



The Equal Rights Trust

Suggested issues and questions to be adopted at the 66th session of the Committee on the Elimination of Discrimination against Women (pre-sessional working group) in relation to the sixth periodic report submitted by:

Jordan

Statement of Interest

1. The Equal Rights Trust submits the following suggested issues and questions for adoption by the Committee on the Elimination of Discrimination against Women (the Committee) at the pre-sessional working group for the 66th session, at which the Committee will consider Jordan's sixth periodic report.
2. The Equal Rights Trust exists to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. It focuses on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice. The Trust is the only international organisation focusing exclusively on the right to equality and approaching equality from a unified human rights framework.
3. This submission relies on the Committee's interpretations of the Convention on the Elimination of All Forms of Discrimination against Women¹ (the Convention), most notably in General Recommendation 19² on gender based violence and General Recommendation 28³ on the obligations arising under Article 2.
4. It also relies on the Declaration of Principles on Equality (the Declaration),⁴ a document of international best practice on equality. The Declaration was drafted and adopted in 2008 by 128 prominent human rights and equality advocates and experts, and has been described as "the current international understanding of Principles on Equality".⁵ It has also been endorsed by the Parliamentary Assembly of the Council of Europe.⁶

¹ G.A. Res. 34/180, 1979.

² Committee on Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against women*, UN Doc. CEDAW/C/GC/19, 1992.

³ Committee on Elimination of Discrimination against Women, *General Recommendation No. 28 on the core obligations of States parties under Article 2 of the Convention on the Elimination of All forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 2010.

⁴ *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008.

⁵ *Naz Foundation v Government of NCT of Delhi and Others*, High Court of Delhi, WP(C) No. 7455/2001, Para 93.

⁶ Parliamentary Assembly of the Council of Europe, *Resolution and Recommendation: The Declaration of Principles on Equality and activities of the Council of Europe*, REC 1986 (2011), 25 November 2011, available at: http://assembly.coe.int/ASP/Doc/ATListingDetails_E.asp?ATID=11380.

5. The Trust has been actively involved in improving protection from discrimination in Jordan since 2013, to strengthen the capacity of civil society to combat discrimination and promote equality. In the course of this work, we have undertaken research into patterns of discrimination and inequality in Jordan, with a particular focus on discriminatory torture and other forms of ill-treatment, including on as these affect women. We have also assessed the legal and policy framework in place to combat discrimination and discriminatory torture and ill-treatment.

Introduction

6. This submission focuses on three issues in Jordan which we believe call into question the state's compliance with its obligations under the Convention. We urge the Committee to question Jordan in respect of each of these issues at its 66th session.
7. Firstly, this submission will argue that the continued use of so-called "protective custody" in Jordan, which involves the administrative detention of women considered to be at risk of violence, breaches Jordan's obligation under Article 2(d) of the Convention. This practice continues to be employed despite the Committee having previously advised Jordan to eliminate it.⁷ We note with concern that Jordan makes no mention of "protective custody" in its sixth periodic report, despite the Committee's earlier recommendation and the continued use of this practice. Accordingly, we urge the Committee to add questions on this topic to the list of issues adopted at the pre-session working group.
8. Secondly, this submission will argue that Article 308 of the Penal Code No. 16 of 1960 (Penal Code), pursuant to which perpetrators of sexual assault are pardoned if they marry their victims, breaches Jordan's obligations under Articles 1 and 2 of the Convention. Again, the provision remains in force despite the Committee having directed Jordan to repeal it, and despite Jordan's assurance in its sixth periodic report that the provision would be repealed. We ask that the Committee question Jordan regarding its commitment to repealing Article 308 in its list of issues.
9. Finally, this submission will recommend that the Committee address the lack of comprehensive non-discrimination legislation in Jordan and absence of the grounds of sex and gender from the equality guarantee in Article 6 of the Constitution. The omission of sex and gender as grounds of discrimination in the Constitution means that Jordan remains in violation of Article 2(a) of the Convention, while, as the Committee has made clear in its General Recommendation 28, the failure to enact anti-discrimination legislation means that it is unable to fulfil its obligations under Article 2(a), (b), (f) and (g).⁸ As such, we call on the Committee to question Jordan on its plans to bring its national legal framework into line with Article 2 of the Convention.

"Protective Custody"

⁷ Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Jordan*, UN Doc. CEDAW/C/JOR/CO/4, 10 August 2007, Para 26.

⁸ See above, note 3, Paras 31 and 32.

10. “Protective custody”⁹ involves the administrative detention of women who are perceived to be at risk of certain types of violence. It is ostensibly used for their own protection. Our research and consultations indicate that women in Jordan are placed in “protective custody” because they are believed to be in danger of becoming victims of “honour crimes” because, for example, they are rape victims, are alleged to have had sex outside marriage or have been seen in the company of a man to whom they are not related.
11. “Protective custody” persists in Jordan. In 2014, 49.5% of all women imprisoned in Jordan were administrative detainees (incarcerated without having come before a court),¹⁰ several of whom were held in “protective custody”. According to one report, 25 women were held in “protective custody” in November 2011¹¹ and at least seven women were being held as at February 2015.¹²
12. Women are placed into “protective custody” following a decision of District Governors pursuant to Article 3 of the Crime Prevention Law of 1954.¹³ While it is debatable whether the language of this Article permits “protective custody” of potential victims of gender-based violence, the fact remains that women in Jordan are placed in “protective custody” under this Article. The focus of this submission is on the state’s continued use of “protective custody” and not whether it possesses jurisdiction under its domestic law to do so.
13. “Protective custody” amounts to discrimination against women within the meaning of Article 1 of the Convention, as that Article is interpreted in General Recommendation 19. Article 1 provides that discrimination includes any distinction made on the basis of sex which “has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women (...) on a basis of equality of men and women, of human rights and fundamental freedoms”.
14. The Committee has found, in its General Recommendation 19 that gender-based violence is among the types of distinctions, exclusions or restrictions that constitute

⁹ While we use the term “protective custody” in this submission because this is the way in which the practice is commonly described in Jordan, our use of this term does not indicate any acceptance of the term’s legitimacy.

¹⁰ National Centre for Human Rights, *The Status of Female Inmates at Reform and Rehabilitation Centers in Jordan*, September 2014, p. 40; Azzeh, L., “Nearly half of women prisoners are administrative detainees – study”, *Jordan Times*, 5 March 2015; and Glenister, J., “Good Intentions: Can the ‘Protective Custody’ of Women Amount to Torture?”, *Equal Rights Review*, Vol. 16, 2016, p. 14.

¹¹ Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo: Addendum, Mission to Jordan*, UN Doc. A/HRC/20/16/Add.1, 14 May 2012, Para 27.

¹² 7iber, “Seven Oppressed Women: Witness Accounts on Administrative Detention Under the Pretext of Protection from ‘Honor’ Crimes”, 25 January 2015, available at: <http://www.7iber.com/2015/01/women-detention-testimonials/> (in Arabic).

¹³ This article provides that a District Governor may order administrative detention if: (1) a person is found in a public or private place in circumstances convincing the District Governor that he is about to commit, or help to commit, a crime; (2) a person is given to banditry, theft, possession of stolen money, protection or harbouring of thieves, or helping others to hide or dispose of stolen money; or (3) a person’s release without bail might be dangerous to other persons.

discrimination under Article 1 of the Convention.¹⁴ It goes on to state that gender-based violence includes “deprivations of liberty”.¹⁵ It is clear that “protective custody”, which is undertaken without the consent of the women involved and is often indefinite, constitutes violence.¹⁶ Moreover, it is clear that it is disproportionately women who are held in so called protective custody, and that as such, this is a form “violence that is directed against a woman because she is a woman or that affects women disproportionately” and is therefore within the scope of Article 1 of the Convention.¹⁷

15. In addition to violating Article 1 of the Convention, “protective custody” is a discriminatory violation of the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment.¹⁸ In 2013 the UN Special Rapporteur on Torture stated that prolonged detention can amount to inhuman treatment and is discriminatory.¹⁹ Recent commentary has suggested that “protective custody” may at times amount to torture or to cruel, inhuman or degrading treatment or punishment.²⁰ It is plain that “protective custody”, in impairing the enjoyment of this right, constitutes a violation of Article 1 of the Convention.²¹
16. Certain consequences flow from the conclusion that “protective custody” falls within the definition of discrimination against women in Article 1. In particular, Jordan is obligated under Article 2(d) of the Convention to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”, and as such, the failure of Jordan to end the practice places it in breach of Article 2(d) of the Convention.

¹⁴ See above, note 2, Para 6, which defines gender-based violence as “violence directed against a woman because she is a woman or that affects women disproportionately” and goes on to state that violence includes “physical, mental or sexual harm or suffering, threats of such acts, coercion *and other deprivations of liberty*” (emphasis added).

¹⁵ See above, note 2, Para 6.

¹⁶ Baker, J. and Søndergaard, E., *Conditions for Women in Detention in Jordan: Needs, vulnerabilities and good practices*, DIGNITY, December 2015, pp. 27-8, available at: https://dignityinstitute.org/media/2066001/pubseriesno9_wid_jordan.pdf.

¹⁷ See above, note 2, Para 6.

¹⁸ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966, Article 7.

¹⁹ United Nations Office of the High Commissioner for Human Rights, “Statement of the United Nations Special Rapporteur on torture at the Expert Meeting on the situation of detainees held at the U.S. Naval Base at Guantanamo Bay”, 3 October 2013, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13859&#sthash.fpmPLP Xh.K0ZINBd3.dpuf>; see also, for a consideration of “protective custody” in the context of cruel, inhuman or degrading treatment or punishment, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Jordan*, UN Doc. A/HRC/4/33/Add.3, 5 January 2007.

²⁰ See Glenister, above, note 10.

²¹ See above, note 2, Para 7(b).

17. The Committee raised the practice of “protective custody” in its list of issues for consideration of Jordan’s fifth periodic report.²² In its responses, Jordan failed to address either expressly or implicitly the Committee’s question on the issue.²³
18. The failure of Jordan to provide information and analysis on the issue of “protective custody” may itself be a breach of its obligation to report on the implementation of the Convention, which arises under Article 18. General Recommendation 19 explains that States should include in their reports information on violence and on measures introduced to deal with it.²⁴ States are also obliged to “report on all forms of gender-based violence”, and such reports should include available data on the incidence and effects of such violence.²⁵
19. Given the continuation of this policy in Jordan described above, we recommend that the following questions be adopted at the pre-sessional working group, in advance of consideration of Jordan’s sixth periodic report:
 - (1) Does the state consider Article 3 of the Crime Prevention Law of 1954 to be consistent with its obligations under Articles 1 and 2(d) of the Convention? If so, how?
 - (2) On what basis does the state consider that Article 3 of the Crime Prevention Law of 1954 provides a legal basis for the administrative detention of women considered to be at risk of violence? Does the state consider this interpretation to be consistent with its obligations under Articles 1 and 2(d) of the Convention? If so, how?
 - (3) What plans does the state have, if any, to review, amend or repeal the provision?
 - (4) What measures and safeguards has the state put in place to ensure that the application of the provision does not result in discrimination, contrary to the Convention?
 - (5) How many women in Jordan are currently held in administrative detention for reasons of their own protection?
 - (6) What plans does the state have, if any, to review and bring to an end the practice of “protective custody”?

²² Specifically, Jordan was asked “[w]hat strategies are being developed to protect women and girls from “honour crimes” through measures other than protective custody and to ensure the rehabilitation and reintegration of victims of such crimes into society?” Committee on the Elimination of Discrimination against Women, *List of issues and questions with regard to the consideration of periodic reports*, UN Doc. CEDAW/C/JOR/Q/5, 10 August 2011, Para 8.

²³ Committee on the Elimination of Discrimination against Women, *Responses of Jordan to the list of issues to be taken up in connection with the consideration of its fifth periodic report*, UN Doc. CEDAW/C/JOR/Q/5/Add. 1, 18 January 2012.

²⁴ This comment is reiterated in General Recommendation 19, above, note 2, Para 2. Further, Para 24(e) of General Recommendation 19 provides that states parties in their reports should “identify the nature and extent of attitudes, customs and practices that perpetuate violence against women, and the kinds of violence that result.”

²⁵ See above, note 2, Para 24(u).

Article 308 of the Penal Code

20. Article 308 of the Penal Code provides that persons accused of sexual assault who agree to marry their victims for between three and five years (depending on the nature of the assault) are exempt from investigation and prosecution.
21. By offering the possibility of pardon perpetrators of sexual assault, Article 308 represents a failure on the part of Jordan to take effective measures to eliminate gender-based violence. Jordan is obliged to take such measures under Article 1 of the Convention as interpreted in General Recommendation 19, which provides that states must “ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity.”²⁶
22. As well as representing a failure to implement legislation protecting women from domestic violence, Article 308 is itself a discriminatory law. To the extent that the victims of sexual assault are disproportionately women and the perpetrators disproportionately men, Article 308 has the effect of impairing the exercise by women, on a basis of equality between men and women, of the right to enter into marriage with free and full consent²⁷ and the right to equality before the law.²⁸ The Committee itself has described Article 308 as discriminatory: in comments to Jordan’s fifth periodic report, it registered its concerns about “discriminatory” provisions of the Penal Code including Article 308.²⁹
23. Having established that Article 308 falls within Article 1 of the Convention - including because Jordan has failed to adopt legislation to protect against domestic violence – a number of specific obligations arise under Article 2. It is incumbent on Jordan, in accordance with Article 2(f), to “take all appropriate measures (...) to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. Under Article 2(g), Jordan must “repeal all national penal provisions which constitute discrimination against women.”
24. In its sixth periodic report, the contents of which are to be considered at the 66th session, Jordan concedes that Article 308 must be repealed.³⁰ It states that it has already publically accepted the necessity to remove the provision when appearing before the Human Rights Committee during its Universal Periodic Review on 24

²⁶ See above, note 2, Para 24(b).

²⁷ See above, note 1, Article 16(b); see above, note 18.

²⁸ See above, note 18, Article 26.

²⁹ Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Jordan*, UN Doc. CEDAW/C/JOR/CO/5, 9 March 2012, Para 28(b).

³⁰ Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States parties under article 18 of the Convention - Sixth periodic report of States parties due in 2016: Jordan*, UN Doc. CEDAW/C/JOR/6, 25 June 2015, p. 13. In its concluding observations to Jordan’s fifth periodic report, the Committee called on Jordan to “repeal remaining discriminatory provisions of the Penal Code in line with Article 2(g)”: see above, note 29, Para 28(b).

October 2013.³¹ It outlines various proposals that it has taken in order to garner support for the amendment.³²

25. On 17 April 2016, a Ministerial Committee established by the Jordanian Cabinet issued a decision to repeal Article 308 of the Penal Code.³³ The amendment was referred to the Lower House Legal Committee for examination on 25 April 2016.³⁴ The measure must be approved by both houses of Parliament and gain Royal assent before becoming law.
26. However, the Ministerial Committee did not advocate revoking Article 308 in its entirety. Rather, it advised retaining the pardon in respect of rape charges in which the victim was aged between 15 and 18 years and the impugned intercourse was consensual (under the Penal Code, sexual intercourse with women of this age is rape).³⁵
27. In our view, such an amendment will not render Article 308 compliant with Article 1 of the Convention. While the exemption from prosecution will have been narrowed, women between the ages of 15 and 18 that are victims of statutory rape would still be discriminated against. Jordan would therefore continue to be in breach of Article 2(g) of the Convention; in order to satisfy its obligations under the Convention, Jordan must repeal Article 308 altogether.
28. We recommend that the following questions be adopted at the pre-sessional working group for consideration of Jordan's sixth periodic report:
 - (1) Can the state update the Committee on the status of the implementation of the Ministerial Committee's recommendation that Article 308 of the Penal Code be partially repealed? When does the state predict that the amendment (or repeal) of Article 308 will become law?
 - (2) Does the state consider that an amendment to Article 308 of the Penal Code, such that the exemption from investigation and prosecution only applies where

³¹ See above, note 30, p. 13: "The Iftaa Board of the General Iftaa Department issued fatwa no. 2758, which stated that the marriage of a rapist to the person he raped is a reward for his crime and unacceptable in custom, Shariah and civil law. JNCW held a seminar attended by a number of specialists from relevant governmental and non-governmental organizations to discuss the psychological, social and legal (civil and Shariah) effect of the marriage of the perpetrators of honour crimes to their victims."

³² *Ibid.*

³³ Al Emam, D., "Legal Experts Call for Scrapping Controversial Rape Provision in Penal Code", *Jordan Times*, 26 April 2016, available at: <http://www.jordantimes.com/news/local/legal-experts-call-scrapping-controversial-rape-provision-penal-code>; Library of Congress, *Jordan: Ministerial Committee Decides to Repeal Controversial Rape Provision*, 6 May 2016, available at: <http://www.loc.gov/law/foreign-news/article/jordan-ministerial-committee-decides-to-repeal-controversial-rape-provision/>.

³⁴ Husseini, R., "MP to push for scrapping controversial rape article from draft Penal Code", *Jordan Times*, 25 April 2016, available at: <http://www.jordantimes.com/news/local/mp-push-scrapping-controversial-rape-article-draft-penal-code>.

³⁵ Husseini, R., "Panel restricts pardon in rape cases but activists not satisfied", *Jordan Times*, 3 April 2016, available at: <http://www.jordantimes.com/news/local/panel-restricts-pardon-rape-cases-activists-not-satisfied>.

victims are between 15 and 18 years old and the sexual intercourse is consensual, is consistent with its obligations under Articles 1 and 2(g) of the Convention? If so, how?

Legal Framework on Discrimination

29. Article 6 of the Constitution of Jordan provides:

*Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on the grounds of **race, language or religion** (emphasis added).*

30. The Equal Rights Trust is gravely concerned that this provision omits sex or gender from the list of characteristics on which discrimination is not permitted. Article 2 of the Convention states that “States Parties condemn discrimination against women in all its forms” and are required to “embody the principle of the equality of men and women in their national constitutions or other appropriate legislation”. Both the Human Rights Committee and the Committee itself have already noted with concern the omission of sex or gender as a ground of discrimination in Article 6.³⁶
31. In its sixth periodic report to the Committee, Jordan has asserted that “the omission of gender or sex in this article in no way constitutes a basis for discrimination between citizens. Females are granted all the same rights provided for in the Constitution as are granted to males”.³⁷ Further, in the period between the state’s fifth and sixth periodic reports, the Royal Committee for Constitutional Reforms (RCCR) proposed 42 constitutional amendments (40 of which were endorsed by Parliament)³⁸ but excluded the word “gender” from the final draft of the amendment to Article 6.³⁹ Instead, the RCCR issued an opinion, in response to the concerns expressed by the Committee, stating that the term “Jordanians” includes both women and men.
32. While this declarative statement is to be welcomed, it does not address the core problem that the Jordanian Constitution neither “embod[ies] the principle of the equality of men and women”⁴⁰ nor prohibits discrimination on the basis of sex and gender in the same terms as Article 1 of the Convention. The legal status of the RCCR’s opinion is unclear. More importantly, a recognition that the word “Jordanians” includes both men and women and that as such both are entitled to equality before the law is not the same as an explicit prohibition of discrimination on the basis of sex or gender. In our view, Article 2(a) of the Convention, read together with Article 1, and the

³⁶ Human Rights Committee, *Concluding Observations: Jordan*, UN Doc. CCPR/C/JOR/CO/4, Para.7; see above, note 29, Para 14.

³⁷ See above, note 30, p. 11.

³⁸ European Union Joint Staff Working Document, *Implementation of the European Neighbourhood Policy in Jordan – Progress in 2011*, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012SC0116&from=EN>; European Council on Foreign Relations, *Europe and Jordan: Reform before it's too late*, 2012, available at: http://www.ecfr.eu/page/-/ECFR54_JORDAN_BRIEF_AW.pdf.

³⁹ Human Rights Council, Universal Periodic Review, Second Cycle, *Advance Questions to Jordan – Addendum 1*.

⁴⁰ See above, note 1, Article 2(a).

Committee's consistent practice, imposes a clear obligation to prohibit discrimination on the basis of sex and gender.

33. In addition to the lack of a constitutional guarantee of equality and non-discrimination between men and women, Jordan lacks either comprehensive anti-discrimination legislation or any legislation specifically addressing discrimination against women. The Human Rights Committee has previously recommended that Jordan "adopt and effectively implement comprehensive legislation on gender equality, including a prohibition of discrimination against women".⁴¹
34. In General Recommendation 28, the Committee noted that the obligation under Article 2 requires both comprehensive constitutional and legislative protection from discrimination.⁴² Such laws should *inter alia* cover all spheres of life, prohibit both direct and indirect discrimination and prohibit intersectional discrimination affecting women, for example on the basis of "race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity."⁴³
35. As the Committee has previously noted, the establishment of a National Dialogue Committee in March 2011 to implement reforms of national legislation to promote gender equality has resulted in neither enactment of any anti-discrimination legislation prohibiting nor any amendment to Article 6 of the Constitution in line with the Committee's recommendations.⁴⁴ In addition, as noted by the Committee, women were hugely underrepresented on National Dialogue Committee, with only four out of 52 members of the Committee being women.⁴⁵
36. In light of the weak legislative framework prohibiting discrimination against women, we recommend that Committee adopt the following questions for inclusion in its list of issues for Jordan:
 - (1) What plans does the state party have to amend Article 6 of the Constitution to include grounds of sex or gender?
 - (2) What plans does the state party have to introduce specific and comprehensive national anti-discrimination legislation, supported by national action plans, prohibiting direct and indirect discrimination on grounds of gender and on grounds which intersect with gender, in all spheres of life regulated by law, consistent with General Recommendation 28?

⁴¹ Human Rights Committee, *Concluding Observations: Jordan*, UN Doc. CCPR/C/JOR/CO/4, Para. 14.

⁴² See above, note 3, Paras 24-25.

⁴³ *Ibid.*, Paras 16, 18 and 25.

⁴⁴ See above, note 29, Para 15; see also Human Rights Watch, *World Report 2012: Jordan*, 2012, available at: <https://www.hrw.org/world-report/2012/country-chapters/jordan>.

⁴⁵ See above, note 29, Para. 15.