

Statelessness and nationality Discrimination in the Middle East and North Africa (Open Society Foundation Funded)

Illegal Residents in Jordan: stateless persons, illegal migrants and refugees

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Introduction

Jordan has had an open-door policy since its establishment. The Circassians and the Chechens were the first comers of the early 20th century, followed soon by Syrians and Palestinians as labour migrants invited by Prince Abdallah I for their artistic skills in contraction, furniture and administration. More Palestinians as a result of the Israeli-Palestinian conflict, flooded Jordan twice in 1948 and 1967 this time as forced migrants. The many political-economic events in the Middle East region brought along the years Pakistanis (1970s), Egyptians(1970 and 80s), Lebanese (1980s), Iraqis (1990s,2000), domestic labourers (1990s), Lebanese (2006) and Syrian (2012). The country hosts today some 900,000 migrants of various nationalities of Iraqi refugees and numerous Syrians, Lebanese, West Bank Palestinians, while an estimated 50% of the population is descendent of the naturalised Palestinian refugees of 1948 and 1967' displaced people.

The migration is hence a concern on one hand a demographic one and the way it risks to unbalance opportunities of education, employment and social protection for the citizens. On the other hand, it is a challenge. While Jordan has been trying to open up its economy with its neoliberalised politics and globalised markets and manpower, it is faced by the economic challenge of openness versus the political challenge of forced migrants and demographic challenge of securing services for its population.¹

This paper, in brief, looks at four main groups whose status in Jordan is volatile and falls out of the domestic legal grounds and administrative regulations and most importantly of the internationally pledged conventions and covenants. This makes them stateless or illegal migrants whose basic human rights are exploited. These are

- Palestinians holders of Jordan Citizenship
- Jordanian women and the citizenship rights of their children.
- Migrant workers: their residency and their overstayed permits
- Refugees other than Palestinians

¹ <http://www.aucegypt.edu/GAPP/cmrs/reports/Documents/Francoise%20de%20Belair.pdf>

Palestinians Holders of Jordanian Citizenship

According to Article 15 of the 1948 *Universal Declaration of Human Rights* “Everyone has a right to a nationality. No one shall be arbitrarily deprived of this nationality, nor denied the right to change his nationality”. The nationality hence gives a sense of belonging to a place in which people remain - or return to – as their usual place of residence if they wish to. In Jordan as in the Arab world mostly the nationality is given based on the principle of *jus sanguis* ‘law of blood’. The Jordanian Citizenship law of 1954² however, was given based on the principle of *jus solis* ‘law of land’ as per the second paragraph of Article 3 of the 1954 Jordanian Citizenship Law which detailed the eligibility of the Palestinians then residing within what was the Hashemite Kingdom of Jordan of its West and East banks: “Any person with previous Palestinian nationality except the Jews before the date of May 15, 1948 residing in the Kingdom during the period from December 20, 1949 and February 16, 1954.” Thus Palestinians in both banks of the Hashemite Kingdom of Jordan were granted Jordanian nationality and were, as citizens, to enjoy similar rights and obligations to all other Jordanian citizens, including compulsory military service.

Article 6 of the Jordanian constitution affirmed the rights and duties of Jordanians, stating that “Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion. The Government shall secure work and education within the limits of its possibilities, and it shall ensure a state of tranquillity and equal opportunities to all Jordanians”. Furthermore, Jordan has ratified The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which commits its members to the elimination of racial discrimination of understanding among all races, promotion of tolerance and using conflict resolution mechanism.

The 1988 decision to sever administrative and legal relations with the West Bank had legal repercussions on Palestinian Jordanians and failed to observe the domestic and international commitments on what may concern nationality, discrimination and equality. King Hussein’s speech in 1988 acknowledging the wish of the PLO representative body of the Palestinians to take over the sovereignty of the western part of the Kingdom, created a groups of stateless people who abruptly lost their rights as citizens and rights to remain in the country of their habitual residence.

This disengagement speech introduced territorial criteria into the definition of Jordanian citizenship as West Bank residents became Palestinians. As it became a law by virtue of a statement made the Jordanian Prime Minister,³ Jordanian passports were withdrawn from Jordanians of Palestinian origin. In the 1988 until 1996, this process was practised against

² 1954 Jordanian Citizenship Law was amended in 1987.

³ Zeid El Rifai on August 20, 1988

the Palestinians residing in the West Bank. Their five year passports were replaced with a two year travel document, which was made a five year travel document after 1996.

Furthermore, the process of withdrawing the nationality was also implemented since the year 2000 against Palestinian origin Jordanians who have never lived in the West Bank. A human rights activist, Fawzi El Samhour, who was the director of the Jordanian society for Human Rights filed 1000 names in 2002 for passport withdrawal. The reports of Human Rights Watch since 2002 have addressed the issue of passport withdrawal as an arbitrarily action taken against the Jordanian of Palestinian origin with no clear basis of law. And according to Human Rights Watch report in 2010, Jordanian authorities stripped more than 2,700 of their Jordanian nationality between 2004 and 2008, and the practice continued in 2009. The National Human Rights Centre, which is a government body in Jordan, addressed this issue as well in its report in 2006. According to it, the decision to sever ties was never formally promulgated in Jordan's *Official Gazette* and thus it does not have the status of law. Although never promulgated. Many legal provisions were based on it – including amendments to the election and passport laws. Because the unity of both Banks is enshrined in Jordan's constitution, the decision to “separate” the West Bank from the kingdom is – as many critics contend – unconstitutional and therefore illegal.⁴ Despite the promises of the King to end this dilemma, the recent revision of the constitution did not consider the issue.

In practice, decisions made in 1988 created several categories of Palestinians in Jordan:

1. Jordanians of Jordanian origin (with a five-year passport and a national identity number)
2. Jordanians of Palestinian origin (with a five-year passport and a national identity number)

Of this category, passports have been withdrawn and replaced with two year travel documents. No clear pattern and no clear numbers are reported. Although, according to the international lawyer, Dr Anis Kassim the targeted group of the passport withdrawal has been the holders of the yellow crossing border cards particularly. These are holders of a five year passport with a national identity number but have access to the West Bank through family reunification approved by Israeli authorities. They were given in 1983, the yellow crossing borders card by the Jordanian authorities to indicate that they have a double status (the Israeli ID card that permits them in to the West Bank and the Jordanian citizenship). Their number in Jordan according to figures published in daily newspapers in 1996 was 187.000. This group of yellow card holders, as their passports were withdrawn from them, their yellow cards were replaced with green ones. According to Human Rights Watch report of 2012, a committee was established in April 2011 to restore nationality to Jordanians of Palestinian origin, from whom officials had previously arbitrarily withdrawn nationality. The committee benefited only around 50

⁴ National Centre for Human Rights 2006, p. 21. Interviews with International lawyer and former judge, September 20th, 2006.

persons according to the National Center for Human Rights. The king, during his visit in 2011 to Baqaa camp, promised to take action and halt this arbitrary action.

A CASE

Emad, a Jordanian citizen, has been living in the West Bank since 2005. In Feb 18, 2012, as he endeavoured to return to Jordan, he was not permitted in. His first trial in December was also rejected and he was sent back to the West Bank. He decided the second time to remain at the border protesting this illegal way of treating citizens. He was held in prison in 1998 for political activities with an illegal political party. For this he was imprisoned for one year, but was let out with a royal pardon.

<http://www.khaberni.com/more-69908-1->

عماده 20% يرفض 20% طلب 20% الأمن 20% العودة 20% للصفة 20% ويعتصم 20% في 20% الجسر

3. “West Bankers”: holders of two-year passports, not connoting citizenship (this was changed in 1996 to a five-year passport with no national identity number).

They hold green border crossing cards. This category used to hold the Jordanian citizenship until 1988 when the unity between the East Bank and the West Bank of Jordan was severed. Their citizenship was thus replaced with a two year travel document. In 1996, the Palestinian Authority, created after signing Oslo peace agreement, started issuing Palestinians living in the West Bank Palestinian travel documents. The majority of Palestinians living in the West Bank have the Palestinian TDs and only those who have interest in Jordan kept the temporary Jordanian travel document (and the green crossing border card indicating that they are permanent residents in the West Bank).

4. “Gazans”: holders of two-year passports, a travel document that does not give them access to services as citizens.

Palestinian refugees from Gaza arrived in Jordan in 1967 -68. Failing to enter Egypt, which they held its travel documents then, they had to take the route to Jordan via Hebron. Egypt since 1949 had taken the military and administrative rule over Gaza Strip. This encompassed issuing Gaza people with Egyptian travel documents. A year after their arrival in Jordan, their Egyptian travel documents were replaced with Jordanian travel documents which do not connote citizenship. For those who have reunification cards to go to Gaza, they have been given blue crossing border cards. The Jordanian TD has served as residency permit in Jordan, has enabled its holders to travel and come back to Jordan. It however does not give its holders much of the rights enjoyed by citizens, such as the right to compete on higher education seats, employment at the private and public sector, driving licence for public transports, opening a bank account and ownership of houses or shops. In a way, it also deprives its holder of being treated as a foreigner since they do not have the right to invest and own property as foreigners have.

Few reported cases in Jerash Camp that was created to host Gazans, had their Jordanian travel document withdrawn from them. Some joined in the 1990s military groups outside Jordan and upon return their TDs were withdrawn. Others reported that their TDs were withdrawn because they did not accept to cooperate with the state security to report on some cases or some people. These people live without any identification document that prevents them from any legal action , whether marriage or child registry or work or receiving payment through a bank.

JORDAN CITIZENSHIP: Citizenship laws are based upon the Jordanian Citizenship Act of 1954. **BY BIRTH:** Birth within the territory of Jordan does not automatically confer citizenship. **BY DESCENT:** Child born of a Jordanian father, regardless of the country of birth. **PREFERENCE GIVEN TO THOSE OF ARAB DESCENT:** The following are also considered citizens of Jordan: - Person of Arab descent who was habitually resident in Transjordan in 1928. - Person of Palestinian Arab nationality before May 15, 1948, who was habitually resident in Jordan at the coming into force of the 1954 Law. - Person of Arab blood continually resident in Jordan for five years. **BY NATURALIZATION:** Jordanian citizenship may be acquired upon fulfillment of the following conditions: Person has maintained residence in Jordan for at least 15 years. **DUAL CITIZENSHIP: RECOGNIZED.** **LOSS OF CITIZENSHIP:** A Jordanian may not acquire the nationality of another state (other than an Arab State) without the consent of the Board of Ministers. **VOLUNTARY:** Voluntary renunciation of Jordanian citizenship is permitted by law, with the permission of the Board of Ministers. Contact the Embassy for details and required paperwork. A two-hundred dollar fee is required. The renouncement must be approved by the Ministry of the Interior. **INVOLUNTARY:** The following are grounds for involuntary loss of Jordanian citizenship, though loss is not recognized until permission is granted. - Person commits misconduct that undermines the security of the state. Person joins the Armed Forces of another state.

Jordanian women and the citizenship rights of their children

According to a study conducted by Information and Research Centre/ King Hussein Foundation (IRC) in 2011 the population of Jordanian women married to non-Jordanians is estimated at 65,956, which used figures of the Ministry of Interior. This is an alarming matter that is reflected in denial to access free public services (whether education, health care and other social benefits). These families of Jordanian mothers fail to gain the Jordanian nationality, and fail to have the right to permanently reside in Jordan on the strength of their relationship to the Jordanian wife/mother. Like any foreign visitors to the country, these families are required to apply for annual residency permits based on the same criteria as foreigners which denies them the right to reside without a verifiable source of income.

With this, several domestic and international laws are being breached, especially those targeting women and children. Jordan is a signatory of the Convention on the Elimination of All Forms of Discrimination Against Women and of the Convention on the Rights of the Child. This is added to article 6 (i) of the Jordanian Constitution which stipulates: “There shall be no discrimination between Jordanians as regards to their rights and duties on grounds of race, language or religion”. Furthermore, Jordan’s constitution of 1952 calls for equal

rights for men and women and stipulates in article 6 that Jordanians shall be equal before the law: “There shall be no discrimination between them with regards to their rights and duties on grounds of race, language or religion”. Yet the Nationality law of 1954 (amended in 1987) limits the granting of nationality to (a) those born of a father holding a Jordanian nationality, (b) those born in the Hashemite Kingdom of Jordan to a mother holding a Jordanian nationality and to a father whose citizenship is unknown or who is stateless or whose paternity has not been legally established; and (c) those born in the Hashemite Kingdom of Jordan to unknown parents. While there are very few exceptions, the law does not enable Jordanian women to pass their citizenship on to their non-Jordanian spouses or their children.

The call by Queen Rania of Jordan in 2002 at the 2nd Arab Women’s Summit called for the empowerment of the Arab women and the strengthening of their status in the society was but a wish. The amendment of the Jordanian passport by the Prime Ministry on the citizenship was not approved by the Parliament. The claim given by the minister of interior, Samir Habashneh, then that granting citizenship to women would mean “giving the Jordanian citizenship to around half-a-million Palestinians in Jordan,” considering that 60,000 Jordanian women are married to Palestinians.⁵

The justification for this discrimination has routinely been lodged on political grounds with claims that giving women the right to pass on their nationality to their husbands and children will threaten the demographic distribution of Palestinian origin Jordanians and may lead to political crisis and identity problems. The official political claim as well resides in safeguarding the Palestinian identity for the Palestinian families in order to use the demographic issue as a pressure against Israel. Jordan, a signatory state to the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) has placed a reservation on granting its nationality to the foreign family of a Jordanian woman citing political and security reasons especially with regards to the high percentage of Jordanian women married to Palestinian men (West Bankers or Gazans). Meanwhile , Jordanians are allowed to hold dual nationality, they are not permitted to have another Arab passport (as per the regulations of the Arab League). This political dilemma has been at the core of the denial of citizenship to the foreign families of Jordanian women and also has wide support among the Jordanian public in general which fear the political influence of the “newcomers” into their electoral system.

Claims continue and activism by several Women NGOs, such as Karama with its report titled “Economic, Social, Political, and Psychological Implications on Jordanian Women Married to Non-Jordanians and their Families”. By interviewing 191 women, analysed the experiences of women married to non-Jordanian men.⁶ The study aimed to bring out the social, economic, and political effects on women in these marriages and the consequences of their situation on education, healthcare, labor rights, and general economic status of both women and their children. The same concern was reflected in the Universal Periodic Review Report for Jordan (2009), in which the recommendations related to a review of the Nationality Act (recommendations 39 c, 63 b and 66 b) did not enjoy the

⁵ <http://www.black-iris.com/2007/12/28/foreigners-in-their-own-land-jordanian-women-hereditary-citizenship/>

⁶ <http://www.el-karama.org/content/karama-arab-womens-organization-releases-report-citizenship-rights-jordan>

support of Jordan and where similar arguments related to the protection of national identity as well as the rights of Palestinians are brought forth.⁷

The ramifications of the denial of residency to the non-Jordanian husbands and children of Jordanian women affect the lives of these families on several levels and beaches humanitarian and human rights grounds demonstrating how the state us gender bias. Jordan's Residency and Foreigners' Affairs Law Number 1973/24 article 22 b stipulates that the Minister of Interior Affairs can, upon recommendation from the head of (relevant) department, grant a five-year residency permit to the foreign wife of a Jordanian man. The five year permit covers the minimum period required for a foreign woman (non-Arab) married to a Jordanian to reside in the country before she automatically receives the Jordanian nationality of her husband. An Arab wife of a Jordanian is only required to reside in Jordan for three years before she is granted the nationality. There is, however, no legal allowance for residency for the spouse or children of a Jordanian woman on the strength of their relationship to her. This unobserved practises by the state creates denied rights and insecurity in the everyday lives of people.

Migrant Workers: work permits and overstay residency

In the 1970-80s, Jordan lived beyond its means as a result of the high revenue of the state: whether from the international and Gulf aid to Jordan, or from the remittances sent by the Jordanians living in the Gulf. This enabled the government to enroll a big number of its citizens in the public sector. The economic boom was also reflected in the urban expansion of the Jordanian. For this, Egyptian construction labourers were permitted in and a mutual inter-state agreement has had "unlimited stay" deal for citizens of both countries. Over the years, the facilitated visa permits for non-arab labour migrants and facilitated mobility for Arab nationals among arab countries, made the mobility appear to be easy. However, human rights activists working on migration issues in Jordan do not seem to approve. They argue that policies and regulations in Jordan, affected the mobility of migrants, especially that regulations concerning their work permit and overstay continue to be unclear, fluctuating and left to the discretion of administrative employees. Despite the fact that Jordan is a signatory of labour, child, torture, conventions, the trafficking protocol, added to the covenant for social and economic rights and political and cultural rights, the issue of irregular migrants is becoming of a concern for human rights activists for the human rights violations and administrative and legal practises.

Cases reported by Tamkeen, an NGO serving migrant labours with their legal and social needs show violation from the employer and lack of support by the state. *A migrant labourer served 11 years in the house of her employer who did not renew her residency nor paid her salary. When seeking assistance, she was held in prison with the fine of paying the overstay of her visa and had to remain in prison until a decision is taken by the court on her case.* Whether at prison or at the Jordanian Association for Family

⁷http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/JO/ECLJ_JOR_UPR_S4_2009_EuropeanCentreforLawandJustice_upr.pdf (Paragraph 58 p.12).

Planning and Protection, in case of a judicial case, the labourer is expected to ensure a legal residency and can be fined for the days spent until his/her case are ruled out. Another case is about *a migrant labourer who was tortured by her employer for 14 months with no renewed residency or paid salary*. Taking such cases to court risk the long period of time awaiting a ruled out decision which may stretch to two years meanwhile the labour migrant is held in jail.

While the application to bring in a migrant labourer is a straight forward one which starts with an application to the ministry of Labour submitted by the Employment office , which represents the work owner, some gaps in applying the law, taking into consideration the international conventions or following the regulations become very flagrant. Upon approval, the ministry of interior issues the visa. The work permit will be the next step to be issued by the employment office based on the health/ medical record. When the work permit is not renewed by the owner of work on time, the labourer is fined the overstayed period and may risk being jailed.⁸ The minister of interior has a full authority to deport without giving any justifications. Deportation of labour migrants, is an explicit abuse by the state that defies in reality the laws . The case of the Egyptian labour migrants stands out under this violation: although there is an inter-state agreement for citizens of both states to be given “unlimited stay”, the Egyptian labour migrant, is jailed the moment his work permit expires, and is deported when having committed a crime.

Jordan has signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred to as the Trafficking Protocol) and has established its own national committee to prevent human trafficking. It has however failed to ensure the protection for exploited individuals since the national committee does not consider exploitation is an issue if it happened to less than three people, claiming that one person cannot be a victim. On this, according to Tamkeen, the Jordanian employer is rarely convicted to have exploited a labour migrant. This clearly brings out the legal bias towards the Jordanian nationals despite the signed labour convention by Jordan, in article 100 pledging to safeguard social rights for labour migrants.

The news in the 24th of Dec announcing that the minimum average for workers will be 190 JD, excluded labour migrants from it, violating with this article 111 of Labour convention addressing the discrimination in payment and the discrimination in what may concern certain professions and jobs. Not being a signatory of the convention on the rights of all Migrant Workers and their families, makes it easy for Jordan not to treat the labour migrant equally as the citizen and permits it to keep a blind eye to the labourer and his/her family.

⁸ The state recently announced that the residency permit will increase one hundred Jds and the fine will double (from one and half Jds to three Jds), Al Ghad newspaper, 20 Feb. 2012

Refugees, other than Palestinians

Jordan is not a signatory of the 1951 Geneva Convention on Refugees and has not adopted domestic legal instruments for the granting of asylum. Therefore it receives all Iraqis, Syrians or others whatever the causes of their migration and their protection needs, within the framework of its Alien Law. The office of UNHCR in Jordan, under a Memorandum Understanding with the Jordanian Ministry of Interior, processes asylum claims and is in charge of status determination under the condition that those who are recognised as refugees be resettled in a third country.

The position of the Jordanian authorities does not appear to be negotiable despite the *déjà vu* experiences with the Iraqis since 1991: refugees will continue to be treated as migrants and not as refugees. Therefore, NGOs' activities aimed at assisting refugees need to be framed within a development approach to serve all vulnerable groups within the Jordanian society and not conceived strictly as programmes for Iraqi or Syrians *de facto* refugees. In addition due attention needs to be given to the issue of livelihood and economic security that has recently emerged on the agenda of concerned agencies as perhaps the most pressing issue facing vulnerable refugees in Jordan.

The illegal status of many refugees, with the minimum protection they are able to secure from the host state or the UNHCR, is rendering their lives difficult in Jordan. Although education has been made accessible to refugees since 2006 in Jordanian public schools and health is being provided by NGOs and public clinics for a nominal fee, employment opportunities are scarce and often risky. Refugees with illegal status or with their UNHCR registration cards are not permitted to work. Even those who are staying legally on a temporary entry visa or as residents need a work permit which is difficult to secure. For the sake of securing daily income, those who attempt to work in the informal economy or in the private sector risk both being exploited and being deported. This creates a climate of anxiety and fear of deportations among refugees. This absence of legal status is contributing to extra financial burdens in order to pay the overstay of their visas. For refugees with limited financial means, this quickly becomes an enormous sum that they are unable to pay and may prevent them from going back to Iraq or to elsewhere.

There is no domestic legislation or laws which deal specifically with refugees in Jordan. A refugee, as an alien or foreigner, can benefit from some of the existing legislation in Jordan. Some of the laws that touch upon the issue of asylum seeker and refugees status are the Law of Residence and Foreign Affairs, Number 24, 1973 and its amendments. In articles 4, 5 and 6, the law discusses the details of the entrance and the departure of foreigners to and from Jordan. Article 4/1 indicates the conditions for entering the country.⁹ The conditions stipulate a valid passport or Travel Document (TD) of a country that is recognised by Jordan, including those holders of TD given to UN staff and stateless and refugee persons. Article 4/c clarified that the Hashemite Kingdom of Jordan

⁹ Extracted from unpublished paper, 'Legal Status of Non-Palestinian Refugees in Jordan', 2006, by Dr Ayman Adib Halaseh, assistant professor in School of Law, Israa University.

can give TD to refugees who are recognised as such (without mentioning the agency mandated to grant this recognition). In article 5, the law indicates that the entry of the foreigners should be legal whether entrance was by road, sea or air routes. Article 6 gives exceptions to this entry: emergency landing and entrance from areas that are not official borders for political asylum seekers to declare themselves. In this case, the alien should present him/herself to the nearest police station within a period of 48 hours. No further details are provided on who can apply for asylum or what constitutes an emergency landing. However, it is indicated that those entering Jordan due to emergency conditions are exempted from the punishment of illegal entry mentioned in article 31 of the law of residency. According to this law, the illegal alien should be jailed, be presented to the administrative governor who can recommend to deport him/her or give him/her permit to obtain residency or send him/her to the court to be sentenced for a period of one to six months and fined the amount of ten to fifty JDs. The law does not provide any definition of refugee and does not specify the body or the agency that should define a refugee.

The Ministerial Council, under such legal deficiencies, becomes the body in charge (as mentioned in article 1/45 of the Jordanian constitution). Article 10 of Law 24, gives the Minister of Interior the authority to issue passports that have specific conditions for use. These laws indicate that the Minister of Interior has the complete authority to decide on the exemption and it is not necessarily granted to refugees. Articles 32 and 37 of the law address deportation but do not define refugees as such. The administrative governor is given the right to deport the alien if he entered the country illegally, except for the two cases mentioned in articles 4, 5 and 6 that exempt the refugee from this punishment. Article 37 gives the authority to the Minister of Interior to decide on a case by case basis those who should be deported. In addition to residence law, the labour law number 8 for the year 1996 and its amendments highlight the issue of deporting foreign workers if the foreigner is found to be working illegally. Article 12 of the labour law elaborates on how the alien may apply for a work permit, especially if the alien has unique qualifications and has entered the country legally. Part (e) of the law gives the authority to the Minister of Labour to deport the alien in the case that he does not hold a permit. Refugees hence run the risk of being exploited in the private sector because of their irregular status. Yet, and according to the cassation court, any legal contract between a Jordanian employer and an alien based on all the general conditions of work ensures all the basic rights of the labourer, which protects the alien in the case of exploitation (2003-2004). Observation from the field show that Jordanian employers do not sign contracts with illegal refugees/guests which permits them to be in a vulnerable status, even if exploited cannot declare themselves to the authorities.