the article is a legislative import from colonial times (Osman, 2017). In addition, close rapports were established between the coalition and MPs in favor of repealing the article. The presence of such MPs willing to defend women's rights was crucial in bringing about the eventual repeal<sup>27</sup>, and these MPs jockeyed in the parliament to attempt to convince their colleagues on the necessity to abolish the article<sup>28</sup>.

## INFLUENCING FACTORS AND TRANSFORMATIVE MOMENTS

Additional factors played a role in bringing about the full repeal of Article 308. Firstly, the fact that one of the UPR Working Group's recommendations in the October 2013 session had been to repeal Article 308 served as munition for CSOs in their attempt at pressuring the government or the parliament to repeal the article. Most of the submissions by CSOs highlighted the Jordanian government's backsliding on human rights, and explicitly documented instances of basic human rights violations and harassments committed since 2010 by the Jordanian government and its security apparatus<sup>29</sup>.

Given the UPR's "naming and shaming" approach (Frazier, 2011, p.3), and given that the human rights situation in Jordan had not made any noticeable improvements since the October 2013 UPR session, it is reasonable to assume that the government had wanted an "easy win"<sup>30</sup> which would likely garner Jordan praise at the subsequent UPR review<sup>31</sup>. Indeed, in the Summary of Stakeholders' submissions on Jordan report of the November 2018 UPR session, both the Amman Center for Human Rights Studies and the Arab Women Organization highlighted the repeal of Article 308 as a positive development<sup>32</sup>.

Secondly, given that Jordan has long been heavily dependent on foreign – namely Western – financial assistance, it is unsurprising to note that the case of Article 308, and the international dimension that it had acquired (via the UPR), had reached the very highest echelons of political power in the kingdom. The US has arguably been one of Jordan's largest foreign backers, providing around \$1.2 billion and \$1.48 billion in foreign assistance in 2016 and 2017, respectively<sup>33</sup>. Bearing in mind that the Tadamon-led campaign was funded by USAID<sup>34</sup>, and that certain student-led activities regarding awareness-raising on the article were part of the National Democratic Institute's 'Ana Usharek' program (see footnote 8 on p.3), the international dimension surrounding Article 308 becomes clearer. The fact that Princess Basma bint Talal, chairperson of the JNCW, had openly declared her support for a full repeal of the article<sup>35</sup>, in addition to the king's establishment of the Royal Committee whose tasks were to revise laws and accelerate legislative processes with regard to amending or abolishing laws (one of which was Article 308), is further indicative of the support that the highest echelons of political power had towards the article's full repeal (Qubaylat, 2017).

Third, media coverage evidently played a strategic role in the success of the pro-repeal activists' campaign. Local media outlets were perceived to be heavily biased in favor of repealing, rather than amending the article, and Western media outlets covering the issue had ignored the calls for amending rather than repealing the article (Al Khashman, 2017). The segment of civil society that was calling for amending rather than repealing neither had the foreign funding and backing, nor the type of media-savviness needed, both locally and internationally, to loudly voice its demands for an amendment; instead, they focused their lobbying and advocacy efforts on influencing the Parliamentary Legal Committee to recommend an amendment rather than a full repeal of the article<sup>36</sup>.

Nonetheless, the repeal of Article 308 would not have happened without the agency and hard labor of local activists, journalists and CSOs. Their continuous and sustained efforts toward establishing a broad informal coalition of CSOs and CBOs, their close networking with like-minded MPs who were willing to support their demands in parliament, and their extensive awareness-raising efforts, strove to make the issue a national issue and make enough noise to reach the highest echelons of political power.

<sup>23</sup>Footage of Prime Minister Mulki announcing the government's point of view and MP Mustafa Yaghi's reply can be accessed here: <https://bit.ly/2V6P3y0>

<sup>24</sup>Footage of the chaotic situation in which the voting was held can be accessed here: <https://bit.ly/2FLF1MF>

<sup>25</sup>Interview with Asma Khader on July 10, 2018.

<sup>26</sup>Asma Khader participated in a television debate with a Muslim scholar on Al Haqiqa Al Duwaliyya Television. The debate can be viewed here: <https://www.youtube.com/watch?v=dgWAKUdBmi8>

<sup>27</sup>Interview with Layla Naffa, director of projects at the Arab Women Organization, held on November 13, 2018.

<sup>28</sup>Interview with MP Khaled Ramadan October 15, 2018.

<sup>29</sup>For instance, the joint-submission by CIVICUS and the Amman Center for Human Rights, submitted on March 4, 2013, minutely details instances of human rights abuses. Retrieved from: <https://bit.ly/2WYzLxI>

<sup>30</sup>This assumption was reinforced by Abou Hassane – a former minister – when interviewed, confirming that Jordanian governments tend to want to achieve 'quick wins' – such as the repeal of Article 308 in this case – so as to be in a better position to attract donor funding. The interview was held on March 31, 2019.

<sup>31</sup>Interview with Dr. Salma Nims on February 14, 2019.

<sup>32</sup>The report can be accessed here: <https://bit.ly/2FJwI4Y>. At the time of writing, the report of the UPR Working Group containing recommendations for Jordan was still in draft form.

<sup>33</sup>Figures retrieved from: [https://explorer.usaid.gov/cd/JOR?fiscal\\_year=2017&measure=Obligations](https://explorer.usaid.gov/cd/JOR?fiscal_year=2017&measure=Obligations)

<sup>34</sup>The authors attempts to schedule an interview with the Chief of Party of the USAID-funded Takamol – Jordan Gender program were unsuccessful. The same individual writes op-eds in the Jordan Times constantly peddling the political narrative favored by the political establishment, which further explains the intersection between the desires of the donors and the political establishment. The op-eds can be accessed here: <https://bit.ly/2UnVFV4>

<sup>35</sup>On April 24, 2016, a post by the official Facebook page of Princess Basma bint Talal stated that it is «absolutely crucial that we continue to lobby, demand and advocate for the complete abolishment of Article 308.» Retrieved from: <https://bit.ly/2UfzVKP>

<sup>36</sup>Interview with Reem Abou Hassane, Dalila Al Farouki, and Ahmad Abou Rumman held on March 31, 2019.

## POLICY OUTCOMES AND CONCLUSION

Despite the shroud surrounding it, and despite opposing views among civil society, the repeal of Article 308 was hailed as a milestone in women's rights activism in Jordan, and has garnered wide local and international praise (Husseini, 2017c). However, the repeal remains a point of contention, and civil society remains divided on the matter of whether the article should have been abolished or amended. Following the repeal, Abou Hassane (2017) wrote an op-ed highlighting the fact that such a repeal does not present any plan or suggestions for a follow-up on cases of young girls who had consensual sexual relations and who may have actually benefitted from Article 308, and that the amendments proposed by the Legal Committee would have protected such cases (Abou Hassane, 2017). Other proponents of the amendment voiced their displeasure at what they perceived to be a misleading campaign in favor of a full repeal<sup>37</sup>.

This case study sought to illuminate how a confluence of domestic and international factors can lead to significant legislative changes, despite the reticence of the Lower House and certain swathes of civil society. CSOs' good practices included taking advantage of international and local factors to bring about desired policy outcomes, persisting in awareness-raising activities, and generating enough noise to gain the attention of the highest levels of the political echelon. In the long run, this confluence of factors and the CSOs' behavior and dedication to the cause brought about a successful outcome, albeit achieved in an undemocratic manner as evidenced by the chaotic way in which the voting in parliament took place, and given the support provided by the highest echelons of political power for a full repeal. Yet, questions remain as to whether this outcome was truly successful in the sense that it actually improved women's conditions in Jordan and did not merely lead to further complications for underage girls who have consensual sexual relations<sup>38</sup>.

The process leading up to the repeal of the article was complicated, and involved a whole array of actors and stakeholders. In light of the on-going debate between those in favor of the repeal and those in favor of the amendment, one is under the impression that the actual repeal of Article 308 has not de-complicated matters. The question that still needs to be tackled is the one concerning the fate of a vulnerable segment of the Jordanian population, namely that of pregnant underage girls who have had consensual sexual relations and are presently confined to seeking refuge in social welfare homes.

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<sup>37</sup>For instance, on an episode of the Kalam Sarih talk show on Al Ordon Al Yoom TV aired on August 3, 2017 (i.e., right after the parliament voted on the article's repeal), a lawyer who favored amending the article loudly criticized the pro-repeal CSOs' awareness campaign, accusing them of misleading the public by using catchy slogans rather than providing a full picture of the numerous dimensions surrounding Article 308. The episode can be watched here: <https://bit.ly/2Upioqb>. Indeed, an article written in July 2017 by the editor of women's affairs and human rights in Al Rai showcases that, upon hearing the news that the government was in favor of a full repeal of the article, the concerned girls in a care home manifested intense signs of despair and worry for their futures. Retrieved from: <https://bit.ly/2sCe8Dj>

<sup>38</sup>When interviewed, Abou Hassane, Al Farouki and Abou Rumman provided anecdotal evidence based on their work in the SPFVV showing that a non-negligible number of underage girls who had engaged in consensual sexual relations have actually been negatively affected by the repeal of the article. Due to the sensitive nature of the matter, no specific details on the cases that could identify the individuals in question were provided.



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## BREAKING THE MOLD PROJECT

In mid- 2018, the “Civil Society Actors and Policymaking in the Arab World” program at IFI, with the support of Open Society Foundations, launched the second round of its extended research project “Arab Civil Society Actors and their Quest to Influence Policy-Making”. This project mapped and analyzed the attempts of Arab civil society, in all its orientations, structures, and differences, to influence public policy across a variety of domains. This research produced 92 case studies outlining the role of civil society in impacting political, social, economic, gender, educational, health-related, and environmental policies in ten Arab countries: Lebanon, Syria, Palestine, Jordan, Egypt, Morocco, Tunisia, Yemen, and the Arab Gulf.

Over two dozen researchers and research groups from the above countries participated in this project, which was conducted over a year and a half. The results were reviewed by an advisory committee for methodology to ensure alignment with the project’s goals, and were presented by the researchers in various themed sessions over the course of the two days.

## THE CIVIL SOCIETY ACTORS AND POLICY-MAKING PROGRAM

at the Issam Fares Institute for Public Policy and International Affairs at AUB, examines the role that civil society actors play in shaping and making policy. Specifically, the program focuses on the following aspects: how civil society actors organize themselves into advocacy coalitions; how policy networks are formed to influence policy processes and outcomes; and how policy research institutes contribute their research into policy. The program also explores the media’s expanding role, which some claim has catalyzed the Uprisings throughout the region.

## THE ISSAM FARES INSTITUTE FOR PUBLIC POLICY AND INTERNATIONAL AFFAIRS AT THE AMERICAN UNIVERSITY OF BEIRUT

The Issam Fares Institute for Public Policy and International Affairs (IFI) at the American University of Beirut (AUB) is an independent, research-based, policy oriented institute. It aims to initiate and develop policy-relevant research in and about the Arab region. The Institute is committed to expanding and deepening knowledge production and to creating a space for the interdisciplinary exchange of ideas among researchers, civil society actors, and policy makers.

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