

Shouting Through the Walls

DISCRIMINATORY TORTURE AND ILL-TREATMENT



CASE STUDIES FROM JORDAN

Equal Rights Trust
in partnership with Mizan for Law

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London, March 2017

The **Equal Rights Trust** is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

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*Time flows through the room
Narrow room
Empty as a drum
Four walls
No threshold to help me run!*

*Silence speaks
Screams its words out*

An extract from "Blackout" by Jordanian poet, Nesma Alnsour.

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Finally, and most importantly, the Trust would like to thank everyone who had the courage to speak to us about their experiences. The report covers particularly egregious human rights violations and discusses matters to which significant social stigma still attaches. Many people felt too fearful to speak about their experiences. Accordingly, our greatest thanks goes to the individuals who spoke to us about their experience of torture and ill-treatment or their witnessing of ill-treatment in institutions in which they have or continue to work. This report is for you and for all the others who are suffering in silence.

A Preliminary Note

The Equal Rights Trust has put the allegations contained within this report to the relevant government ministries and heads of the relevant institutions and those responsible for monitoring those institutions. No response has yet been received. The Trust will publish any responses it receives to its request for responses in due course.

Acronyms and Abbreviations

Arab Charter	Arab Charter on Human Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CPRD	Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
HRC	Human Rights Committee
NCHR	National Centre for Human Rights
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
Special Rapporteur	Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
UN	United Nations
UNGA	United Nations General Assembly

Executive Summary

Torture and other cruel, inhuman and degrading treatment (“other ill-treatment”) are among the most serious of all human rights violations. They often result in indescribable immediate effects and profound long-term physical and mental implications. Instances of torture and other ill-treatment are rightly a focus for human rights defenders and the subject of widespread condemnation. The relationship between discrimination and torture and other ill-treatment has been less explored. And yet discrimination is often central. Individuals are sometimes subject to torture and other ill-treatment as a result of discrimination; a person’s characteristics, such as their gender, disability or age, may impact on the way in which they experience a particular type of treatment; and addressing stigma may be key to eradicating certain instances of torture and ill-treatment. This report therefore seeks to fill a significant gap in the literature, by looking more closely at the specific phenomenon of *discriminatory* torture and ill-treatment.

This report explores the phenomenon of discriminatory torture and other ill-treatment through case studies from the Hashemite Kingdom of Jordan (Jordan). In particular, it focuses on the impact of torture and ill-treatment upon two marginalised groups: women in “protective custody” and persons with mental disabilities. While there has been some attention paid by civil society and the media to the discriminatory treatment of these groups in Jordan, there is a need for closer scrutiny of the treatment they face and the extent to which they are subject to discriminatory torture and other ill-treatment. The report aims to illustrate the lived experience of these individuals in Jordan and to highlight the extent to which discriminatory views are used to detain, mistreat and silence them.

The desk research for this report was conducted in 2015 and 2016. The field research for the two case studies (Parts 4 and 5) was carried out in partnership with Mizan for Law from late 2015 to late 2016. The focus on women and persons with mental disabilities was determined following detailed consultation with key stakeholders in Jordanian civil society on identifying the major patterns of discriminatory torture and other ill-treatment in Jordan. The research sought to identify the treatment these groups face in the public and private spheres, with a particular focus on institutions. This report takes a holistic approach to exploring these issues and makes recommendations for Jordan on the basis of its findings.

Part 1: Introduction

Part 1 gives the reader a brief overview of the background to this report. Part 1.1 explains that the purpose of the report is to consider the underexplored phenomenon of discriminatory torture and ill-treatment by exposing the treatment faced by two vulnerable but very different groups in Jordan: women in “protective custody” and persons with mental disabilities. Part 1.1 also elaborates the structure of the report. Part 1.2 explains how the report uses the unified human rights framework on equality, as expounded in the *Declaration of Principles on Equality*, as a conceptual framework; this framework ensures that the relationship between the right to equality and all other human rights is fully explored and understood. Part 1.2 sets out how the *Declaration* emphasises the relationship between the right to equality and other human rights, requiring that the extent to which inequality and discrimination relate to other human rights abuses is fully understood and exposed in order to ensure that measures taken to ensure the realisation of the full enjoyment of human rights for all persons are appropriate and responsive to the issues at play. In respect of torture and other ill-treatment, this demands consideration of how experiences of structural discrimination may impact upon the severity of pain and suffering experienced by persons. Part 1.2 also explains how the framework notes that seeing groups such as women and persons with mental disabilities as homogenous is insufficient to ensure appropriate identification of torture and ill-treatment and to respond appropriately: multiple discrimination and the specific context are highly relevant.

The research methodology and terminology that we have used in the report is detailed more fully in Part 1.3. The report combines desk and field research, which was undertaken in 2015 and 2016. The field research included speaking with members of the affected groups, members of their family and civil society and members of the medical profession working with the target groups. Importantly, Part 1.3 outlines the terminology used in the report, acknowledging that while “protective custody” is the term most commonly used in Jordan to refer to the practice of detaining women ostensibly to protect them from the threat or perceived threat of violence, the term is a misnomer. Part 1.3 also identifies that the term “persons with mental disabilities” includes all persons with intellectual, psychosocial or other cognitive disabilities. The use of this term is problematic and best practice requires a specific delineation of the situation of different groups within this broad umbrella. However, the term is used after careful consultation with relevant stakeholders in Jordan about the situation in Jordan and the possibility of overcoming the severe lack of understanding of mental disability and exploring the treatment fully if such delineation was adopted.

Part 2: What is Discriminatory Torture and Ill-Treatment?

The second part of the report, in Part 2.1, introduces the reader to the concept *discriminatory* torture and ill-treatment, which is used to refer to circumstances in which discrimination is a relevant factor in the manifestation of torture or other

ill-treatment. It argues that discriminatory torture and ill-treatment is qualitatively distinct from other forms of torture and ill-treatment in a way which demands specific acknowledgment and that this qualitative difference necessitates a distinct response which combats both discrimination and torture.

In Part 2.2, the definition of discriminatory torture is explored with reference to the four key elements which must be demonstrated for the treatment to be recognised as torture in international law: severe pain and suffering; intent; purpose; and the involvement of the state (Parts 2.2.1 to 2.2.4). Throughout these sub-sections the report identifies a number of important ways in which a discrimination analysis is relevant. In summary, the report notes firstly that severe pain and suffering is subjective and the particular characteristics of an individual need to be taken into account in assessing whether the threshold has been met. Secondly, the report explores the extent to which, where there is discrimination, it may be argued that intent has been made out. Thirdly, the report emphasises that treatment “for reasons of discrimination” is one of the key purposes identified in the Convention Against Torture but this has, to date, been underutilised. Finally, the report expounds the international legal position with respect to the state’s involvement in the acts of private individuals and its due diligence obligations. Part 2.2.5 details the treatment which is excluded from the definition of torture, noting in particular that the state cannot argue that a person has consented to treatment which intentionally causes severe pain and suffering – something which states often seek to argue where they are providing “medical treatment” to persons with mental disabilities.

Part 2.3 explores the concept of discriminatory ill-treatment and how it relates to the concept of discriminatory torture. There is no consensus on whether or how a distinction should be drawn between the torture and ill-treatment, and the approaches of different international authorities to this issue are examined in detail. Examples of treatment which have been classified as falling below the threshold for torture are given to further demonstrate the complexity of classifying torture and other ill-treatment. Part 2.3 reiterates that the threshold for minimum level of pain and suffering for treatment to amount to that prohibited by international law on the freedom from cruel, inhuman and degrading treatment requires that the particular vulnerabilities of the individual be taken into account. The Part also emphasises that, when considering the question of humiliation of an individual, in relation to identifying whether treatment is degrading, discrimination will be relevant.

In Part 2.4, the report sets out the international human rights law which obliges states to prohibit torture and ill-treatment from occurring. It identifies that states must have adequate systems of investigation and must punish perpetrators. It also notes that states have a due diligence requirement to prevent acts of torture and other ill-treatment. The report argues that this requires the state to have prevention measures which are suitably targeted and appropriate to deal with the treatment in question, especially where torture and ill-treatment is particularly prevalent against an identifiable protected group. Measures taken should be appropriately targeted and, where necessary, extra steps should be taken.

Part 3: Discriminatory Torture and Ill-Treatment in Jordan

The third part of the report provides the reader with a contextual overview of Jordan's political system (Part 3.1) and human rights record (Part 3.2). It discusses the extensive executive and legislative powers vested in King Abdullah II and the resultant weak separation of powers in the country. It notes that a wide array of human rights violations have been reported by non-governmental organisations, including the widespread use of administrative detention, disproportionate limits on freedom of expression, the re-instigation of the death penalty and impunity for perpetrators of torture and other ill-treatment. The report provides further insight into some of the most prevalent forms of discrimination in Jordan and their respective impacts. The persistence of harmful practices and traditions, such as polygamy, patriarchal attitudes and deep-rooted stereotypes, continue to perpetuate discrimination against women in Jordan. In addition, the absence of education or work opportunities for persons with disabilities and the abuse of children with disabilities in care homes are highlighted as issues of particular concern.

The report then turns to the legal frameworks relating to equality and torture and other ill-treatment. Part 3.3.1 examines Jordan's obligations under international human rights law, noting that it has failed to progress in its implementation of the Convention on the Elimination of All Forms of Discrimination against Women. The binding nature of customary international law and the implementation of international law in Jordan are also discussed. Following on from this, Part 3 analyses the national legal framework on equality and non-discrimination (Part 3.3.2) and the national legal framework on liberty and security of the person and torture (Part 3.3.3). The report concludes that these frameworks fall short of what is required under international law. In particular, the fact that the Constitution only explicitly guarantees non-discrimination on the grounds of race, language and religion and the characterisation of torture as a mere misdemeanour in the Jordanian Penal Code demonstrate the inadequacy of these frameworks in addressing the problem of discriminatory torture and other ill-treatment.

Part 4: Treatment of Persons with Mental Disabilities

Part 4 begins by acknowledging the lack of clarity in respect of the number of persons with mental disabilities in Jordan and the specific extent to which persons with mental disabilities are subject to discriminatory abuse. However, the evidence presented in this Part indicates that widespread discrimination against persons with mental disabilities is an ongoing problem and that Jordan's failure to implement its obligations in accordance with the Convention on the Rights of Persons with Disabilities has contributed to the torture and ill-treatment of persons with mental disabilities.

Part 4.1 explains how international law places obligations on Jordan to protect persons with mental disabilities from torture and other ill-treatment. It focuses

on the human rights framework of the Convention on the Rights of Persons with Disabilities and the way in which it operates to prohibit discrimination which leads to the exploitation and abuse of persons with disabilities. In Part 4.1.1, the right to health (contained within the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights) is explored. It is noted that failure to ensure that the right to health is realised by providing adequate medical care and providing reasonable accommodation for persons with disabilities can amount to torture or other ill-treatment. The report gives examples of other violations of the right to health, such as forced psychiatric interventions and sterilisations and the denial of legal capacity. Part 4.1.2 looks specifically at the prohibition of institutionalisation in international human rights law, and Part 4.1.3 considers the human rights of children with disabilities, who can face intersectional discrimination because of their particular needs.

The national legal framework relating to persons with disabilities is examined in Part 4.2. Although Jordan has taken steps to combat discrimination by enacting a law to promote the rights of persons with disabilities, the law does not meet the standards required by international law. Examples of its shortcomings are given, including the law's authorisation of segregated day centres, involuntary institutionalisation and substituted decision making. The social and political context for persons with mental disabilities in Jordan is explored in greater depth in Part 4.3; Part 4.3.1 uses the testimony of professionals working in the public health sector to illustrate the stigma faced by persons with mental disabilities and the barriers to services, including education and employment, that this can create. Part 4.3.2 identifies the failings in the government's approach to supporting persons with disabilities, such as the insufficient provision of financial support and medical resources.

Part 4.4 sets out the report findings relating to the torture and other ill-treatment of persons with mental disabilities. Using the testimony of 77 individuals, the report expounds allegations of a number of deeply concerning practices which continue to take place in Jordan, including involuntary detention (Part 4.4.1); physical and sexual abuse (Part 4.4.2); and the arbitrary use of sedation (Part 4.4.3). Each of these may amount to torture or other ill-treatment, either because there has been a deliberate and discriminatory infliction of pain and suffering or because the state has failed to properly implement systems for monitoring and documenting institutions. In some of the documented cases, severe pain and suffering is inflicted upon individuals in a position of vulnerability. The Trust was told of one individual, a child with disabilities, who was sexually assaulted and had his arm broken whilst being held in an institution. A parent who gave evidence to the Trust described discovering that their child with a mental disability had been beaten around the head in an institution, becoming permanently visually impaired as a result. Furthermore, the denial of, or lack of, adequate medical care (Part 4.4.4); and the lack of oversight of medical care (Part 4.4.5) are detailed in this report. A number of interviewees stated that their children had been refused medical care; that they had been unable to secure appointments with medical practitioners; and that doctors had failed to inform them of their diagnosis or explain the effects of their treatment.

The report stresses that the cumulative effects of such acts must be taken into account and urges Jordan to take action to investigate incidents and remedy failings. Part 4.5 draws conclusions from the report's findings and makes a series of recommendations to the Jordanian government, including that Jordan ends the institutionalisation of persons with mental disabilities, investigates and prosecutes acts of abuse, amends its legislation to prohibit all forms of discrimination in accordance with the Convention on the Rights of Persons with Disabilities, and introduces wider measures to ensure the equal treatment of persons with disabilities. International human rights bodies and civil society are also asked to work together to monitor and publicise Jordan's progress in achieving these recommendations.

Part 5: Protective Custody

Part 5 of the report presents evidence in relation to Jordan's practice of detaining women in protective custody. Although ostensibly used to protect women from gender-based violence, the report submits that protective custody not only fails to achieve this purpose, but further exacerbates the harms experienced by women by violating a number of their human rights.

This part begins by providing the reader with a general background to the issue of gender-based violence in Jordan. Part 5.1 sets out Jordan's international human rights obligation to combat violence against women and notes that Jordan's use of protective custody as its key response to violence against women means it falls far short of its international human rights obligations in that respect. What's more, the restrictive effect that protective custody has on women's rights to be free from ill-treatment, to liberty and freedom of movement (Part 5.1.1) and their right to be free from gender-based discrimination (Part 5.1.2) means that in and of itself, protective custody is a violation of Jordan's international obligations.. In Part 5.1.3, the report discusses in detail what international law requires the state to do to combat violence against women: an adequate legal framework must be in place to prohibit and punish gender-based violence (Part 5.1.3.1); states must adopt appropriate practical measures to ensure the protection of women (Part 5.1.3.2); and violence against women by private actors must be prevented, investigated, prosecuted and punished by the state (Part 5.1.3.3).

Part 5.1.4 then addresses the ways in which detaining women in protective custody may amount to torture or other ill-treatment. It notes the state's obligation to exercise due diligence to protect women from gender-based violence, and Jordan's failure to do so by relying on protective custody as a protective mechanism. The report goes on to argue that, given that protective custody is intentional and discriminatory, provided that it reaches the minimum threshold of severity of pain and suffering, it will amount to inhuman treatment and, where the pain and suffering caused is severe, it will amount to torture. In addition, conditions in detention and the treatment of women detained while in prison, where fulfilling the element of pain and suffering, may amount to torture or inhuman and degrading treatments.

The national legal framework relating to protective custody and gender-based violence is examined in Part 5.2. The report notes with concern that the legal provision most commonly relied upon as justification for the detention of women in protective custody, Article 3 of the Crime Prevention Law of 1954, does not provide any legal basis for doing so. In addition, the leniency of the legislation criminalising domestic violence and sexual assault falls far short of what is required by international human rights law.

Part 5.3 goes into further detail about the experience of women detained in protective custody in Jordan. The findings of the field research carried out by the Trust and Mizan for Law in relation to Jordanian women (Part 5.3.1.1) and foreign women (Part 5.3.1.2) are outlined. In particular, the reasons for women being detained are demonstrated by witness testimony from lawyers, non-governmental organisations and detainees in Juweida Women's Correctional Facility. Part 5.3.1.3 identifies that the misapplication of the Crime Prevention Law has profound impacts. In some cases women have been detained for as long as 10 years and only being released with the support of a male relative or husband, a practice which is not only discriminatory but also can be fundamentally dangerous in the context of domestic violence cases. There have been cases of women being killed upon release by male relatives despite guarantees that they would not be harmed.

Part 5.3.2 focuses on allegations of abuse in detention by fellow inmates and custodial officers. The conditions in detention are discussed in Part 5.3.3, with overcrowding, poor hygiene, lack of access to health care, inadequate prenatal care, problems with visitation rights and few opportunities for work and recreation being the primary problems.

The impact of protective custody on women is discussed with reference to witness testimony told to the Trust together with the results of research including that carried out by Penal Reform International. The report then explores what lies ahead for women who have been released from protective custody and identifies the fact that there is inadequate support available to help them return to living independently.

In Part 5.4.2, the report offers a series of recommendations for Jordan in respect of protective custody. It urges that Jordan discontinues and prohibits the practice of protective custody, takes a number of measures (both practical and legislative) to ensure compliance with its international obligations to protect women from gender-based violence and investigates the conditions of detention at women's correctional facilities.

Part 6: Conclusions and Recommendations

Part 6.1 concludes that there are serious allegations of treatment which amounts to discriminatory torture and other ill-treatment in relation to the two case studies in Jordan. To date, there has been no real exploration of the situations faced

by women in “protective custody” and persons with mental disabilities, particularly in institutions, through the lens of discriminatory torture and ill-treatment. While this report has begun this process, much further attention is now required both by civil society and by the Jordanian authorities to ensure further torture and ill-treatment is prevented and appropriate responses are identified to protect people, fulfil their rights and punish perpetrators.

Part 6.2 makes a series of recommendations to Jordan and to the international community. Above all, it calls for stakeholders to adopt the term “discriminatory torture and ill-treatment” and to focus specific attention on identifying such treatment in all its forms and on ensuring appropriately targeted responses which acknowledge the particular discrimination at play. Part 6.2 also makes a number of recommendations to Jordan, aimed at improving Jordan’s national law and practice and also ensuring it can be held to full account by international complaints mechanisms. Part 6.2 also calls on the international community to provide specific guidance on “discriminatory torture and ill-treatment” including how to identify and respond to it. It urges specific resources and attention be dedicated to the issue and that such attention is mindful of the specific obligations in discrimination-related conventions including the Convention of the rights of Persons with Disabilities and the Convention on the Elimination of all forms of Discrimination against Women.

1. INTRODUCTION

Torture and other cruel, inhuman and degrading treatment are widely considered to be among the most serious of all human rights violations. In addition to having severe immediate effects, such treatment often results in profound long-term implications for an individual's physical and mental health and effects every aspect of their life. It is, therefore, unsurprising that so much work has been done to draw attention to these injustices and seek their eradication. However, the extent to which addressing discrimination must be a central aspect of the fight against torture is less understood. Individuals are sometimes subject to torture and other ill-treatment as a result of discrimination; a person's characteristics, such as their gender, disability or age, may impact on the way in which they experience a particular type of treatment; and addressing stigma may be key to eradicating certain instances of torture and ill-treatment. Accordingly, it is necessary to look more closely at the specific phenomenon of *discriminatory* torture and ill-treatment.

While this phenomenon exists everywhere, this report focuses on the Hashemite Kingdom of Jordan (Jordan). Discrimination against vulnerable persons in Jordan is widespread and rooted in long-held traditional views and stereotypes. In the early stages of the Equal Rights Trust's exploration of discriminatory torture and ill-treatment in Jordan, we identified that women and persons with mental disabilities face particularly egregious discrimination, resulting in violence and abuse against them.¹ These patterns demanded further exploration. Accordingly, this report examines the treatment of both groups in Jordan, both to shed light on the treatment that they face and also as a means to explore the way in which the rights to equality and non-discrimination intersect with the prohibition of torture and other ill-treatment. While the relationship between these rights has been explored elsewhere, the extent of the discussion has been limited.² This report aims to fill the gap in discussion.

This first part of the report sets out the purpose and structure of the report in further detail and explain the conceptual framework, research methodology and terminology used.

1 See, below, Part 3.2.

2 Much of the discussion has focussed on state responsibility for the acts of private individuals, See, for example, Copelon, R., "Recognizing the Egregious in the Everyday: Domestic Violence as Torture", *Columbia Journal of Human Rights Law Review*, Vol. 25, 1994; Cochrane Alexander, B., "Convention Against Torture: A Viable Alternative Legal Remedy for Domestic Violence Victims", *American University International Law Review*, Vol. 15, 2000.

1.1 Purpose and Structure of the Report

The purpose of this report is to examine the as yet underexplored phenomenon of discriminatory torture and ill-treatment by exposing the treatment faced by two vulnerable but very different groups in Jordan: women in “protective custody”;³ and persons with mental disabilities. The groups were chosen following preliminary focus group discussions among human rights and equality experts in Jordan. The Trust acknowledges that research on the situation for persons with mental disabilities as opposed to more delineated research in relation to persons with intellectual, psychosocial and other cognitive disabilities separately, is an imperfect approach. However, stakeholders advised that seeking to do so would cause significant challenges due to the level of misunderstanding surrounding disability among affected communities and, in some cases, medical professionals. In addition, the views of those consulted were that the harms faced in the institutional setting in particular, were on the whole indistinguishable and the research intended to focus on those harms. The report looks at the way in which both groups are treated, comparing the standard of care and treatment identified through field research to the standard that must be afforded pursuant to international human rights law. The treatment of women in protective custody has been the subject of recent study,⁴ while there have been very few attempts to examine the treatment of persons with mental disabilities.⁵ In neither case has the issue been thoroughly explored through the paradigm of discriminatory torture and ill-treatment.

The report consists of five parts. **Part One** of the report sets out the conceptual framework for the report, the research methodology that was followed, and provides an explanation of the terminology used. **Part Two** of the report discusses the prohibition of discriminatory torture and other ill-treatment pursuant to international human rights law. **Part Three** provides the contextual background to the report in three parts: a brief discussion of the political system in Jordan; an overview of the human rights situation; and an explanation of the relevant constitutional provisions and the national legal framework relevant to the prohibition of torture and other ill-treatment and to equality.

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- 3 As is explained in the terminology section, “protective custody” refers to the practice of detaining women ostensibly to protect them from the threat or perceived threat of violence. Protective custody is sometimes referred to as “preventative” or “precautionary” custody or detention. This report uses the term protective custody as it is widely used. However, as has been noted by Jordanian lawyers and non-governmental organisations (NGOs) working to combat violence against women, the term protective custody is a misnomer, as it refers to a situation in which women are detained in violation of both national and international law, rather than provided with protection from violence in accordance with human rights standards.
 - 4 Baker, J. and Søndergaard, E., *Conditions for Women in Detention in Jordan: Needs, vulnerabilities and good practices*, DIGNITY, December 2015, Penal Reform International, *Who are women prisoners? Survey results from Jordan and Tunisia*, 2014.
 - 5 An official Investigation Committee into the treatment of children with mental disabilities was ordered by King Abdullah II in response to a BBC Arabic investigation and chaired by the Minister of Social Development, see National Council for Human Rights, *Annex IV and Annex VI to Shadow Report Submitted to Committee on Rights of the Child*, 2012–2013, available at: <http://www.nchr.org.jo/Arabic/ModulesFiles/PublicationsFiles/Files/Alternative%20Report2%20.pdf> (in Arabic); BBC, “BBC Uncovers Abuse at Children’s Care Homes In Jordan”, *BBC News*, 15 May 2012, available at: <http://www.bbc.co.uk/news/world-middle-east-18073144>.

Parts Four and Five of the report then turn to examining the treatment of persons with mental disabilities and of women in protective custody. Each section begins by setting out an overview of the relevant obligations in international human rights law and the Jordanian national law, before detailing the findings of the research. Each section concludes with a discussion of Jordan's compliance with international human rights law in relation to the treatment of each group. Finally, **Part Six** of the report makes a series of recommendations to the Jordanian government and also the international community based on the findings in Parts Four and Five.

1.2 Unified Human Rights Framework on Equality

This report takes as its conceptual framework the unified human rights framework on equality, which emphasises the integral role of equality in the enjoyment of all human rights. The unified framework is expressed in the Declaration of Principles on Equality.⁶ Principle 1 of the Declaration defines the right to equality:

The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.

The definition requires equality to be afforded in all areas of life, including with respect to civil and political rights and economic, social and cultural rights. It therefore emphasises the relationship between the right to equality and other human rights, requiring that the extent to which inequality and discrimination relate to other human rights abuses is fully understood and exposed in order to ensure that measures taken to ensure the realisation of the full enjoyment of human rights for all persons are appropriate and responsive to the issues at play. For example, in the context of torture and other ill-treatment, the framework requires consideration of how experiences of structural discrimination may impact upon the severity of pain and suffering experienced by persons.

The understanding of equality expressed in the unified framework and articulated in the Declaration is drawn from concepts and jurisprudence developed in international, regional and national legal contexts. The same approach is used in order to elaborate on specific discriminatory phenomenon and to develop a full understanding of the content of other human rights, as this report seeks to do by exploring discriminatory torture and ill-treatment.

6 Equal Rights Trust, *Declaration of Principles on Equality*, London, 2008. In 2008, in a process facilitated by the Equal Rights Trust, 128 human rights and equality experts from 47 countries in different regions of the world consulted and agreed on a set of principles of equality: the Declaration of Principles on Equality. The Declaration promotes a unified approach to equality and non-discrimination and its principles are "based on concepts and jurisprudence developed in international, regional and national contexts".

The Declaration sets out three types of prohibited conduct which constitute discrimination:

Direct discrimination occurs when for a reason related to one or more prohibited grounds a person or group of persons is treated less favourably than another person or another group of persons is, has been, or would be treated in a comparable situation; or when for a reason related to one or more prohibited grounds a person or group of persons is subjected to a detriment. Direct discrimination may be permitted only very exceptionally, when it can be justified against strictly defined criteria.

Indirect discrimination occurs when a provision, criterion or practice would put persons having a status or a characteristic associated with one or more prohibited grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

An act of discrimination may be committed intentionally or unintentionally.⁷

Each of these three concepts reflects current expert opinion on the definition of discrimination found in international human rights law.⁸ In addition, in line with international human rights law, the report takes the approach that a denial of reasonable accommodation constitutes discrimination.⁹ Principle 13 of the Declaration provides that:

To achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds.

Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facili-

7 See above, note 6, Principle 5.

8 See, for example, Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, Para 2, of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/20, 2009, Para 10; Committee on the Rights of Persons with Disabilities (CRPD Committee), *General comment No. 3 (2016) – Article 6: Women and girls with disabilities*, UN Doc. CRPD/C/GC/3, 2016, Para 17.

9 See, for example, Convention on the Rights of Persons with Disabilities (CRPD), 2515 U.N.T.S 3, 2006, Article 2; *ibid.* CRPD Committee, Para 15; and CESCR, *General Comment No. 5: Persons with Disabilities*, UN Doc. E/1995/22, 1995, Para 15.

tate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.

All four forms of prohibited discrimination are relevant to the determination of whether an act may amount to discriminatory torture and other ill-treatment, and this is discussed in further detail in Part 2 of the Report.

Sex, disability and health status are all clearly prohibited grounds of discrimination.¹⁰ Discrimination is also prohibited:

*[W]hen it is on the ground of the association of a person with other persons to whom a prohibited ground applies or the perception, whether accurate or otherwise, of a person as having a characteristic associated with a prohibited ground.*¹¹

It is also important to recognise, as Principle 12 of the Declaration does, that a person may experience multiple discrimination, that is discrimination on more than one ground. As the Committee on the Rights of Persons with Disabilities has noted, recognition means:

*[A]cknowledging the lived realities and experiences of heightened disadvantage of individuals caused by multiple and intersecting forms of discrimination, which requires targeted measures with respect to disaggregated data collection, consultation, policymaking, enforceability of non-discrimination and provision of effective remedies.*¹²

For the purpose of this report, it is particularly notable, for example, that women and girls with mental disabilities may be at particular risk of torture or other ill-treatment.¹³ To consider women and persons with mental disabilities as homogenous groups would fall short of identifying and addressing the specific problems present.

10 See above, note 6, Principle 5. The full list includes: “race, colour, ethnicity, descent, sex, pregnancy, maternity, civil, family or carer status, language, religion or belief, political or other opinion, birth, national or social origin, nationality, economic status, association with a national minority, sexual orientation, gender identity, age, disability, health status, genetic or other predisposition toward illness”.

11 *Ibid.*, Principle 5.

12 See also CRPD Committee above, note 8 Para 16.

13 Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, Para 9; see also CRPD Committee above, note 8, Para 10.

1.3 Research Methodology, Scope and Terminology

The report findings are based on a combination of field research and desk research. Part 1, 2 and 3 of the report were developed through desk-based research of existing published resources. The national and international legal frameworks discussed in Part 4.1 and 5.1 of the report were also developed in the same way. The conceptual framework of the report (Part 1.2) and the international legal frameworks (Part 2, 4.1 and 5.1) were subject to an online validation process, during which a number of experts in international human rights law provided comments on the accuracy and completeness of each part.

The findings presented in each of Part 4.3 and 5.3 of the report are drawn from field research commissioned by the Equal Rights Trust in addition to findings reported in other studies, where such studies exist. The research was undertaken in two stages. The first stage was carried out between November 2015 and February 2016 and was carried out by Basel Al-Hamad, Lubna Dawany and Fatima Alhalabiya. The second stage began in October 2016 and was completed in November 2016, and was carried out by Areej Mohammad Semreen, Rahaf Safi and Fatima Alhalabiya. The research aimed to speak directly to persons with mental disabilities and women in protective custody and their family members. In addition, a range of stakeholders, such as doctors, nurses, teachers and those from civil society were interviewed or took part in focus groups. In this way, the research aimed to develop a comprehensive picture of the treatment of persons with mental disabilities and women in protective custody in Jordan. The questions asked during interviews and focus groups followed a suggested list of questions developed prior to the beginning of the research, which were further revised following the completion of the first stage of research. Wherever permitted by the person being interviewed and by the place of detention, the interviews and focus groups were recorded. These recordings are retained on file by the Equal Rights Trust. When recording was not permitted, the notes of the interview remains on file with the Equal Rights Trust.

A total of 120 persons were either interviewed or took part in focus groups. Forty persons with mental disabilities or their family members were interviewed, and 36 persons who worked to care or advocate for persons with mental disabilities were interviewed or took part in focus groups. Of those 40 persons, five had been institutionalised and an additional five spoke about a family member who had been institutionalised. Twenty-one women who are or who have been detained in protective custody were interviewed, and 23 persons who work with women detained in protective custody were interviewed or took part in a focus group. These persons were identified by Mizan for Law and the researchers themselves through visits to prisons, clinics and through speaking to organisations who worked with these groups. The report uses pseudonyms for persons with mental disabilities or those who have themselves been detained in protective custody, and for their family members. As noted in Part 4.3, there was a general reluctance on the part of persons with mental disabilities to speak about their experiences due to the social stigma associated with mental disability in Jordan.

The research findings and conclusions and recommendations were also subject to an online validation process, which sought comments from experts on the situation facing women in protective custody and persons with mental disabilities in Jordan.

It is important to note a number of matters which were outside the scope of the research. Inspection of the places in which persons were detained was not within the scope of the research. Nor was an exploration of the circumstances of women who were administratively detained for reasons other than protective custody.

The following terms are used in the report:

Administrative detainee refers to a person who is detained in prison but who has not been detained through the criminal justice process. This includes women who are held in “protective custody”.

Other ill-treatment refers to cruel, inhuman or degrading treatment or punishment as these terms are understood as a matter of international law and best practice.

Persons with disabilities refers to “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”¹⁴

This report uses the term *persons with mental disabilities* to include all persons with intellectual, psychosocial or other cognitive disabilities.¹⁵ As outlined in Part 1.1 above, the Trust acknowledges that the use of this term is problematic and that best practice requires a specific delineation of the situation of different groups within this broad umbrella. However, after careful consultation with relevant stakeholders in Jordan, the approach was taken to explore the treatment of persons with mental disabilities more generally.

Protective Custody refers to the practice of detaining women ostensibly to protect them from the threat or perceived threat of violence. Protective custody is sometimes referred to as “preventative” or “precautionary” custody or detention.¹⁶ This report uses the term protective

14 CRPD, Article 1. The CRPD recognises that “disability is an evolving concept and (...) results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”, see Preamble at (e).

15 See CRPD Committee above, note 8, Para 42; World Network of Users and Survivors of Psychiatry, *Manual on Implementation of the Convention on the Rights of Persons with Disabilities*, 2009, p. 9, available at: <http://www.chrusp.org/home/resources>.

16 See Baker, J. and Søndergaard, E. above, note 4, p. 27.

custody as it is widely used. However, as has been noted by Jordanian lawyers and non-governmental organisations (NGOs) working to combat violence against women, the term protective custody is a misnomer, as it refers to a situation in which women are detained in violation of both national and international law, rather than provided with protection from violence in accordance with human rights standards.¹⁷

¹⁷ Comments made to the Equal Rights Trust roundtable discussing violence against women, Amman, Jordan, 1 November 2016. See below, Part 4 for a discussion of the way in which the use of protective custody violates national and international law.

2. WHAT IS DISCRIMINATORY TORTURE AND ILL-TREATMENT?

The relationship between discrimination and torture and other ill-treatment is one that has not been fully explored. Although recent years have seen increased discussion of whether the acts of private individuals may amount to torture, largely in the context of violence against women,¹ there has been no detailed consideration of the way in which discrimination relates to each element of the definition of torture and the assessment of whether there is other ill-treatment. This Part of the report seeks to fill this gap in the present discourse, exploring what constitutes “discriminatory torture or other ill-treatment” and, in so doing, elucidates the importance of considering inequality and discrimination when assessing whether an act constitutes torture or other ill-treatment.

The report uses the term “discriminatory torture and other ill-treatment” to refer to the circumstances in which discrimination is a relevant factor in the manifestation of torture or other ill-treatment. In this context, discrimination encompasses four types of conduct as outlined in Part 1.2: direct discrimination, indirect discrimination, harassment and a failure to provide reasonable accommodation. It is also important to note from the outset that discrimination may occur intentionally or unintentionally and requires no malicious motive.²

This part will first briefly introduce discriminatory torture and ill-treatment. It will then consider in more detail the relevance of discrimination in the definition of torture and then, other ill-treatment. It will finish by setting out the obligations on the state to prohibit both torture and other ill-treatment.

2.1 Introducing the Concept

The Equal Rights Trust uses the term *discriminatory* torture and ill-treatment because of the significance of the relationship between discrimination and tor-

1 See, for example, Copelon, R., “Recognizing the Egregious in the Everyday: Domestic Violence as Torture”, *Columbia Journal of Human Rights Law Review*, Vol. 25, 1994; and Cochrane Alexander, B., “Convention Against Torture: A Viable Alternative Legal Remedy for Domestic Violence Victims”, *American University International Law Review*, Vol. 15, 2000.

2 Equal Rights Trust, *Declaration of Principles on Equality*, London, 2008, Principle 5. See also the definitions of discrimination contained in International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 660 U.N.T.S. 195, 1965, Article 1(1); Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1249 U.N.T.S. 13, 1979, Article 1; and Convention on the Rights of Persons with Disabilities (CRPD), 2515 U.N.T.S. 3, 2006, Article 2, which all allow for a finding of discrimination on the basis of the “effect or purpose” of a difference in treatment.

ture and other ill-treatment and the fact that it is currently underrecognised.³ The relationship is significant for two reasons. Firstly, because discriminatory torture and other ill treatment is qualitatively distinct from other instances of torture and ill treatment in a way which demands specific acknowledgement and, secondly, because this qualitative difference necessitates a distinct response which combats both discrimination and torture. Each of these points will be examined in turn.

Discriminatory torture and other ill-treatment is qualitatively distinct in two key ways. Firstly, discrimination is often a cause of torture and other ill-treatment of protected groups.⁴ This may occur in the sense that a particular group, such as women or persons with mental disabilities, is singled out for particular acts amounting to torture or other ill-treatment or is particularly vulnerable to such acts.⁵ It may also occur less overtly, for example, a failure to accommodate the specific needs of persons with disabilities in detention and the inhuman and degrading treatment that can result from this failure is a manifestation of the wider discrimination that persons with disabilities face in society.⁶ Secondly, ill-treatment impacts disproportionately and differently upon certain groups including those who have faced historical disadvantage – such as women – and those with specific vulnerabilities – such as certain persons with mental disabilities.⁷ For example, a person with a mental disability may experience psychological ill-treatment in a different way to others, and in a way which means that the impact of that ill-treatment may be severe enough to amount to torture. A failure to explicitly acknowledge the relevance of discrimination to the treatment is a failure to accurately tell the story of the human rights violations taking place. Among other things it leads to a lack of understanding of the extent to which the right to be free from such treatment is being enjoyed by all regardless of their particular characteristics.

The distinctions between discriminatory torture and other ill-treatment and other forms of torture and ill-treatment also necessitate a unique response. Recognising discrimination as a cause of torture and other ill-treatment makes it clear that, in many contexts, steps taken to prevent torture and other ill-treat-

3 See Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016; Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, 2008, Paras 20–24; and United Nations General Assembly (UNGA), *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/63/175, 28 July 2008.

4 *Ibid.*, Human Rights Council, Para 6; *ibid.*, Committee Against Torture, Para 21; Committee on the Rights of Persons with Disabilities (CRPD Committee), *General comment No. 3 (2016) – Article 6: Women and girls with disabilities*, UN Doc. CRPD/C/GC/3, 2016, Para 53; Human Rights Council, *Thematic study on the issue of violence against women and girls and disability: Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/20/5, 30 March 2012, Paras 14–16.

5 See Human Rights Council above, note 3, Para 20; *ibid.* Committee Against Torture, Para 21; *ibid.* CRPD Committee, Para 53; *ibid.* Human Rights Council, Paras 14–16; see also UNGA above, note 3, Para 39.

6 *Ibid.*, Human Rights Council, Para 16; see also Human Rights Council above, note 3, Para 9.

7 *Ibid.*, Human Rights Council, Para 9; European Court of Human Rights, *Keenan v United Kingdom*, Application No. 27229/95, 3 April 2001, Para 111; UN Office of Drugs and Crime, *Handbook on Prisoners with Special Needs*, Criminal Justice Handbook Series, 2009, pp. 44–46; and Human Rights Committee, *Vuolanne v Finland*, Communication No. 265/1987, UN Doc. A/44/40, 1989, Para 9.2.

ment will be ineffective unless steps are also taken to combat the discrimination which leads to such acts. This has been recognised by Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur):

*Full integration of a gender perspective into any analysis of torture and ill-treatment is critical to ensuring that violations rooted in discriminatory social norms around gender and sexuality are fully recognized, addressed and remedied.*⁸

Discrimination and stereotypes may mean that the torture or other ill-treatment of persons with vulnerabilities is accepted by the wider community, and the marginalised status of victims may mean that they are less able or willing to seek assistance, which fosters a climate of impunity.⁹ Tackling discrimination is therefore an essential part of preventing impunity for torture and other ill-treatment. For example, measures taken to prevent future inhuman treatment are unlikely to be fully effective unless they seek to tackle underlying societal stigma and prejudice against people with disabilities.

In addition, considering acts through the lens of discrimination allows for acts that have previously not been considered to be torture or other ill-treatment to be correctly recognised as such. For example, taking a gender sensitive approach to the definition of torture and other ill-treatment has led to the recognition of domestic violence and other forms of violence against women as torture or other ill-treatment.¹⁰ This includes taking into account the ways in which different groups experience treatment in order to determine if acts amount to torture and other ill-treatment. As the Special Rapporteur has noted:

*Gender stereotypes play a role in downplaying the pain and suffering that certain practices inflict on women, girls, and lesbian, gay, bisexual and transgender persons.*¹¹

Taking into account particular vulnerabilities therefore guards against a tendency to minimise acts.¹²

The recognition of acts as torture and other ill-treatment is also significant because it allows for additional avenues of legal redress that are invoked by the prohibition of torture and other ill-treatment to be utilised. The significance of recognising “practices for what they are, i.e. torture and ill-treatment”¹³ has been noted by the Special Rapporteur:

8 See Human Rights Council above, note 3, Para 6.

9 See CRPD Committee above, note 4, Para 53; see Human Rights Council above, note 3, Para 9.

10 *Ibid.*, Human Rights Council, Para 55.

11 *Ibid.*, Para 9.

12 *Ibid.*, Para 8.

13 See UNGA above, note 3, Para 70.

*By recognizing and reframing violence and abuse perpetrated against persons with disabilities as torture or other cruel, inhuman or degrading treatment or punishment, victims and advocates can be afforded stronger legal protection and redress for violations of human rights.*¹⁴

In the context of abuses in health settings, the recognition of acts as torture and other ill-treatment prevents the state from justifying its failure to prevent such acts due to a lack of resources, as it may do if the acts are viewed in the framework of the right to health alone.¹⁵

It is therefore clear that the obligations of the state to combat discrimination and to combat torture and other ill-treatment should be considered mutually reinforcing. Discriminatory torture and other ill-treatment will only be successfully combatted by recognising it as such, and by states fully implementing measures to combat both discrimination and torture and other ill-treatment.

2.2 Discriminatory Torture

The prohibition of torture is an absolute right which all states are required to uphold¹⁶ and is contained in numerous human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR),¹⁷ the Convention on the Rights of Persons with Disabilities (CRPD),¹⁸ the Convention on the Rights of the Child (CRC),¹⁹ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)²⁰ and the Arab Charter on Human Rights.²¹ Article 1 of the CAT provides a definition of torture that is considered to be authoritative:²²

14 *Ibid.*, Paras 45, 70 and 83.

15 *Ibid.*, Para 83.

16 International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, 20 July 2012, Para 99; see Committee Against Torture, above, note 3, Para 1; Inter-American Court of Human Rights, *Goiburú and Others v Paraguay*, 22 September 2006, Para 128. See also, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Prosecutor v Furundzija*, Case No. IT-95-17/1-T, Trial Chamber, 10 December 1998, Para 154.

17 International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, 1966, Article 7.

18 CRPD, 2515 U.N.T.S. 3, 2006, Article 15.

19 Convention on the Rights of the Child (CRC), 1577 U.N.T.S. 3, 1989, Article 37.

20 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1465 U.N.T.S. 85, 1984, Article 1.

21 League of Arab States, *Arab Charter on Human Rights*, 15 September 1994, Article 8.

22 Rodley, N., "The Definition(s) of Torture in International Law", *Current Legal Problems*, Vol. 55, 2002, p. 476; Miller, G.H., *Defining Torture*, Floersheimer Center for Constitutional Democracy, Benjamin N. Cardozo School of Law, 2005, pp. 5–6; Morris McDonnell, M., Nordgren, L.F. and Loewenstein, G., "Torture in the Eyes of the Beholder: The Psychological Difficulty of Defining Torture in Law and Policy", *Vanderbilt Journal of Transnational Law* Vol. 44, 2011, fn. 2; Lasson, K., "Torture, Truth Serum, and Ticking Bombs: Toward a Pragmatic Perspective on Coercive Interrogation", *Loyola University Chicago Law Journal*, Vol. 39, 2008, p. 334. The CAT has 159 state parties and 10 signatories. Office of the High Commissioner for Human Rights,

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

According to this definition, four elements must be present in order to conclude that treatment amounts to torture: severe pain and suffering; intentionally inflicted; for a purpose; and by or with the consent or acquiescence of a public official.²³ Each of these elements will be considered in turn.

2.2.1 Severe Pain and Suffering

For any act to be considered torture it must cause severe pain and suffering. It is clear that this includes mental pain and suffering (whether alone or in combination with physical pain and suffering).²⁴ Examples of acts that have been considered to cause severe pain and suffering include rape, falanga (beating on the soles of the feet) and threats of execution.²⁵ In extreme cases, the sense of hopelessness arising from prolonged arbitrary detention in and of itself may lead to severe pain and suffering.²⁶

The determination of whether a person is experiencing pain and suffering and the severity of that pain and suffering involves a subjective element, which may

“Status of Ratification Interactive Dashboard”, available at: <http://indicators.ohchr.org>. Some consider that the definition itself is now part of customary international law, see International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia above, note 16, Paras 159–161.

23 See Copelon above, note 1, p. 308.

24 CAT, Article 1. See also, for example, Human Rights Committee, *General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, 1992, Para 5; see Human Rights Committee above, note 7, Para 9.2. A discussion of jurisprudence in this regard can be found in Rodley, N. with Pollard, M., *The Treatment of Prisoners Under International Law*, Oxford University Press, 3rd edition, 2009, pp. 97–98.

25 *Ibid.*

26 Office of the High Commissioner for Human Rights (OCHCR), “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”, *OHCHR*, 3 October 2013, available at, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13859&#sthash.fpmPLPXh.K0ZINBd3.dpuf>. See also OHCHR, “IACHR, UN Working Group on Arbitrary Detention, UN Rapporteur on Torture, UN Rapporteur on Human Rights and Counter-Terrorism, and UN Rapporteur on Health reiterate need to end the indefinite detention of individuals at Guantanamo Naval Base in light of current human rights crisis”, *OHCHR*, 1 May 2013, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13278&LangID=E#sthash.RL8zOgfs.dpuf>. In some cases of prolonged detention it is not clear if the detention was considered to amount to torture or to other ill-treatment, see, Human Rights Committee, *FK.A.G. et al v Australia*, Communication No. 2094/2011, UN Doc CCPR/C/108/D/2094/2011, 20 August 2013, Para 9.8; European Court of Human Rights, *Vinter and Others v the United Kingdom*, App. Nos. 66069/09, 130/10 and 3896/10, 9 July 2013, Para 78.

include factors such as the age, sex and health of the victim.²⁷ As has been noted by the current and previous Special Rapporteurs, these subjective considerations also include consideration of whether a person has a disability:

*Assessing the level of suffering or pain, relative in its nature, requires considering the circumstances of the case, including the existence of a disability, as well as looking at the acquisition or deterioration of impairment as a result of the treatment or conditions of detention in the victim.*²⁸

More recently, the Special Rapporteur noted that “[i]ntersectional identities can result in experiencing torture and ill-treatment in distinct ways”.²⁹ It is therefore clear that a person’s particular vulnerabilities must be taken into account when assessing the severity of pain and suffering they have experienced – the same act done to a group of people may lead to severe pain and suffering for those with a particular characteristic, such as women or persons with a mental disability while not reaching the threshold of severity to amount to torture for others. Given the need to consider the particular vulnerabilities of a person, it is also clear that a failure to provide reasonable accommodation may be considered to exacerbate pain and suffering or to inflict severe pain and suffering on a person.³⁰ For example, in the case of *Z.H. v Hungary*, the European Court of Human Rights (ECtHR) found that detaining a man with an intellectual disability who was also hearing and speech impaired without providing sufficient reasonable accommodation to him to be able to understand his situation and overcome his feelings of isolation amounted to inhuman and degrading treatment.³¹ Although this case refers to inhuman and degrading treatment rather than torture, the principles articulated are equally applicable to a determination of pain and suffering for the purposes of torture.³²

In addition to considering a person’s particular vulnerabilities, the impact of any discriminatory motive or statements in the carrying out of an act,³³ or of

27 See UNGA above, note 3, Para 47; see Human Rights Committee above, note 7, Para 9.2. This approach is also taken by the European Court of Human Rights, *Yordanov v Bulgaria*, Application No. 56856/00, 10 August 2006, Para 86 where the Court noted “[t]o fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim”.

28 See UNGA above, note 3, Para 47.

29 See Human Rights Council above, note 3, Para 9.

30 Lawson, A., “Disability equality, reasonable accommodation and the avoidance of ill-treatment in places of detention: the role of supranational monitoring and inspection bodies”, *The International Journal of Human Rights*, Vol. 16(6), 2012, pp. 851–852.

31 European Court of Human Rights, *Z.H. v Hungary*, Application No. 28973/11, 8 November 2012, Paras 28–33. The Court did not use the words “reasonable accommodation” in its findings instead stating at Para 33 that “the applicant’s incarceration without the requisite measures taken within a reasonable time must have resulted in a situation amounting to inhuman and degrading treatment”. See also the discussion of case law on this point in Lawson, A. above, note 30, pp. 852–854.

32 The distinction between torture and other ill-treatment is discussed below in Part 2.3.

33 See, Human Rights Committee, *Dzemajl et al. v Yugoslavia*, Communication No. 161/2000, U.N. Doc. CAT/C/29/D/161/2000, 21 November 2002, Para 9.2.

imbalances in power between the victim and the perpetrator due to systematic and structural discrimination, should be taken into account. For example, physical violence combined with discriminatory statements directed towards a person may have a more severe effect than physical abuse alone, and it is clear that human rights law allows for the cumulative effect of these acts to be considered together when determining whether the threshold for severe pain and suffering is met.³⁴ In relation to systematic and structural discrimination, the Special Rapporteur recently noted that an assessment of pain and suffering must include consideration of “normative and institutional frameworks that reinforce gender stereotypes and exacerbate harm”.³⁵ It is clear that discrimination may in some circumstances be a determining factor in assessing whether a victim has suffered pain and suffering severe enough to fall within the ambit of torture.

2.2.2 Intent

The definition of torture requires that the severe pain and suffering be *intentionally* inflicted on a person. The requirement of intent is one of general intent, rather than specific intent, requiring only that the act was done deliberately (and was not, for example, the result of accident or disease). It is not necessary to show that the perpetrator intended to cause pain and suffering through their actions.³⁶ Purely negligent acts, on the other hand, fall outside of the definition of torture but may be considered to be another form of ill-treatment.³⁷

It is largely accepted that although the definition of torture refers only to “acts”, it includes intentional omissions, such as denying a person food, because excluding such intentional omissions from the scope of the definition would run contrary to the purpose of the prohibition on torture.³⁸ While it has not previously been explored, properly understood, in many circumstances a state failure to make a reasonable accommodation where it has an obligation to do so will fall within this scope. The question becomes whether such failures can ever be considered unintentional for the purpose of the definition. As noted above in Part 1.2, a failure to make a reasonable accommodation involves failing to make a necessary adjustment to allow a person to enjoy their human rights on an equal basis with others i.e. an omission. It is arguable that such failures should not be

34 See, for example, Human Rights Committee, *Khalilov v Tajikistan*, Communication No. 973/2001, UN Doc. CCPR/C/83/D/973/2001, 30 March 2005, Para 7.2.

35 See Human Rights Council above, note 3, Para 68.

36 Rodley, N. and Pollard, M., “Criminalisation of torture: state obligations under the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment”, *European Human Rights Law Review*, 2006, pp. 124–125. For a discussion of this debate see Hathaway, O., Nowlan, A. and Spiegel, J., “Tortured Reasoning: The Intent to Torture Under International and Domestic Law” *Virginia Journal of International Law*, Vol. 52, 2012, pp. 792–794; and Glenister, J., Good Intentions: Can the “Protective Custody” of Women Amount to Torture?” *Equal Rights Review*, Vol. 16, 2016, pp. 31–33.

37 See UNGA above, note 3, Para 49; Burgers, J. H. and Danelius, H., *The United Nations Convention Against Torture: A Handbook on the Convention Against Torture and Other Cruel, Inhuman, Or Degrading Treatment Or Punishment*, Martinus Nijhoff Publishers, 1988, p. 118.

38 See Rodley, N. and Pollard, M. above, note 36, p. 120 and the sources cited therein; see also Miller, G.H. above, note 22, pp. 6–8.

seen as merely negligence, given that they are positive human rights obligations. However, this matter has not previously been determined.

2.2.3 Purpose

The definition of torture requires that the pain and suffering is inflicted for a purpose such as:³⁹

*[O]btaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.*⁴⁰

In many cases involving discriminatory torture, a number of these purposes may be fulfilled. For example, the use of discriminatory language may be aimed at intimidating a person.⁴¹ However, there are some cases in which only the last of these purposes, “for any reason based on discrimination of any kind”, may be present. For example, medical treatment may be considered to be in the “best interests” of the patient but actually be based on discriminatory notions of what is in a person’s best interests. In a report on torture and other ill-treatment in healthcare settings, the Special Rapporteur stated that:

*The mandate has recognized that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned. This is particularly the case when intrusive and irreversible, non- consensual treatments are performed on patients from marginalized groups, such as persons with disabilities, notwithstanding claims of good intentions or medical necessity. For example, the mandate has held that the discriminatory character of forced psychiatric interventions, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under the article 1 of the Convention against Torture, notwithstanding claims of “good intentions” by medical professionals.*⁴²
(references omitted)

The Special Rapporteur has also questioned the approach of the ECtHR in a 1992 case in allowing medical necessity as a defence to a claim of torture and other ill-treatment, noting that:

.....

39 This list is generally considered to be non-exhaustive, see, UNGA, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Mendez, UN Doc. A/HRC/22/53, 1 February 2013, Para 21.

40 CAT, Article 1.

41 Stop Torture in Health Care, *Treatment or Torture? Applying International Human Rights Standards to Drug Detention Centres*, June 2011, p. 12.

42 See above, note 39, Para 32.

[T]reatment provided in violation of the terms of the Convention on the Rights of Persons with Disabilities – either through coercion or discrimination – cannot be legitimate or justified under the medical necessity doctrine.⁴³

Similarly, acts which amount to discrimination on the basis of sex have also been recognised by the Special Rapporteur as meeting the “purpose” requirement under the definition of torture. In 2008, then Special Rapporteur, Manfred Nowak, stated that:

In regard to violence against women, the purpose element is always fulfilled, if the acts can be shown to be gender-specific, since discrimination is one of the elements mentioned in the CAT definition.⁴⁴ (reference omitted)

When discussing the discriminatory purpose in Article 1 of the CAT in the context of persons with disabilities, the Special Rapporteur “recalled” the definition of discrimination in Article 2 of the CRPD, which is expansive and includes all forms of discrimination.⁴⁵ Article 2 states that discrimination on the basis of disability means:

[A]ny distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

Pursuant to the Vienna Convention on the Law of Treaties, the definition of discrimination contained in the CRPD and in other international human rights treaties must be taken into account when interpreting the CAT.⁴⁶ The Vienna Convention requires that “[a]ny relevant rules of international law applicable in the relations between the parties”,⁴⁷ be taken into account when interpreting a treaty, which includes international human rights treaties.⁴⁸

43 *Ibid.*, Paras 34–35. The decision of the European Court of Human Rights that is referred to is European Court of Human Rights, *Herczegfalvy v Austria*, Application No. 10533/83, 24 September 1992, Paras 81–83.

44 Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, UN Doc. A/HRC/7/3, 15 January 2008, Para 30.

45 See UNGA above, note 3, Para 48.

46 See Glenister, J. above, note 36, pp. 34–36; see also Human Rights Council above, note 3, Para 9.

47 Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 1969, Article 31(3)(c).

48 Fitzmaurice, M., “Interpretation of Human Rights Treaties” in Shelton, D. (ed), *The Oxford Handbook of International Human Rights Law*, Oxford University Press, 2013, pp. 749–750; and International Court of Justice, *Legal Consequences for States of the continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276*, 21 June 1971, Para 53.

Interpreting the reference to discrimination in the CAT in line with the definition of discrimination contained in other human rights treaties incorporates all four prohibited forms of discrimination within the scope of the discriminatory purpose aspect of the definition of torture. This means that, while the act (or omission) itself must be intentional (in the sense that it is not accidental as discussed above in Part 2.2.2), there is no need to demonstrate that the perpetrator knowingly or intentionally discriminated against the victim in carrying out the act.⁴⁹ Taking this view includes within the definition of torture situations in which acts are carried out with “good intentions” which are based on unknowing discrimination.⁵⁰ For example, the sterilisation of women with mental disabilities is often considered to be in the best interests of the women, but is in fact based on underlying (and often unrecognised) discriminatory attitudes about their suitability to be mothers or what is in their best interests.⁵¹

2.2.4 Involvement of the State

For an act to be torture, it must be “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁵² The inclusion of “consent or acquiescence” makes it clear that acts which are carried out by private individuals fall within the scope of the definition of torture. This includes acts which are ordered or encouraged by a state official, whether explicitly or implicitly, and also to situations where the state has failed to exercise due diligence.⁵³

The Committee against Torture (CAT) has explained that the state’s failure to exercise due diligence amounts to acquiescence or consent to acts of torture:

[W]here State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and

49 It should be noted that this aspect of the definition may be contentious, see for example, McGregor, L., “Applying the Definition of Torture to the Acts of Non-State Actors: The Case of Trafficking in Human Beings”, *Human Rights Quarterly*, Vol. 36, 2014, p. 219; and the discussion in Glenister, J. above, note 36, pp. 25–36.

50 See Glenister, J. above, note 36, p. 30.

51 Women With Disabilities Australia, *Dehumanised: The Forced Sterilisation of Women and Girls With Disabilities in Australia*, March 2013, Paras 71–74, 93–96.

52 CAT, Article 1. The same requirement may not be present under the ICCPR, see Human Rights Committee above, note 24, Para 2; see above, note 41, p. 12.

53 See Committee Against Torture above, note 3, Paras 17–19.

*enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission.*⁵⁴

The principle of due diligence expressed in this way is often used to hold states responsible for violations of the prohibition of torture in individual cases when the state fails to take measures to protect a particular person or persons from the acts of a private individual. State failures to protect women from gender-based violence, such as domestic violence and trafficking have often been found to fall short of this due diligence requirement.⁵⁵ It is clear that acts carried out in private institutions may therefore be considered to have the requisite degree of state involvement. The Committee Against Torture has stated in this regard that:

*[E]ach State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.*⁵⁶

In addition to applying in circumstances where there is a known risk of harm to particular person (or a risk that ought to be known), the principle of due diligence may apply at a systematic level, making states responsible for the acts of a private individual when the state has failed generally to meet its obligations to prevent torture.⁵⁷ In these circumstances the state is responsible not because it knew of a particular risk to any one person, but because it had failed in its obligations to such an extent that there was a risk to all persons in a group. In the case of *Maria Da Penha v Brazil*, the Inter-American Commission on Human Rights stated that:

The condoning of this situation by the entire system only serves to perpetuate the psychological, social, and historical roots and factors that sustain and encourage violence against women. Given the fact that the violence suffered by Maria da Penha is part of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors, it is the view of the Commission that this case

54 *Ibid.*, Para 18.

55 *Ibid.*, Para 18. See, for example, European Court of Human Rights, *Opuz v Turkey*, Application No. 33401/02, 9 June 2009 in the context of the right to life.

56 See Committee Against Torture above, note 3, Para 17. See also above, note 39 Para 24. As the Special Rapporteur notes, the CEDAW Committee has stated that “the State is directly responsible for the action of private institutions when it outsources its medical services and that, furthermore, the State always maintains the duty to regulate and monitor private health-care institutions”, in CEDAW Committee, *da Silva Pimentel v Brazil*, Communication No. 17/2008, UN Doc. CEDAW/C/49/D/17/2008, 27 September 2011, Para 7.5.

57 Redress, *Using international jurisprudence on rape as a form of torture or other ill-treatment*, October 2013, pp. 70–74.

*involves not only failure to fulfill the obligation with respect to prosecute and convict, but also the obligation to prevent these degrading practices. That general and discriminatory judicial ineffectiveness also creates a climate that is conducive to domestic violence, since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.*⁵⁸

Thus a state's failure to meet its obligations to prevent torture generally, including by failing to take specific measures to prevent discriminatory treatment, may in some circumstances lead to the state being held responsible for violating the prohibition of torture in individual cases. These obligations are explored in further detail in Part 2.3 below.

2.2.5 Exclusions and Defences

The definition of torture contains only one explicit exception from its scope, which is "pain or suffering arising only from, inherent in or incidental to lawful sanctions".⁵⁹ It is clear from its wording that this exclusion applies to punishments (sanctions). However, it is not clear from the wording of the definition whether these sanctions must be lawful according to national or international law (or both). Nigel Rodley, when Special Rapporteur, noted that lawful sanctions:

*[M]ust necessarily refer to those sanctions that constitute practices widely accepted as legitimate by the international community, such as deprivation of liberty through imprisonment, which is common to almost all penal systems. (...) By contrast, the Special Rapporteur cannot accept the notion that the administration of such punishments as stoning to death, flogging and amputation - acts which would be unquestionably unlawful in, say, the context of custodial interrogation - can be deemed lawful simply because the punishment has been authorized in a procedurally legitimate manner, i.e. through the sanction of legislation, administrative rules or judicial order.*⁶⁰

This approach is now widely accepted.⁶¹

In addition to the express exclusion of lawful sanctions from the definition of torture, it is considered by some that under the CAT "states can allow for a

58 Inter-American Commission on Human Rights, *Maria Da Penha v Brazil*, Case 12.051, Decision of 16 April 2001, Report No. 54/01, 2001, Paras 55–56.

59 CAT, Article 1.

60 United Nations Economic and Social Council, *Question of the Human Rights of all Persons Subjected to any Form of Detention or Imprisonment, in Particular: Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1995/37 B*, UN Doc, E/CN.4/1997/7, 10 January 1997, Para 8.

61 UNGA, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/67/279, 9 August 2012, Para 28. It remains disputed by some states, Mendez, J., *The Death Penalty and the Absolute Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment*, 2012, p. 3.

defence of consent to treatment involving intentional infliction of pain or suffering.”⁶² This is widely disputed.⁶³ In the event that consent was permitted as a defence, it must be fully informed and voluntarily given.⁶⁴ The requirement to obtain consent cannot be forgone based on a presumption that a person lacks the capacity to make a decision, and discriminatory attitudes which see decisions made for a patient’s own “benefit”, cannot excuse a failure to obtain consent.⁶⁵ Similarly, discrimination may exacerbate existing power imbalances between patients and doctors such that a patient is not truly making a free choice.⁶⁶ The requirement for consent to medical treatment is discussed in further detail in Part 2.2.3 above.

2.3 Discriminatory Ill-Treatment

Ill-treatment (that does not amount to torture) is prohibited by the ICCPR, the CAT, the CRPD, the CRC and the Arab Charter.⁶⁷ All of these treaties, with the exception of the Arab Charter, prohibit “cruel, inhuman or degrading treatment or punishment” (referred to together as “other ill-treatment”), but none provide further explanation of what these terms mean.⁶⁸ The distinction between torture and other ill-treatment is not often clearly made. Indeed, the Human Rights Committee has expressly noted that it does not consider it necessary to draw a distinction between the concepts, and that whether a distinction can be made depends on the severity, nature and purpose of the treatment, and its jurisprudence largely reflects this view.⁶⁹ On the other hand, the European Court of Human Rights has drawn a distinction between torture and other ill-treatment,⁷⁰

62 See Rodley, N. and Pollard, M. above, note 36, p. 124.

63 Oliver Lewis discusses the example of whether a person can consent to ill-treatment such as lashings in order to “cure” mental illness, see Lewis, O. “Consent to ill-treatment”, *MDAC*, 11 March 2013 available at: <http://www.mdac.info/en/olivertalks/2013/03/11/consent-ill-treatment>. In international criminal law, consent is not considered a defence to torture, see, for example, de Brouwer, A.L.M., *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR*, Intersentia, 2005, p. 121 and fn. 162; McDonald, G.K. and Swaak-Goldman, O. (eds), “Substantive and Procedural Aspects of International Criminal Law: The Experience of International and National Courts”, *Kluwer Law International*, Vol 1, 2000, pp. 314–315.

64 See above, note 39, Para 27.

65 *Ibid.*, Para 27; UNGA, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc. A/64/272, 10 August 2009, Paras 10–17. For examples of such decisions, see Women With Disabilities Australia above, note 51, Paras 93–99.

66 See above, note 39, Para 29; see also UNGA above, note 65, Para 45.

67 ICCPR, Article 7; CAT, Article 16; CRC, Article 37; and CRPD, Article 15.

68 Arab Charter on Human Rights, Article 8 uses similar wording, prohibiting “cruel, degrading, humiliating or inhuman treatment”. Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, 1950, Article 3 uses the wording, “inhuman or degrading treatment or punishment”.

69 See Human Rights Committee above, note 24, Para 4; see Rodley, N. with Pollard, M. above, note 24, pp. 93–94. The Committee Against Torture has noted that the distinction “between ill-treatment and torture is often not clear”, see Committee Against Torture above, note 3, Para 2.

70 Amnesty International, *Combatting Torture and Other Ill-Treatment: A Manual for Action*, 11 November 2016, p. 78. See, for example, European Court of Human Rights, *El Masri v The Former Yugoslav Republic of Macedonia*, Application No. 39630/09, 13 December 2012, Para 197.

although the Court does not always make this distinction in its judgments, in some cases simply referring to “ill-treatment”.⁷¹

The distinction between torture and other ill-treatment is most often drawn as a negative one – other ill-treatment is treatment that *does not* amount to torture because it does not meet one or more of the elements of the definition of torture.⁷² Interpreting other ill-treatment as treatment that doesn’t amount to torture because it does not meet one or more elements of the definition of torture, rather than identifying only one distinguishing element between torture and other ill-treatment such that other ill-treatment must meet all of the remaining elements of the definition of torture,⁷³ widens the scope of what may be considered to be torture or other ill-treatment. This is both in line with the wording used in Article 16 of the CAT, and also with the General Assembly’s Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,⁷⁴ which states that:

*The term “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.*⁷⁵

71 See, for example, European Court of Human Rights, *Mityaginy v. Russia*, Application No. 20325/06, 4 December 2012.

72 See Amnesty International above, note 70, pp. 75–76.

73 A distinction between torture and other forms of ill-treatment is most commonly drawn on the basis of: the severity of the pain and suffering; the purpose (only torture requiring a purpose); or a combination of both of these elements. In relation to distinctions on the basis of severity of pain and suffering see, for example, Committee Against Torture, *Keremedchiev v Bulgaria*, Comm. No. 257/2004, UN Doc. CAT/C/41/D/257/2004, 21 November 2008, Para 9.3; see Rodley, N. with Pollard, M. above, note 24, pp. 98–99, 114. However, it should be noted that this is no longer considered as requiring that torture inflicts something more than severe pain and suffering, as had been previously proposed, see Nowak, M., “What Practices Constitute Torture?: UN and US Standards” *Human Rights Quarterly*, Vol. 28, 2006, pp. 820–821; see Rodley, N., above, note 22, p. 476. In relation to distinctions based on purpose, see, for example, Rodley, N. with Pollard, M. above, note 24, pp. 98–99. Nowak takes the same approach, but adds the element of powerlessness of the victim, “the decisive criteria for distinguishing torture from cruel, inhuman and degrading treatment may best be understood to be the purpose of the conduct and the powerlessness of the victim”, UNGA, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, UN Doc. E/CN.4/2006/6, 23 December 2005, Para 39; Nowak, M. and McArthur, E., *The United Nations Convention Against Torture: A Commentary*, Oxford University Press, 2008, p. 77; and Nowak, M. and McArthur, E., “The distinction between torture and cruel, inhuman or degrading treatment”, *Torture*, Vol. 16, 2006. The addition of powerlessness as an element of the definition of torture (if this is what is proposed by Nowak) has been strongly contested, see, for example, Copelon, R., “Gender Violence as Torture: The Contribution of CAT General Comment No. 2”, *New York City Law Review*, Vol. 11, 2008, p. 242. In relation to distinctions drawn on a combination of both factors, see Human Rights Committee above, note 24, Para 4, Para 10; see also Committee Against Torture above, note 3, Para 10.

74 See Amnesty International above, note 70, pp. 75–76. This may also be what the Human Rights Committee meant when it noted that the distinction depended on the “nature, purpose and severity of the treatment applied”, see Human Rights Committee above, note 24, Para 4.

75 UNGA, *Res. 43/173. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, Annex, Principle 6.

In accordance with the above interpretation, treatment which inflicts pain and suffering which is less than severe may be considered to be other ill-treatment.⁷⁶

The Committee Against Torture has commented that the distinction between torture and ill-treatment is not always clear, but that it will depend on the severity of pain and suffering.⁷⁷ For instance, the Committee has found that injuries inflicted on an individual when excessive force was used during an arrest by the police, including bruising to the kidneys, fell within the definition of other ill-treatment in Article 16 rather than Article 1 of the CAT on the basis that the applicant's injuries did not amount to severe pain and suffering.⁷⁸ Other types of treatment that may fall within Article 16 include, for example, poor conditions of detention,⁷⁹ using restraint chairs and electro-shock devices,⁸⁰ and in some instances, solitary confinement.⁸¹

Similarly to the HRC, the Inter-American Commission and Inter-American Court of Human Rights and the African Commission on Human and People's Rights have not explicitly listed what constitutes ill-treatment. By way of example, the African Commission have found that an individual who was held in a two-by-three metre cell with continuous light for three months without access to a bathroom amounted to ill-treatment but did not meet the threshold for torture.⁸² The Inter-American Commission have stated that distinguishing between torture and other ill-treatment should be "done on a case-by-case basis, taking into account the peculiarities thereof, the duration of the suffering, the physical and mental effects on each specific victim, and the personal circumstances of the victim".⁸³

The distinction between severe and other forms of pain and suffering has been discussed in some detail by the ECtHR, which is responsible for much of the discussion and jurisprudence elaborating the content of what constitutes "inhuman and degrading treatment and punishment". The Court has made it clear that acts must still meet a minimum threshold of pain and suffering in order to be considered other ill-treatment.⁸⁴ However, the extent to which general principles can be drawn from its jurisprudence and the jurisprudence and comments

76 See Amnesty International above, note 70, pp. 75–76.

77 See Committee Against Torture above, note 3, Para 10.

78 See Committee Against Torture above, note 73, Para 9.3.

79 Committee Against Torture, *Concluding Observations: Nepal*, UN Doc. CAT/C/NPL/CO/2, 15 December 2005, Para 31.

80 Committee Against Torture, *Concluding Observations: USA*, UN Doc. A/55/44, 1–19 May 2000, Para 179.

81 Committee Against Torture, *Concluding Observations: Switzerland*, UN Doc. A/49/44, 1994, Para 133. See also UNGA, *Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/66/268, 5 August 2011, Paras 70–78 for further discussion in respect of solitary confinement as torture or other ill-treatment.

82 African Commission on Human and People's Rights, *Ouka v Kenya*, Application No. 232/99, 2000, Paras 23 and 26.

83 Inter-American Commission on Human Rights, *Luis Lizardo Cabrera v Dominican Republic*, Case 10.832, 1997, Para 83.

84 European Court of Human Rights, *Jalloh v Germany*, Application No. 54810/00, 11 July 2006, Para 67.

of other international and regional bodies should not be overstated. The specific facts of an individual case will be considered closely in reaching a determination.

That said, the ECtHR has considered treatment to be inhuman “because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering”.⁸⁵ As noted above, discrimination and the particular vulnerabilities of an individual are relevant to the assessment of the severity of pain and suffering. The Court has considered shackling a prisoner by the ankle to a hospital bed to be inhuman treatment.⁸⁶ It often finds that treatment is both “inhuman and degrading”. For example, the Court considered the suffering arising from conditions of detention in a prison to be inhuman and degrading in circumstances in which the cells were overcrowded, had unsatisfactory sanitary facilities and prisoners were kept in their cells, which had no natural light, nearly 24 hours a day, without the chance to do any activities.⁸⁷

Degrading acts are commonly characterised as those that humiliate the victim. The ECtHR has described degrading treatment as treatment that is:

*[S]uch as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his will or conscience.*⁸⁸ (references omitted)

The previous Special Rapporteur, Manfred Nowak, similarly noted that “[a]cts aimed at humiliating the victim constitute degrading treatment or punishment even where severe pain has not been inflicted.”⁸⁹

Whether there is an intention to humiliate or debase is relevant to the assessment of the treatment, but is not necessary for a finding of degrading treatment to be made.⁹⁰ The humiliation may be felt by in the eyes of the victim, it is not necessary

85 *Ibid.*, Para 68. See also, European Court of Human Rights, *Pretty v United Kingdom*, Application No. 2346/02, 29 April 2002, Para 52. See also the examples provided in Rodley, N. with Pollard, M. above, note 24, pp. 126–143.

86 European Court of Human Rights, *Hénaf v France*, Application No. 65436/01, 27 February 2004, Paras 47–60.

87 European Court of Human Rights, *I.I. v Bulgaria*, Application No. 44082/98, 9 June 2005, Paras 70–80.

88 See above, note 84, Para 68. See also European Court of Human Rights, *Bouyid v Belgium*, Application No. 23380/09, 28 September 2015, Para 87.

89 See UNGA above, note 73, Para 35. See also above, note 7, Para 9.2 where the Committee notes that “for punishment to be degrading, the humiliation or debasement involved must exceed a particular level and must, in any event, entail other elements beyond the mere fact of deprivation of liberty”. The European Court of Human Rights takes a similar approach, “[w]here treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance, it may be characterised as degrading”. See European Court of Human Rights above, note 85, Para 52.

90 See, for example, European Court of Human Rights, *Yankov v Bulgaria*, Application No. 39084/97, 11 December 2003, Paras 105, 117.

that others consider him or her humiliated.⁹¹ Examples of acts found to be degrading include forcibly shaving a detainee's head,⁹² verbally abusing and deriding a detainee during a strip search,⁹³ and being slapped by a police officer while in custody.⁹⁴ Discrimination will be relevant when determining whether a person has been humiliated. It has been recognised that discrimination may itself in some circumstances amount to degrading treatment. The European Court has noted:

*[T]hat publicly to single out a group of persons for differential treatment on the basis of race, might in certain circumstances, constitute a special form of affront to human dignity; and that differential treatment (...) might therefore be capable of constituting degrading treatment.*⁹⁵

In relation to infringements on human dignity, the Court has recently noted that:

*For that reason any conduct by law-enforcement officers vis-à-vis an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question.*⁹⁶

2.4 Obligations of the State to Prevent Torture and Other Ill-Treatment

The Committee Against Torture has made it clear that both the prohibition of torture and the prohibition of other ill-treatment are non-derogable, and that states are obliged to take steps to prevent both torture and other ill-treatment.⁹⁷ The Committee has confirmed that the obligations in the CAT applicable to torture are equally applicable to the prohibition of other ill-treatment.⁹⁸

91 See above, note 88, Para 87.

92 See above, note 90, Paras 108–122.

93 European Court of Human Rights, *Iwańczuk v Poland*, Application No. 25196/94, 15 November 2001, Paras 58–60.

94 See above, note 88, Paras 100–113.

95 European Court of Human Rights, *East African Asians v United Kingdom*, Application No. 4403/70, 14 December 1973, Para 207. However, this finding was based on the “special importance” attached to racial discrimination. See also, European Court of Human Rights, *Cyprus v Turkey*, Application No. 25781/94, 10 May 2001, Paras 309–310, where the Court also found discriminatory treatment to amount to be degrading within the meaning of Article 3. European Court of Human Rights *Abdulaziz, Cabales and Balkandali v United Kingdom*, Application no. 9214/80; 9473/81; 9474/81, 28 May 1985, Paras 90–91, where the Court declined to find that discriminatory treatment amounted to degrading treatment, noting that “the difference of treatment complained of did not denote any contempt or lack of respect for the personality of the applicants and that it was not designed to, and did not, humiliate or debase”.

96 See above, note 88, Para 101.

97 See Committee Against Torture above, note 3, Para 3.

98 *Ibid.*, Para 6, “[t]he Committee considers that articles 3 to 15 are likewise obligatory as applied to both torture and ill-treatment.”

Article 4 of the CAT requires states to ensure that “all acts of torture are offences under its criminal law”. This also applies to attempts to commit torture, and acts which amount to complicity or participation in torture.⁹⁹ Such offences must be “punishable by appropriate penalties which take into account their grave nature”.¹⁰⁰ Pursuant to Article 10 of the CAT, states are required to provide education and information regarding the prohibition against torture in the training of “law enforcement personnel, civil or military, medical personnel, public officials and others who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”.¹⁰¹

States must ensure that a prompt and impartial investigation is carried out when there are reasonable grounds to believe an act of torture has been carried out.¹⁰² Article 13 of the CAT guarantees the right of individuals who allege that they have been subjected to torture to complain and to have their case promptly and impartially examined by competent authorities. Complainants and witnesses must be protected against any ill-treatment or intimidation as a consequence of their complaint or any evidence they give.¹⁰³ Victims of torture have the right to obtain redress and fair and adequate compensation, including the means for as full rehabilitation as possible.¹⁰⁴ As noted in Part 2.2.4 above, states are also required to prevent, investigate, prosecute and punish acts of torture and ill-treatment carried out by private individuals both so that they are not considered to be acquiescing or consenting to torture (and therefore liable for a violation in an individual case) and so that they are meeting their treaty obligations more broadly by exercising due diligence to protect all those in their territory from torture.¹⁰⁵

As noted at the outset of this Part, discriminatory torture and other ill-treatment is qualitatively distinct from other forms of torture and ill-treatment. The importance of taking extra steps to ensure that vulnerable groups are protected from torture is well established. The Committee Against Torture has stated that:

*The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment (...) States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection.*¹⁰⁶

99 CAT, Article 4(1).

100 CAT, Article 4(2).

101 CAT, Article 10(1).

102 CAT, Article 12.

103 CAT, Article 13.

104 CAT, Article 14.

105 See above, note 57, p. 61.

106 See Committee Against Torture above, note 3, Para 21.

This has been reiterated by the Special Rapporteur, noting that:

*States have a heightened obligation to protect vulnerable and/or marginalized individuals from torture, as such individuals are generally more at risk of experiencing torture and ill-treatment.*¹⁰⁷

As has been recently recognised by the Special Rapporteur, measures to combat and prevent discrimination are essential to preventing the torture and other ill-treatment of vulnerable individuals. In a recent report on gender perspectives on torture, the Special Rapporteur recommended that states take measures including repealing laws that support discrimination and oppression, such as laws which grant pardons to rapists who marry their victims, and providing training to public officials and community sensitisation to combat discrimination.¹⁰⁸ These obligations are discussed in further detail in Parts 3.1 and 5.1 below.

107 See above, note 39, Para 26.

108 See Human Rights Council above, note 3, Para 69, 72(g).

3. DISCRIMINATORY TORTURE AND ILL-TREATMENT IN JORDAN

This part of the report provides an overview of Jordan's political system, human rights record and its national legal framework relating to equality and to torture and other ill-treatment. The aim of this part is not to provide a comprehensive analysis but rather to provide the context to the findings that follow.

3.1 Political System

Jordan is a constitutional monarchy.¹ The Constitution of the Hashemite Kingdom of Jordan (Constitution) was adopted on 1 January 1952 and declares the King, currently King Abdullah II, as head of state.² Executive power is vested in the King and legislative power is vested in the King and the National Assembly.³ The National Assembly is made up of the Senate (upper house) and the Chamber of Deputies (lower house).⁴ The King appoints the Senate whereas the Chamber of Deputies is elected by the public, although the King retains the power to dismiss both houses.⁵ The King also appoints and may dismiss the Prime Minister.⁶ Amendments to the Constitution in April of 2016 have granted the King even more extensive powers; he now has unchecked power to appoint and dismiss, amongst others, members of the Constitutional Court and the directors of intelligence and the riot police.⁷ While the government

1 Constitution of the Hashemite Kingdom of Jordan, 1952, Article 1.

2 *Ibid.*, Article 30.

3 *Ibid.*, Articles 25 and 26.

4 *Ibid.*, Articles 25 and 62.

5 *Ibid.*, Articles 24, 36 and 67; Freedom House, *Freedom in the World 2016: Jordan*, 2016, available at: <https://freedomhouse.org/report/freedom-world/2016/jordan>.

6 *Ibid.*, Article 35.

7 Sowell, K.K., "A New Role for Jordan's Parliament", *Carnegie Endowment for International Peace*, 22 June 2016, available at: <http://carnegieendowment.org/sada/63882>. The amended text of Article 40 of the Constitution is available at Government of the Hashemite Kingdom of Jordan, *Constitution of the Hashemite Kingdom of Jordan*: <http://www.pm.gov.jo/content/1405787177/%D8%A7%D9%84%D9%81%D8%B5%D9%84-%D8%A7%D9%84%D8%B1%D8%A7%D8%A8%D8%B9.html>. See also Younes, A., "Jordan changes constitution to give King more power", *Al Jazeera*, 28 April 2016, available at: <http://www.aljazeera.com/news/2016/04/jordan-constitution-give-king-power-160428065710977.html>; Al Sharif, O., "Changes to Jordan's constitution raise concerns", *Al-Monitor*, 4 May 2016, available at: <http://www.al-monitor.com/pulse/originals/2016/05/jordan-adopts-constitution-amendments-king-powers.html>; Younes, A., "Jordan King Abdullah set to consolidate executive power", *Al Jazeera*, 24 April 2016, available at: <http://www.aljazeera.com/news/2016/04/amendments-recommend-powers-king-jordan-160421115110995.html>; and Obeidat, S., "Jordan's 2016 constitutional amendments: A return to absolute monarchy?", *CONSTITUTIONNET*, 27 May 2016, <http://www.constitutionnet.org/news/jordans-2016-constitutional-amendments-return-absolute-monarchy>.

claimed that the amendments strengthened the separation of powers, they have been subject to criticism:

*With these amendments now in place, Jordan is moving toward an absolute monarchy as opposed to a constitutional monarchy whereby the King would rule through a legally accountable executive branch.*⁸

Despite these amendments, the Constitutional Court remains an independent judicial body according to the Constitution,⁹ and all members of the judiciary are also deemed to be independent.¹⁰

Jordan is divided into twelve regions, known as governorates, each of which is headed by a governor who is appointed by the King. The governors act to implement the decisions of the central government in the regions and maintain law and order.¹¹ The Crime Prevention Law of 1954 allows governors to detain persons without charge, including to prevent the commission of a crime.¹²

3.2 Human Rights in Jordan

Although it is party to seven of the nine core human rights treaties (discussed below in Part 3.3.1), Jordan has been subject to widespread criticism for its failure to meet its human rights obligations. NGOs have documented a wide array of human rights concerns and violations, including the widespread use of administrative detention,¹³ increasing limits on freedom of expression,¹⁴ the re-institution of the death penalty¹⁵ and impunity for perpetrators of torture and other ill-treatment.¹⁶ These concerns have been echoed by the treaty bodies and special mechanisms of the United Nations.¹⁷

8 See Younes, A., “Jordan changes constitution to give King more power” above, note 7, quoting an MP who voted against the amendments, Abdel Karim al Dughmi.

9 See above, note 1, Article 58(1).

10 *Ibid.*, Article 97.

11 European Union, Committee of the Regions, *Jordan: Vertical Division of Power*, 3 June 2014, p. 6; see also Freedom House above, note 5.

12 National Centre for Human Rights, *The Status of Female Inmates at Reform and Rehabilitation Centers in Jordan*, September 2014, pp. 12–13. The use of this law to detain women in protective custody is discussed below in Part 5.2 and 5.3.

13 Human Rights Watch, *World Report 2016: Jordan*, 2016, p. 343; and Amnesty International, *The State of the World's Human Rights*, 2015/2016, p. 211.

14 *Ibid.* Human Rights Watch, p. 339; see Freedom House above, note 5.

15 *Ibid.* Human Rights Watch, p. 342; see Amnesty International above, note 13, p. 211.

16 *Ibid.* Human Rights Watch, p. 342; see Freedom House above, note 5. See generally, Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Jordan*, UN Doc. A/HRC/WG.6/17/JOR/3, 24 July 2013.

17 See Committee Against Torture (CAT), *Concluding observations on the third periodic report of Jordan*, UN Doc. CAT/C/JOR/CO/3, 29 January 2016, Paras 10 and 21; Human Rights Council, *Compilation prepared*

Discrimination against vulnerable groups is widespread, and is particularly reported against women. While Jordan has made some efforts to repeal discriminatory laws and reduce discrimination against women, women continue to face discrimination in all areas of their lives.¹⁸ The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has expressed:

*[I]ts serious concern about the persistence of harmful practices and traditions, including polygamy, patriarchal attitudes and deep-rooted stereotypes, regarding the roles, responsibilities and identities of women and men in all spheres of life (...) The Committee is concerned that such practices and stereotypes perpetuate discrimination against women and girls which leads to the persistence of violence against women.*¹⁹

Efforts to combat discrimination often appear to be partial efforts; there may be a commitment made in a particular area but without the necessary change to truly combat discrimination. For example, rather than amending its Nationality Law to allow Jordanian women to pass their nationality on to their children on an equal basis with Jordanian men, Jordan has instead granted the children of a Jordanian mother and a foreign father rights and privileges in some areas of life, including education, health and work.²⁰ As noted below in Part 3.3.1, Jordan has also maintained its reservation to the CEDAW in relation to equal nationality rights. In other areas, laws are blatantly discriminatory. This is particularly true of laws that relate to family and marriage. For example, Jordan's Personal Status Law requires women to have the consent of a male guardian in order to marry.²¹

The impact of discrimination is evident in recent statistics. In 2012, 82% of Jordanian men were expected to receive a pension compared to only 12% of Jordanian women.²² In 2013, only 15.6% of Jordanian women participated in the

by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, UN Doc. A/HRC/WG.6/17/JOR/2, 31 July 2013; Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant*, UN Doc. CCPR/C/JOR/CO/4, 18 November 2010, Para 14; Human Rights Council, *Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, High-level panel discussion on the question of the death penalty*, UN Doc. A/HRC/30/21, 16 July 2015, Para E.37. Committee Against Torture.

- 18 Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding observations of the Committee on the Elimination of Discrimination against Women: Jordan*, UN Doc. CEDAW/C/JOR/CO/5, 23 March 2012; *ibid.* Committee Against Torture, Paras 39–40.
- 19 *Ibid.* CEDAW Committee, Para 23.
- 20 CEDAW Committee, *List of issues and questions in relation to the sixth periodic report of Jordan*, UN Doc., CEDAW/C/JOR/Q/6, 29 July 2016, Para 14.
- 21 *Ibid.*, Para 21; Malkawi, K., "Personal Status Law among world's 'highly discriminatory' laws against women", *Jordan Times*, 5 May 2015, available at: <http://www.jordantimes.com/news/local/personal-status-law-among-world%E2%80%99s-highly-discriminatory%E2%80%99-laws-against-women%E2%80%99>.
- 22 UN Women, *Progress of the World's Women 2015–2016*, 2015, p. 148.

labour force compared to 66.6% of men²³ and 11% of Jordanian women said that they did not have the final decision as to their own health care.²⁴ As noted by the CEDAW Committee, women in Jordan also face persistent violence as a result of traditional, patriarchal attitudes. Of particular concern is the increase in the number of honour killings in 2016.²⁵

Discrimination on the basis of disability is also widespread in Jordan. Reliable statistics are difficult to find, however, in 2015 it was reported that only 3% of children with disabilities receive an education and approximately 96% of persons with disabilities remain at home “due to the lack of disability-friendly environments at work, and at health and education facilities”.²⁶ In 2012, an investigation by BBC Arabic revealed shocking instances of physical and sexual violence against children with disabilities in care.²⁷ The official Investigation Committee that was ordered by King Abdullah II in response to the BBC Arabic investigation and chaired by the Minister of Social Development revealed further instances of abuse of children with disabilities in Jordan’s care homes.²⁸ As is evident from the findings discussed in Part 4.3 of this report, such abuse remains an ongoing problem.

3.3 Legal Framework Relating to Equality and Torture

3.3.1 Jordan’s International Obligations

Jordan has ratified seven of the nine core human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention

23 *Ibid.*, p. 282.

24 *Ibid.*, p. 166.

25 Human Rights Watch, “Recorded ‘Honor’ Killings on the Rise in Jordan”, *Human Rights Watch*, 27 October 2016, available at: <https://www.hrw.org/news/2016/10/27/recorded-honor-killings-rise-jordan>.

26 Hussein, R., “Majority of people with disabilities still face discrimination – Prince Mired”, *Jordan Times*, 12 August 2015, available at: <http://www.jordantimes.com/news/local/majority-people-disabilities-still-face-discrimination-%E2%80%94-prince-mired>. See also, Permanent Mission of the Hashemite Kingdom of Jordan, *Response of the Hashemite Kingdom of Jordan via the Higher Council for the Affairs of Persons with Disabilities (HCD) to the Office of the United Nations High Commissioner for Human Rights (OHCHR) Questionnaire on Disability-Inclusive Policies from the Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas Aguilar, May 2016*, 8 June 2016, Annex, available at: http://www.ohchr.org/Documents/Issues/Disability/DisabilityInclusivePolicies/States/PM%20Jordan_ENG.pdf; Committee on the Rights of the Child, *Concluding observations on the combined fourth and fifth periodic reports of Jordan*, UN Doc. CRC/C/JOR/CO/4-5, 8 July 2014, Para 43; and Committee on the Rights of Persons with Disabilities, *Consideration of reports submitted by States parties under article 35 of the Convention, Initial reports of States parties due in 2010: Jordan*, UN Doc. CRPD/C/JOR/1, 1 September 2015, Paras 304–311.

27 BBC, “BBC uncovers abuse at children’s care homes in Jordan”, *BBC*, 15 May 2012, available at: <http://www.bbc.co.uk/news/world-middle-east-18073144>.

28 Frontline Club London, *Postponed: Jordan’s Secret Shame*, 24 July 2012, available at http://www.frontlineclub.com/third_party_screening_behind_the_wall_of_silence/. See also, National Council for Human Rights, *Annex IV and Annex VI to Shadow Report Submitted to Committee on Rights of the Child, 2012–2013*, available at: <http://www.nchr.org.jo/Arabic/ModulesFiles/PublicationsFiles/Files/Alternative%20Report2%20>.

on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).²⁹ Jordan has not yet allowed for individual complaint mechanisms to treaty bodies.³⁰ However, this does not limit Jordan's obligations to implement the treaties that it has ratified – Jordan remains obliged to respect, protect and fulfil the human rights expressed in those treaties it has ratified.³¹

In respect of the CEDAW, Jordan has made reservations in relation to Article 9(2), which requires states to “grant women equal rights with men with respect to the nationality of their children”; Article 16(1)(c), which requires states to ensure equal rights and responsibilities upon the dissolution of marriage;³² Article 16(1)(d) under which states must ensure that men and women have “the same rights and responsibilities as parents”; and Article 16 (1)(g), which requires states to ensure men and women equally enjoy “the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.”³³ In its most recent concluding observations in relation to Jordan, the CEDAW Committee noted that:

*The Committee is not convinced of the political and cultural constraints preventing the lifting of the above-mentioned reservations as argued by the State party.*³⁴

Jordan maintained in its subsequent state report that:

Given the current decline in support for women's rights in many of the States of the Middle East and North Africa and in an endeavour to preserve gains, given that the women's movement is facing calls to renounce the Convention, the Jordan Islamic Scholars League sent a letter to the speaker of the House of Representatives calling upon the house not to approve lifting the reservations to the Con-

29 OHCHR, *Ratification status for Jordan*, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=88&Lang=EN.

30 Jordan has signed but not ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities. *Ibid.*; OHCHR, *Status of Ratification: Interactive Dashboard, Jordan*, available at: <http://indicators.ohchr.org>.

31 OHCHR, *International Human Rights Law*, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>.

32 Jordan's ratification specifies that it “does not consider itself bound” by “Article 16, paragraph (1) (c), relating to the rights arising upon the dissolution of marriage with regard to maintenance and compensation”, United Nations Treaty Collection, *Chapter IV: Human Rights: Convention on the Elimination of All Forms of Discrimination against Women*, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en#73.

33 *Ibid.*

34 See CEDAW Committee above, note 18, Para 9.

*vention, on the grounds that they violate Islamic Shariah. Accordingly, the issue of lifting the reservations has to be dealt with very sensitively and gradually, in a manner that balances the promotion of women's human rights with the obligation to reject whatever contradicts the provisions of Islamic Shariah.*³⁵

The use of the decline in support for women's rights as a reason to further restrict women's rights is tantamount to using discrimination as a justification for discrimination. Jordan's reservations are also contrary to the spirit of the CEDAW.

In addition, Jordan is bound by customary international law which provides some important protection in respect of the prohibition of torture and ill-treatment. Under international law, binding legal obligations on states derive from customary international law as well as from treaty law. Customary international law is deduced over time from the practice and behaviour of states.³⁶ Customary international laws are particularly significant when they reach a level – known as peremptory norms³⁷ – at which they are binding on all states and cannot be derogated from. It is accepted that the prohibition of torture and other ill-treatment is a rule of customary international law, and that the prohibition against torture amounts to a peremptory norm of international customary law.³⁸ The prohibition against other ill-treatment is not widely recognised as having peremptory norm status, but both the International Court of Justice and the Inter-American Court of Human Rights have commented on the peremptory status of the prohibition against torture and other ill-treatment as a whole.³⁹ It is largely accepted that the prohibition of racial discrimination is a peremptory norm of international

35 CEDAW Committee, *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, Para 108. See also Jordan's previous report, CEDAW Committee, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Fifth periodic report of States parties: Jordan*, UN Doc. CEDAW/C/JOR/5, 24 September 2010, Paras 121, 302, 305 and 313.

36 Shaw, M., *International Law*, Cambridge University Press, 5th edition, 2003, p. 69.

37 International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY), *Prosecutor v Anto Furundzija*, Case No. ICTY-IT-95-17/1-T, 10 December 1998, Para 153; Parker, K. and Neylon, L.B., "Jus Cogens: Compelling the Law of Human Rights", *Hastings International and Comparative Law Review*, Vol. 12, 1988–1989, p. 417. See also the Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 1969, Article 53.

38 Committee Against Torture, *General Comment No. 2: implementation of article 2 by States parties*, CAT/C/GC/2, 24 January 2008, Para 1; International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, Judgment of 20 July 2012, Para 9; *ibid.* ICTY, Paras 137–146; Human Rights Committee, *General Comment No. 24: general comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under Article 41 of the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.6, 1994, Paras 8 and 10; Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, UN Doc. A/HRC/28/68, 5 March 2015, Para 23.

39 International Court of Justice, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, Judgment of 30 November 2010, Para 87; Inter-American Court of Human Rights, *Caesar v Trinidad and Tobago*, 11 March 2005, Paras 70 and 100.

customary law.⁴⁰ In addition, it can be said that the prohibition of discrimination on other grounds, such as gender and religion, may now be part of customary international law, although not yet reaching the status of a peremptory norm.⁴¹ Additionally some argue, and it has been stated by the Inter-American Court of Human Rights, that the broader principle of non-discrimination is a peremptory norm of customary international law⁴² but this is subject to debate.⁴³

The Constitution makes no mention of whether international treaties ratified by Jordan form part of Jordanian law or of whether treaties prevail in the event of an inconsistency with national law. It also makes no reference to international customary law. Though the courts have indicated that the Constitution takes precedence over both domestic law and international treaty law, it is clear from the jurisprudence of the Court of Cassation and also from the explanations provided by Jordan before treaty monitoring bodies that treaties which have been ratified and published in the official Gazette form part of domestic law, and in the event of conflict, prevail over domestic legislation.⁴⁴ For example, in its report on the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, Jordan noted that:

*Conventions ratified by the Hashemite Kingdom of Jordan are an integral part of its domestic legislation and take precedence in the event of any conflict with that legislation.*⁴⁵

In theory, therefore, the international obligations of treaties should be applied throughout Jordan's national legal system, including by the judiciary.⁴⁶ However,

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- 40 De Schutter, O., *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010, pp. 64–68 and the materials referred to therein; Pellett, A., “Comments in Response to Christine Chinkin and in Defense of Jus Cogens as the Best Bastion against the Excesses of Fragmentation”, *Finnish Yearbook of International Law*, Vol. 17, 2006, p. 85; Shaw, M., *International Law*, Cambridge University Press, 6th edition, 2008, p. 287, who refers to it as part of customary international law, with no reference to it being a peremptory norm.
- 41 *Ibid.*, Shaw, p. 287; *Ibid.*, Pellett, p. 85; and Cassel, D., “Equal Labor Rights for Undocumented Migrant Workers”, in Bayefsky, A. (ed), *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick and Arthur Helton*, Martius Nijhoff Publishers, 2006, pp. 511–512.
- 42 Inter-American Court of Human Rights, *Advisory Opinion OC-18/03 – Juridical Condition and Rights of Undocumented Migrants*, Inter-Am. Ct. H.R. (Ser. A) No. 18 (2003), 17 September 2003, p. 23. See also, by way of example, Martin, F.F. et al., *International Human Rights and Humanitarian Law: Cases, Treaties and Analysis*, Cambridge University Press, 2006, pp. 34–35.
- 43 See Bianchi, A., “Human Rights and the Magic of Jus Cogens”, *The European Journal of International Law*, Vol. 19, 2008, p. 506; see Cassel, D. above, note 41, pp. 511–512; see Pellett A. above, note 40, p. 85.
- 44 Court of Cassation, Decision No. 945/2009; Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Initial reports of States parties due in 2009: Jordan*, UN Doc. CRC/C/OPSC/JOR/1, 27 February 2013, Para 7; El-Haj, A.M., “The Relationship Between International and National Law in New and Amended Arab Constitutions”, in Grote, R. and Roder, T.J. (eds), *Constitutionalism, Human Rights, and Islam after the Arab Spring*, Oxford University Press, 2016, p. 787.
- 45 *Ibid.* Committee on the Rights of the Child, Para 7. See also CEDAW Committee, *Consideration of reports submitted by States parties under article 18 of the Convention, sixth periodic report of states parties due in 2016: Jordan*, note 35, p. 11, Para 2.
- 46 This has been recognised by Jordan itself, noting in its report to the CEDAW Committee that “Jordan strives to implement the commitments arising from these conventions in its legal system and all author-

as noted throughout this report, there are numerous instances where national legislation fails to meet international standards.

3.3.2 National Legal Framework on Equality and Non-Discrimination

Article 6 of the Constitution provides that:

- (i) *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.*
- (...)
- (iii) *The Government shall ensure work and education within the limits of its possibilities, and it shall ensure a state of tranquillity and equal opportunities to all Jordanians.*
- (...)
- (v) *The law protects motherhood, childhood and the elderly and cares for youth and the disabled and protects them from offense and exploitation.*

Article 6(1) only expressly prohibits discrimination on the grounds of race, religion and language. The CEDAW Committee has expressed its concern that the process of constitutional reform in 2011 did not expand this list to include gender discrimination.⁴⁷ In response, Jordan has insisted that the inclusion of “Jordanians” encompasses both men and women, and that the failure to include “gender” as a ground of discrimination in the Constitution does not mean that such discrimination is permitted.⁴⁸ However, as noted by the Special Rapporteur on violence against women, including gender as a ground of discrimination in the Constitution would provide women with a means of challenging laws that are discriminatory on the grounds of gender and would have also assisted to harmonise domestic law with Jordan’s international obligations.⁴⁹

The failure to expressly include gender or sex in the Constitution is made even more problematic by the number of laws which are discriminatory against women (as noted in Part 3.2) and the lack of legislation prohibiting discrimination on the grounds of gender or sex.⁵⁰ Jordan has no comprehensive anti-discrimination legislation. However, in relation to persons with disabilities, Jordan enacted the Law on the Rights of Persons with Disabilities in 2007. Despite this

ities apply the provisions thereof, including the judiciary in respect of disputes brought before it (...) The Prime Minister has indicated the necessity of conducting a comprehensive review of legislation which needs to be harmonized with the international human rights treaties, conventions and charters ratified by the Kingdom”, *ibid.* CEDAW Committee.

47 See CEDAW Committee above, note 18, Paras 13–14.

48 See CEDAW Committee above, note 35, p.11.

49 Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo UN Doc. A/HRC/20/16/Add.1, 4 May 2012, Para 55.

50 See CEDAW Committee above, note 18, Paras 12–13; see above, note 20, Para 1.

welcome step, the Law leaves a number of gaps and does not comply with the CRPD in some aspects. For example, the Law provides for segregated day centres for persons with disabilities,⁵¹ contrary to the requirement of states to ensure that persons with disabilities are able to have “full inclusion and participation in the community”.⁵² Similarly, while the inclusion of Article 6(v) during the constitutional reform process is welcome acknowledgement of the rights of persons with disabilities to be free from exploitation, it begs the question of why persons with disabilities were considered in need of protection rather than included within the non-discrimination provision provided for in Article 6(i). Such an approach reflects a paternalistic view of persons with disabilities, albeit perhaps unintentional.⁵³ However, Jordan is currently in the process of reforming this legislation with the aim of bringing it into line with the CRPD.⁵⁴

3.3.3 National Legal Framework on Liberty and Security of the Person and Torture

The Constitution contains several provisions relating to the right to liberty and security of the person. Article 7(i) provides that “personal freedom shall be guaranteed”, followed by Article 8(i) which provides that “[n]o person may be arrested, detained, imprisoned, have his/her freedom restricted or prevented from free movement except in accordance with the provisions of the law.” The Constitution was amended in 2011 to prohibit torture,⁵⁵ with Article 8(ii) providing that:

Every person who is arrested, imprisoned or whose freedom is restricted, must be treated in a way that preserves his/her human dignity. It is forbidden for him/her to be tortured (in any form) or harmed physically or mentally, as it is forbidden to detain him/her in places outside of those designated by the laws. Any statement extracted from a person under duress of anything of the above or the threat thereof shall neither bare any consideration nor reliability.

Torture is also a crime pursuant to Article 208 of the Penal Code. Article 208(i) initially provide that “[a]ny person who inflicts on a person any type of torture that is not permitted by law in order to obtain a confession to or information about an offence shall be liable to between six months’ and three years’ imprisonment.

51 Law on the Rights of Persons with Disabilities, No. 31 of 2007, Articles 4(4)(d); Al-Azzeh, M. (ed), “Mirror of Reality and a Tool for Change” Civil Society Report on the Status of Implementation of the Convention on the Rights of Persons with Disabilities in Jordan, January 2012, p. 36.

52 Convention on the Rights of Persons with Disabilities, 2515 U.N.T.S 3, 2006, Article 19.

53 See Permanent Mission of the Hashemite Kingdom of Jordan above, note 26, Para 1.2.

54 *Ibid.*

55 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Jordan*, UN Doc. A/HRC/25/9, 6 January 2014, Para 13. See above, note 1, Article 8 of the Constitution provides: “every person seized, detained, imprisoned or the freedom thereof restricted should be treated in a manner that preserves human dignity; may not be tortured, in any manner, bodily or morally harmed; and may not be detained in other than the places permitted by laws; and every statement uttered by any person under any torture, harm or threat shall not be regarded.”

onment". Entirely at odds with Jordan's international obligations, this provision meant that certain forms of torture were considered legal as a matter of national law.⁵⁶ However, Article 208 was amended in 2014 and now provides as follows:

1. *Subjecting a person to any kind of torture in order to obtain confession to a crime or any information thereon shall be punishable by imprisonment from 6 months to 3 years.*
2. *For the purpose of this Article, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*
3. *If torture caused illness or injuries, the punishment shall be temporary hard labour.*
4. *Notwithstanding Articles (45) and (100) of this Law, the Court may not stay of execution of the punishment decided in the crimes stated in this Article or take extenuating circumstances.*

Although the definition of torture in Article 208(2) is in accordance with the Article 1 definition in the CAT, the criminalisation of torture in the Penal Code is undermined by the way in which it is categorised. Torture is characterised as a misdemeanour rather than a felony, meaning that the punishment, which is six months up to three years imprisonment, is not commensurate with the seriousness of the offence of torture or ill-treatment.⁵⁷ This fails to meet the international obligations pursuant to the CAT, which requires that the offence of torture should be punished with appropriate penalties.⁵⁸ At present, the legislation also fails to make clear that the offence of torture cannot be subject to amnesty, pardon or the statute of limitations.⁵⁹ The Committee Against Torture has urged Jordan to amend Article 208 to ensure that it is clear that the prohibition on torture is absolute and non-derogable.⁶⁰

56 Committee Against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture: Jordan*, UN Doc. CAT/C/JOR/CO/2, 25 May 2010, Para 9; and Alkarama Foundation, *Jordan Shadow report – Report submitted to the Committee against Torture in the context of the third periodic review of Jordan*, 23 October 2015, p. 4.

57 See Committee Against Torture above, note 17, Para 9.

58 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1465, U.N.T.S. 85, 1984, Article 4(2).

59 See Committee Against Torture above, note 17, Para 9.

60 Committee Against Torture, *Ibid.*, Para 11.

4. TREATMENT OF PERSONS WITH MENTAL DISABILITIES IN JORDAN

It is difficult to determine how many persons with mental disabilities there are in Jordan. Estimates of the number of persons with disabilities range from 1.23% of the population to four times that number, but the figure is not disaggregated.¹ It is clear that persons with mental disabilities are subject to widespread discrimination and abuse.² Despite this, little research has been carried out to determine the scale and nature of this abuse. In 2012, King Abdullah II ordered an official investigation into the abuse of children with disabilities in care homes following a BBC Arabic investigation which revealed shocking instances of abuse.³ The report, which was published in May 2012, decried the “violations and abuses which (...) constitute an affront to human dignity”. Although the official investigation exposed the details of 69 complaints of physical, mental and sexual abuse in these centres, it appears the few concrete steps were taken following its publication and that no person was charged in relation to the abuse.⁴ Instead, the report urged the Ministry of Social Development to respond to the 69 complaints and improve the licensing and monitoring of centres.⁵

The Trust and Mizan for Law have sought to go some way to filling the gap in research. While the research is not comprehensive, it is hoped that its findings,

- 1 Committee on the Rights of Persons with Disabilities (CRPD Committee), *Consideration of reports submitted by States parties under article 35 of the Convention, Initial reports of States parties due in 2010: Jordan*, UN Doc. CRPD/C/JOR/1, 1 September 2015, Paras 304–311.
- 2 Hussein, R., “Majority of people with disabilities still face discrimination – Prince Mired”, *Jordan Times*, 12 August 2015, available at: <http://www.jordantimes.com/news/local/majority-people-disabilities-still-face-discrimination-%E2%80%94-prince-mired>. See also, Permanent Mission of the Hashemite Kingdom of Jordan, *Response of the Hashemite Kingdom of Jordan via the Higher Council for the Affairs of Persons with Disabilities (HCD) to the Office of the United Nations High Commissioner for Human Rights (OHCHR) Questionnaire on Disability-Inclusive Policies from the Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas Aguilar*, May 2016, 8 June 2016, Annex, available at: http://www.ohchr.org/Documents/Issues/Disability/DisabilityInclusivePolicies/States/PM%20Jordan_ENG.pdf; Committee on the Rights of the Child, *Concluding observations on the combined fourth and fifth periodic reports of Jordan*, UN Doc. CRC/C/JOR/CO/4-5, 8 July 2014, Para 43; and *ibid.* Paras 304–311.
- 3 Frontline Club London, *Postponed: Jordan’s Secret Shame*, 24 July 2012, available at http://www.frontlineclub.com/third_party_screening_behind_the_wall_of_silence. See also, National Council for Human Rights (NCHR), *Annex IV and Annex VI to Shadow Report Submitted to Committee on Rights of the Child, 2012–2013*, available at: [http://www.nchr.org.jo/Arabic/ModulesFiles/PublicationsFiles/Files/Alternative%20Report2%20; BBC, “BBC uncovers abuse at children’s care homes in Jordan”, BBC, 15 May 2012, available at: <http://www.bbc.co.uk/news/world-middle-east-18073144>.](http://www.nchr.org.jo/Arabic/ModulesFiles/PublicationsFiles/Files/Alternative%20Report2%20; BBC, “BBC uncovers abuse at children’s care homes in Jordan”, BBC, 15 May 2012, available at: http://www.bbc.co.uk/news/world-middle-east-18073144)
- 4 See, for example, Al-Azza, M., “Shalo Abdo wa Gabo Shaheen”, *Almanal Magazine*, August 2012, available at: <http://www.almanalmagazine.com/ني-هاش-اوباجو-ودل-اولاش/> (in Arabic).
- 5 The Committee for Investigation and Evaluation, *Report of the Committee of Investigation and Evaluation into the Situation of Centres and Institutions Caring for People with Disabilities, Issued by Order of the Minister for Social Development*, 27 May 2012 (in Arabic).

which include reports of the torture and ill-treatment of persons with mental disabilities and highlight the failure of Jordan to implement its obligations in accordance with the Convention on the Rights of Persons with Disabilities (CRPD), will shape the approach taken to law reform and implementation in Jordan including through the current discussion on reform of the Law on the Rights of Persons with Disabilities. Jordan is currently at a significant junction in ensuring the rights of persons with mental disabilities, and it must take steps to move its commitment to the rights of persons with disabilities from setting out a sufficient legislative framework to enforcing that framework. Recognising the abuse of persons with disabilities as torture and other ill-treatment will assist in this enforcement, moving the discussion from being only one about the right to health or non-discrimination and recognising the gravity of the abuse that persons with mental disabilities suffer in Jordan.

The first section of this part sets out the obligations of Jordan to protect persons with mental disabilities and provide them with adequate health care, providing a framework to consider how the treatment of persons with mental disabilities in Jordan may be contrary to these obligations. The national legal framework relating to persons with disabilities is then set out in Part 4.2. Part 4.3 sets out the Trust's findings in relation to the treatment of persons with mental disabilities in Jordan, highlighting that, in some instances, this treatment amounts to discriminatory torture and other ill-treatment. The final section of this part then sets out conclusions and recommendations to the Jordanian government, international human rights bodies and civil society.

4.1 State Obligations to Protect Persons with Mental Disabilities

As discussed in Part 2, states must prevent acts of torture and other ill-treatment, including by ensuring that such acts are not carried out by health care professionals or in private health care institutions.⁶ As the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur) has recognised, persons with mental disabilities are particularly vulnerable to torture and other ill-treatment.⁷ The CPRD provides a framework for protecting the rights and dignity of persons with disabilities, including by prohibiting the torture or other ill-treatment of persons with disabilities pursuant to Article 15. In addition, Article 16 prohibits exploitation, abuse and violence against persons with disabilities, and Article 17 recognises that "every person with disabilities has a right to respect for his or her physical and mental integrity".

As noted by the Special Rapporteur:

6 See above, Part 2.2.4.

7 United Nations General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/63/175, 28 July 2008, Paras 37-41.

It is (...) necessary to reaffirm that the Convention on the Rights of Persons with Disabilities offers the most comprehensive set of standards on the rights of persons with disabilities, inter alia, in the context of health-care, where choices by people with disabilities are often overridden based on their supposed “best interests”, and where serious violations and discrimination against persons with disabilities may be masked as “good intentions” of health professionals.⁸

The prohibition of torture and ill-treatment must be interpreted in light of the CRPD, which requires states to recognise the equal right of persons with disabilities to enjoy legal capacity in all aspects of their lives in Article 12(2) and requires free and informed consent to medical treatment in Article 25(d). As discussed in more detail below, these provisions require persons with mental disabilities to be supported in decision-making and do not allow for substitute decision-making. Thus, in the context of the prohibition of torture and other ill-treatment, the only person who may consent to an act is the person subject to the act.⁹ Given the absolute nature of the prohibition of torture and other ill-treatment, the consent of a substitute decision maker cannot sanction medical treatment that would otherwise be considered to be torture or other ill-treatment.¹⁰

4.1.1 Healthcare

The CRPD recognises that “persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability”.¹¹ The right to health can also be found in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as in conventions that focus on the rights of other marginalised groups.¹²

The right to health includes the right to “timely and appropriate health care”.¹³ This requires that states provide health care through facilities which are culturally appropriate, respect medical ethics and provide good quality health care that is “scientifically and medically appropriate”.¹⁴ The latter requires, amongst other things, “skilled medical personnel, scientifically approved and unexpired

8 United Nations General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Mendez, UN Doc. A/HRC/22/53, 1 February 2013, Para 61.

9 Rosenthal, E., *A Mandate to End Placement of Children in Institutions and Orphanages: The duty of governments and donors to prevent segregation and torture*, November 2016, p. 25; see above, note 8, Para 66. As the Special Rapporteur noted at Para 66, “[o]nly in a life-threatening emergency in which there is no disagreement regarding absence of legal capacity may a health-care provider proceed without informed consent to perform a life-saving procedure”.

10 *Ibid.* Rosenthal, p. 25.

11 Convention on the Rights of Persons with Disabilities (CRPD), 2515 U.N.T.S 3, 2006, Article 25.

12 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1249 U.N.T.S. 13, 1979, Article 12; and Convention on the Rights of the Child (CRC), 1577 U.N.T.S. 3, 1989, Article 24.

13 Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, UN Doc. E/C.12/2000/4, 2000, Para 11.

14 *Ibid.*, Para 12.

drugs and hospital equipment, safe and potable water, and adequate sanitation.”¹⁵ In some circumstances, a failure to provide adequate medical care may violate the prohibition on torture and other ill-treatment. For example, the Special Rapporteur has noted that failing to provide medication for pain relief may be considered a violation of the prohibition of cruel, inhuman or degrading treatment.¹⁶ The classification as other ill-treatment, rather than torture, appears to be because the element of intent is lacking – the Special Rapporteur notes that “denial of pain treatment involves acts of omission rather than commission, and results from neglect and poor government policies, rather than from an intention to inflict suffering”¹⁷ However, in certain circumstances in which the denial of medication was due to discrimination on the basis of disability, the intention and purpose element of the definition of torture may be met and, provided that the suffering caused was severe, this would amount to torture.

Healthcare facilities must be affordable for all persons, and the cost of health-care should not disproportionately burden those with less economic means.¹⁸ Persons with disabilities should be provided with the “same range, quality and standard of affordable health-care and programmes as provided to other persons”,¹⁹ and should also be provided with health services needed specifically because of their disability.²⁰ Staff providing healthcare should be trained to be able to recognise and address the needs of marginalised groups.²¹

States are required to ensure that healthcare services are accessible to those with disabilities, including by providing reasonable accommodation.²² As noted above, a failure to provide reasonable accommodation in this regard amounts to discrimination and may also amount to torture or other ill-treatment.²³ Examples of how reasonable accommodation might be achieved include “physically accessible facilities, information in accessible formats and decision-making sup-

15 *Ibid.*, Para 12.

16 See above, note 8, Paras 53–55.

17 See above, note 8, Para 54. Mendez also appears to require suffering to be severe in order for the denial of pain medication to amount to other ill-treatment: “generally, denial of pain treatment involves acts of omission rather than commission, and results from neglect and poor Government policies, rather than from an intention to inflict suffering. However, not every case where a person suffers from severe pain but has no access to appropriate treatment will constitute cruel, inhuman, or degrading treatment or punishment. This will only be the case when the suffering is severe and meets the minimum threshold under the prohibition against torture and ill-treatment; when the State is, or should be, aware of the suffering, including when no appropriate treatment was offered; and when the Government failed to take all reasonable steps to protect individuals physical and mental integrity (footnotes omitted).” However, as discussed above in Part 2.2, for treatment to be considered other ill-treatment, the pain and suffering it causes must meet a minimum level of severity, but does not need to be severe pain and suffering.

18 See above, note 13, Para 12(a)-(b); Office of the United Nations High Commissioner for Human Rights, *The Right to Health: Fact Sheet No. 31*, June 2008, p. 18.

19 CRPD, Article 25(a).

20 CRPD, Article 25(b).

21 See above, note 13, Para 37.

22 CRPD, Article 25(c); see above, note 13, Para 12(b); CRPD Committee, *General comment No. 2 (2014) Article 9: Accessibility*, UN Doc. CRPD/C/GC/2, 2014, Para 40.

23 See, Part 1.2, 2.2.1 and 2.2.2.

port, and [the provision of care] in a respectful and dignified manner that does not exacerbate marginalisation.”²⁴

Healthcare must only be provided with the free and informed consent of the patient.²⁵ As the Committee on the Rights of the Persons with Disabilities (CRPD Committee) has made clear, the existence of a disability is not a sufficient reason to deny a person’s legal capacity.²⁶ States must put in place measures to support persons with disabilities to make decisions, rather than to implement systems of substituted decision-making (where another person makes a decision on the patient’s behalf).²⁷ Supported decision-making systems “must be based on the will and preference of the person, not on what is perceived as being in his or her objective best interests”.²⁸ In legal systems where persons are stripped of their legal capacity and a substitute decision maker put in place, the consent of that decision maker cannot be used to justify forced medical treatment.²⁹

As the Special Rapporteur has noted, arguments that treatment is medically necessary cannot be a substitute for informed consent:

*The doctrine of medical necessity continues to be an obstacle to protection from arbitrary abuses in health-care settings. It is therefore important to clarify that treatment provided in violation of the terms of the Convention on the Rights of Persons with Disabilities – either through coercion or discrimination – cannot be legitimate or justified under the medical necessity doctrine.*³⁰

For example, the Special Rapporteur has found the “discriminatory character” of forced psychiatric interventions against persons with psychosocial disabilities satisfies the requirements of both purpose and intent in the definition of torture despite claims of “good intentions” when carrying out such treatments.³¹ In this regard, the Special Rapporteur has noted that:

[F]orced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely scrutinized. Depending on the circumstances of the case, the suffering inflicted and the effects

24 Committee on Economic, Social and Cultural Rights, *General comment No. 22 on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. E/C.12/GC/22, 2016, Para 24. See also *ibid.* CRPD Committee, Para 40.

25 CRPD, Article 12, 25(d).

26 CRPD Committee, *General comment No. 1 (2014), Article 12: Equal recognition before the law*, UN Doc. CRPD/C/GC/1, 2014, Para 13.

27 *Ibid.*, Paras 15–19.

28 *Ibid.*, Para 29(b). Systems of supported decision making are additional to the right to reasonable accommodation in support of a person’s legal capacity, *ibid.*, Para 34.

29 See Rosenthal above, note 9, p. 25; see also above, note 8, Para 66.

30 See above, note 8, Para 35.

31 *Ibid.*, Para 32.

*upon the individual's health may constitute a form of torture or ill-treatment.*³²

The Special Rapporteur has also noted that the forced sterilisation of persons with disabilities amounts to a breach of the prohibition of torture and other ill-treatment.³³ In circumstances in which forced sterilisations are directly or indirectly discriminatory and cause severe pain and suffering, even where performed with supposedly "good intentions", they would amount to torture.³⁴

4.1.2 Institutionalisation

The Office of the United Nations High Commissioner for Human Rights has noted that:

*While institutionalization can differ from one context to another, certain common elements define it: isolation and segregation from community life; lack of control over day-to-day decisions; rigidity of routine, irrespective of personal preferences or needs; identical activities in the same place for a group of persons under a central authority; a paternalistic approach in the provision of services; supervision of living arrangements without consent; and disproportion in the number of persons with disabilities living in the same environment. Institutionalization is therefore not just about living in a particular setting; it is, above all, about losing control as a result of the imposition of a certain living arrangement. In that sense, small environments, including group homes, are not necessarily better than large institutions if overall control remains with supervisors.*³⁵

This report uses the term institutionalisation to refer to a situation in which a person is isolated or segregated due to an actual or perceived disability and does not have control over the majority of their day-to-day decisions.³⁶

32 See above, note 7, Para 63.

33 See above, note 8, Para 48; and Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, UN Doc. A/HRC/7/3, 15 January 2008, Para 38. The first mentioned report states that "[f]orced sterilization is (...) a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment" and the second notes that "given the particular vulnerability of women with disabilities, forced abortions and sterilizations of these women if they are the result of a lawful process by which decisions are made by their "legal guardians" against their will, may constitute torture or ill-treatment (footnotes omitted)".

34 See discussion in Part 2.2.3.

35 Human Rights Council, *Thematic study on the right of persons with disabilities to live independently and be included in the community – Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/28/37, 12 December 2014, Para 21. See also Rosenthal above, note 9, p. 7.

36 In its submission to the day of discussion relating to Article 19 of the CRPD, the Mental Disability Advocacy Centre (MDAC) defined an institution as "any place in which people are isolated, segregated and/or congregated on the basis of an actual or perceived disability (including a mental health diagnosis). An institution is any place in which people do not have, or are not allowed to exercise control over their day-to-day decisions, subject to rules and routines defined and controlled by others. An institution is not defined merely by its size." MDAC, *The Right to Live Independently and be Included in the Community*:

Institutionalisation is prohibited by Article 19 of the CRPD, which affords all persons the right to live in the community and to choose “where and with whom they live”.³⁷ In addition, Article 14 of the CRPD explicitly prohibits the practice of unlawfully and arbitrarily depriving persons with disabilities of their liberty, and makes it clear that the existence of a disability can never justify a deprivation of liberty.³⁸ In September 2015, the CRPD Committee adopted guidelines on Article 14, which make it clear that Article 14 provides for an absolute prohibition on institutionalisation on the basis of “actual or perceived impairment” whether on its own or in conjunction with other factors such as being deemed a danger to self or others or the need for treatment.³⁹ As the Committee also notes, Article 14 “is, in essence, a non-discrimination provision” and deprivations of liberty in violation of Article 14 will also violate the right to non-discrimination contained in Article 5 of the CRPD.⁴⁰ Furthermore, involuntary institutionalisation violates the requirement for medical treatment to be provided only with consent⁴¹ and denies persons of their right to exercise legal capacity on an equal basis with others.⁴² The CRPD Committee has noted that:

*In order to comply with the Convention and respect the human rights of persons with disabilities, deinstitutionalization must be achieved and legal capacity must be restored to all persons with disabilities.*⁴³

Both the CRPD Committee and the Special Rapporteur have confirmed that involuntary institutionalisation may amount to torture or other ill-treatment.⁴⁴ As noted above, the consent of a substitute decision maker does not amount to consent of the patient; institutionalisation does not become voluntary because it is consented to by a substitute decision maker, nor can such consent render what would amount to torture or other ill-treatment otherwise.⁴⁵ The Special Rapporteur has noted that “the length of institutionalisation, the conditions of detention and the treatment inflicted must be taken into account” when assess-

*Written Comments to the UN Committee on the Rights of Persons with Disabilities in response to its Call for Submissions to the Day of General Discussion on 19 April 2016, 27 February 2016, Para 2, available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CallDGDtoliveindependently.aspx>. See also, Office of the High Commissioner for Human Rights Regional Office for Europe, *Forgotten Europeans – Forgotten Rights*, 2010, p. 5.*

37 CRPD, Article 19.

38 CRPD, Article 14.

39 CRPD Committee, *Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities*, September 2015, Paras 6–10 and 13.

40 *Ibid.*, Para 4 and 5.

41 CRPD, Article 25(d); *ibid.* CRPD Committee, Para 10.

42 CRPD, Article 12(2); *ibid.* CRPD Committee, Para 8.

43 See above, note 26, Para 46. See also above, note 8, Para 68; and United Nations Special Rapporteur on Disability, *Comment on the Draft General Comment on Article 9*, 27 May 2014, pp. 2–3 and the sources cited therein. Human Rights Committee, *General Comment No. 35: Article 9 (Liberty and security of person)*, UN Doc. CCPR/C/GC/35, 2014, Para 19.

44 See above, note 8, Para 70; see above, note 26, Para 42.

45 See Rosenthal above, note 9, p. 25; see above, note 8, Para 66.

ing the pain caused by institutionalisation.⁴⁶ The institutionalisation of children will be discussed in the following part.

4.1.3 Children

According to Article 7 of the CPRD, states must ensure the human rights and fundamental freedoms of children with disabilities on an equal basis with other children.⁴⁷ The best interests of the child must be a primary consideration and children must:

*[H]ave the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.*⁴⁸

It is important that decisions about the best interests of a child are not conflated with the interests or convenience of the family or caregiver.⁴⁹ The Committee on the Rights of the Child has emphasised that:

*[T]he interpretation of a child's best interests must be consistent with the whole Convention (...) It cannot be used to justify practices (...) which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention.*⁵⁰

The CRPD recognises the rights of children with disabilities to remain with their family, and prohibits the separation of child from their parents on the basis of the child's disability.⁵¹ In addition, states must "provide early and comprehensive information, services and support to children with disabilities and their families" in order to enable children to remain with their family.⁵²

The CRPD provides that:

*[W]here the immediate family is unable to care for a child with disabilities, [states parties shall] undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.*⁵³

46 See above, note 7, Para 65.

47 CRPD, Article 7(1). See also, CRC, Article 23.

48 CRPD, Article 7(3). See also above, note 26, Para 36.

49 See, for example, Women with Disabilities Australia, *Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia*, March 2013, p. 56.

50 Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, UN Doc. CRC/C/GC/13, 2011, Para 61.

51 CRPD, Article 23(4).

52 *Ibid.*, Article 23(4).

53 *Ibid.*, Article 23(5).

As is the case with adults, the CRPD prohibits the institutionalisation of children.⁵⁴ As noted above, the institutionalisation of adults with mental disabilities may amount to torture and other ill-treatment depending in part on the severity of the pain and suffering it caused.⁵⁵ In the case of children with mental disabilities, it is difficult to envisage a situation in which institutionalisation would not be considered to amount to torture or other ill-treatment given the particular needs of children to grow up in a family setting and the effects of institutionalisation on children.⁵⁶

The effect of institutionalisation on children has been found to be severe. Children who are detained “are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder”.⁵⁷ Significantly, it has been found that improving the conditions of care in institutions does not mitigate these consequences:

*[I]t needs to be emphasised that the improvement of conditions and hygiene does not solve the basic problem of the harmful effects of institutional care, especially in the cases of children below three or even children younger than five to eight years. While some factors can indeed be significantly improved (e.g. feeding practices and physical conditions which appear to have reduced mortality rates in Bulgarian “orphanages”), other key factors are intrinsic to institutional care, not only to “bad” or poorly equipped institutions. It is not just a question of adequate nutrition and heating, or the absence of open violence and physical neglect.*⁵⁸

Similarly, the Special Rapporteur has noted that:

*A number of studies have shown that, regardless of the conditions in which children are held, detention has a profound and negative impact on child health and development. Even very short periods of detention can undermine the child’s psychological and physical well-being and compromise cognitive development.*⁵⁹

In cases where children with mental disabilities are institutionalised, given the severity of the impact of institutionalisation, the authors contend that the presumption should be that their detention amounts to torture or other ill-treatment. Where the institutionalisation of children with mental disabilities can be shown to cause severe pain and suffering, it will amount to torture as all other

54 *Ibid.*, Article 19; see above, note 26, Para 46.

55 See above, note 7, Para 65.

56 See Rosenthal above, note 9, p. 7.

57 Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, UN Doc. A/HRC/28/68, 5 March 2015, Para 16.

58 Office of the High Commissioner for Human Rights, Regional Office for Europe, *The rights of vulnerable children under the age of three: Ending their placement in institutional care*, 2011, p. 19.

59 See above, note 57, Para 33.

elements of the definition of torture are met – institutionalisation is intentional (in that it is an act that is deliberate), it is discriminatory because it is based on a child's disability (and therefore meets the purpose requirement) and it is either carried out by the state (when children are placed in public institutions) or with the involvement of the state (when children are placed in private institutions). As noted in Part 2.2.4, states remain responsible for the monitoring and regulation of treatment of persons in private health care institutions. In light of the severe impact of any form of institutionalisation on children, it will be difficult for the state to argue that it should not have known that institutionalisation (whether public or private) is likely to amount to torture (or other ill-treatment). When the pain and suffering caused by institutionalisation is less than severe, institutionalisation is likely to amount to other ill-treatment given the suffering it causes.⁶⁰ Where children with disabilities have experienced neglect, abuse or any other form of ill treatment, states must take all appropriate measures to ensure the recovery of the child.⁶¹ Thus all children with mental disabilities in institutions should be immediately removed to a family environment and also be provided with support to ensure their recovery.

4.2 National Legal Framework Relating to Persons with Disabilities

Jordan has taken positive steps to combat discrimination against persons with disabilities by enacting the Law on the Rights of Persons with Disabilities in 2007. The definition of disability provided in the Law includes persons with mental disabilities but is based on a medical model of disability and fails to recognise, as the CRPD does, that it is barriers which are put in place which hinder a person's ability to participate in society.⁶² The Law contains a number of provisions which require health care and education to be provided to persons with disabilities.⁶³ The Law also established the Higher Council for the Affairs of Persons with Disabilities, which is mandated, amongst other things, to promote the rights of persons with disabilities through proposing policies, legislative amendments and standards.⁶⁴ However, the Law leaves a number of gaps and fails to comply with the CRPD in some aspects. For example, the Law provides for segregated day centres for persons with disabilities,⁶⁵ contrary to the requirement

60 See discussion in Part 2.3.

61 CRC, Article 39.

62 The Law defines persons with disabilities as "Any person suffering from a permanent, partial or total impairment affecting any of his/her senses, or his/her physical, psychological or mental capabilities, to an extent that undermines his/her ability to learn, work, or be rehabilitated, and in a way which renders him/her unable to meet her/his normal day-to-day requirements under circumstances similar to those of non disabled persons", Law on the Rights of Persons with Disabilities, No. 31 of 2007, Article 2.

63 *Ibid.*, Article 4.

64 *Ibid.*, Articles 6 and 7.

65 *Ibid.*, Articles 4(4)(d); Al-Azzeh, M. (ed), "Mirror of Reality and a Tool for Change" *Civil Society Report on the Status of Implementation of the Convention on the Rights of Persons with Disabilities in Jordan*, January 2012, p. 50.

of states to ensure that persons with disabilities are able to have “full inclusion and participation in the community”.⁶⁶ Significantly, the Law did not address the issue of legal capacity, and Jordanian law still provides for a system of substituted decision making.⁶⁷ Persons who are “undiscerning because of age, dementia, or insanity” are excluded from exercising their civil rights.⁶⁸

A doctor who works at a Ministry of Health clinic in Amman and who spoke to the Trust on condition of anonymity explained the system of health care for persons with mental disabilities in Jordan to the Trust. He noted that persons with mental disabilities can access government health care in four ways: self-referral; referral by a family member; referral by a doctor; or referral by police.⁶⁹ Dr. Muhannad Al-Azzeh, a legal expert on disability in Jordan, explained to the Trust that a medical report detailing a diagnosis is required in order to obtain benefits or receive care. For persons with intellectual disabilities, such reports can be provided by the National Diagnostic Centre for Disabilities or, for some purposes, by a Medical County Committee.⁷⁰ In the case of psychosocial disabilities, adults can be diagnosed by the National Centre for Mental Health at Al-Fhais Hospital (Al-Fhais) and both adults and children be diagnosed in other public hospitals or in public psychiatric outpatient clinics. However, Dr Al-Azzeh was aware of only one specialist paediatric psychiatrist in Jordan.⁷¹

Dr X noted that once a person has been diagnosed with a mental disability, the government provides subsidised health care. The Ministry of Health provides this support through their clinics, which are available across Jordan. At these clinics, patients receive a free psychiatric assessment and all medication is subsidised. The government bears the full cost of medical care and residence for individuals who are institutionalised in public institutions. Individuals may also choose to pay for private health care or institutions. Individuals with a disability are given a disability health care insurance card to access other medical facilities if needed. Persons with mental disabilities who are unable to work as a result of their mental disability are eligible to receive welfare payments from the government based on a psychiatrist’s diagnosis of the condition.⁷² Dr Al-Azzeh noted there are 31 government centres and around 29 private or non-profit centres

66 CPRD, Article 19.

67 CRPD Committee, *List of issues in relation to the initial report of Jordan*, UN Doc. CRPD/C/JOR/Q/1, 29 September 2016, Para 11.

68 Civil Law No. 43 of 1976, Article 44; Personal Status Law No. 36 of 2010, Article 204 as cited in Al-Azzeh above, note 65, p. 90. See also above, note 1, Para 81.

69 For example, this may occur when the police are contacted by an individual believing a family member is a danger to themselves or others. Police are trained to identify persons who may have mental health issues and refer them to the nearest Ministry of Health clinic for diagnosis. These types of referrals are not very common but do occur, Equal Rights Trust interview with Dr X, 17 November 2016, Amman, Jordan.

70 Equal Rights Trust telephone interview with Dr Mohannad Al-Azzeh, 21 December 2016. Dr Al-Azzeh was the chief editor of the civil society report on the implementation status of the CRPD, see Al-Azzeh above, note 65. He has provided advice on international human rights law to the World Health Organisation, the Arab League and the American Bar Association.

71 Equal Rights Trust telephone interview with Dr Mohannad Al-Azzeh, 21 December 2016.

72 Equal Rights Trust interview with Dr X, 17 November 2016, Amman, Jordan.

which provide care for persons with mental disabilities in Jordan. These centres provide a mix of day and residential facilities for persons with intellectual disabilities. For adults with psychosocial disabilities, Al Fhais is the only public institution in which individuals are institutionalised and there is only one private institution, Al -Rashid Hospital. There are no institutions specifically established for children with psychosocial disabilities.⁷³

Jordanian law allows for involuntary institutionalisation. Article 14 of the Public Health Act provides:

- (a) People who are suffering from mental illness, those addicted to substances or those affected by psychotic substances can be admitted to hospitals or specialised wards voluntarily or involuntarily, involuntary admission can be allowed in the following cases:*
- 1. If the patient or addict's case calls for treatment that cannot be provided in any place other than the hospital or specialised ward.*
 - 2. If the patient or addict may harm themselves or others, physically or morally.*
 - 3. If a court order was issued for involuntary admission, the court order should be based on medical purposes.*
- (b) For the involuntary admission mentioned in article 14 (a)(1) (2) or (3), the following conditions should be met:*
- 1. A formal application should be submitted to the hospital's director.*
 - 2. A psychiatrist report should be made that confirms the application submitted to the hospital's director.*
 - 3. An approval for the admission should be obtained from the hospital's director, or his deputy.⁷⁴*

Article 14 clearly violates the right to liberty guaranteed in Article 14 of the CRPD. As noted above in Part 4.1.2, Article 14 of the CRPD prohibits the institutionalisation of persons on the basis of actual or perceived impairment whether the impairment is the sole basis for deprivation of liberty or the deprivation occurs on the basis of impairment and other factors, such as perceived danger to self or others. Article 14 is also discriminatory, because it is based on actual or perceived impairment, and therefore violates Article 5 of the CPRD and also Article 26 of the ICCPR. Any detention made on the basis of the provision must therefore be considered arbitrary in violation of Article 9(1) of the ICCPR.⁷⁵ It is also concerning that Article 14(a) allows for involuntary institutionalisation in the event that medical treatment cannot be provided in a place other than a hos-

73 Equal Rights Trust telephone interview with Dr Mohannad Al-Azzeh, 21 December 2016.

74 Public Health Act, Law No. 47 of 2008, Articles 13–16.

75 See Human Rights Committee above, note 43, Para 17; see also above, note 26, Para 40.

pital. This provision clearly contradicts international human rights law standards, which require persons with disabilities to be provided with medical care in the community.⁷⁶ It is also of concern that individuals may be institutionalised on the basis of the *moral* harm that they may do to themselves or others. This provision is extremely vague as there is no explanation of what may amount to such harm and the threshold may therefore be set very low. The provision therefore could be used to institutionalise those whose conditions are considered upsetting or embarrassing to family members solely on the basis of their disability.⁷⁷ In addition to these problems with the law itself, it is also concerning that the law appears to be implemented inconsistently in practice.

A consultant psychiatrist working in the public health system explained that patients may be “forced” into hospital in certain circumstances. He stated that if patients are a danger to themselves or if their “audio-visual hallucinations and illusions” mean that they are a danger to others, or if they are suffering from the effects of drugs, then they may be hospitalised against their will.⁷⁸ He explained that:

*The opinion of three doctors and the director of the hospital in which they will be detained is required to establish if the patient is forced into hospital to protect himself or others.*⁷⁹

He stated that patients can be asked to leave hospital or may ask to leave themselves:

*If someone asks to leave, an evaluation is needed which has two provisions: have his symptoms reduced the danger to himself or to public safety? [If yes] he can leave by himself or with others. [If asked to leave by the hospital] If he is not willing to go then we can ask that a member of the family come and if they are aware and willing then they can go together.*⁸⁰

Other doctors reported slightly different procedures. Dr Al-Azzeh explained that although families do not have any legal ability to institutionalise their adult relatives, in practice, families do pressure doctors to place relatives in institutions. In addition, while it is the decision of the hospital staff whether a patient should be discharged, doctors are very reluctant to release a patient other than into the care of a guardian or family member – hospital procedures usually require a patient to be signed into the care of another person upon discharge in order to avoid the hospital being responsible in the event that harm comes to the patient after they are discharged. These procedures are problematic as many families

76 See above, Part 4.1.

77 See Al-Azzeh above, note 65, p. 105.

78 Equal Rights Trust interview with a consultant psychiatrist working in the public health, Ministry of Health, 27 December 2015, Amman, Jordan. The psychiatrist asked to remain anonymous.

79 *Ibid.*

80 *Ibid.*

are reluctant to accept care of their relative due to social stigma or a lack of knowledge or understanding about their condition.⁸¹ This explanation accorded with that provided by a doctor who attended a focus-group session at the Al-Saf-Saf Rehabilitation Centre in Amman, who explained that:

Whoever makes the decision [for the patient] to be admitted is the one to make the decision [for the patient] to leave. For example, I had a patient from Saudi (Arabia) who was admitted by his uncle and [during his stay] he made a special demand to go on a holiday. The uncle had to approve the holiday.⁸²

Dr Khalud Abu Zaid, an education specialist with Save the Children who has worked with marginalised communities, including persons with disabilities, for 18 years, stated that when a woman was discharged from Al-Rashid Hospital, the permission of her male guardian was required.⁸³ She told us that admission directly to hospital, for example admission into the private Al-Rashid Hospital, was usually at the request of a patient's family.⁸⁴ Dr Al-Azzeh noted that the decision to place a child in an institution rested with the child's parents.⁸⁵

The Ministry of Social Development is responsible for running and monitoring public care facilities for persons with mental disabilities and also for licensing and monitoring private centres and institutions working with persons with disabilities.⁸⁶ In 2011, the World Health Organisation noted that:

[H]uman rights standards have only been assessed in some mental health facilities and only a small fraction of mental health workers receive human rights training. No mental health facilities in Jordan receive regular annual human rights inspections and no mental health staff working in inpatient facilities have received any training on the human rights protection of patients in the last two years.⁸⁷

Dr Al-Azzeh noted that recent years had seen improved efforts by the Ministry of Social Development to monitor care centres and institutions, particularly since new licensing regulations came into force in 2014. In the past year, the Ministry had closed two centres and issued warnings to four more. In addition to the oversight of the Ministry of Social Development, the National Centre for Human Rights (NCHR) is also mandated to inspect care centres and institutions.

81 Equal Rights Trust telephone interview with Dr Mohannad Al-Azzeh, 21 December 2016.

82 Equal Rights Trust focus group with doctors at the Al-Saf-Saf Rehabilitation Centre, 22 February 2016, Amman, Jordan.

83 Equal Rights Trust interview with Dr Khalud Abu Zaid, 30 January 2016, Amman, Jordan.

84 *Ibid.*

85 Equal Rights Trust telephone interview with Dr Mohannad Al-Azzeh, 21 December 2016.

86 See Al-Azzeh above, note 65, p. 199; Equal Rights Trust telephone interview with Dr Mohannad Al-Azzeh, 21 December 2016.

87 World Health Organization, *WHO-AIMS Report on Mental Health System in Jordan*, 2011, p. 5.

However, Dr Al-Azzeh was of the view that this mandate was not being properly implemented. Although the Centre’s 2015 annual report notes instances of complaints being received from families of persons with disabilities,⁸⁸ it is not clear what steps the Centre took to address such complaints. Dr Al-Azzeh noted that the Centre had begun providing some training to health care practitioners on a human rights based approach to health care in 2012, but this was only a modest beginning and there was a real and ongoing need for training to be provided to health care practitioners.⁸⁹

In summary, there is a need for a specific focus on improving its national legal framework by Jordan and, importantly, on ensuring that the framework it put in place is implemented. To date it is clear that there is a significant gap between the law and procedures which are operating in practice. The latter indicate significant infringements of individual rights, including as a result of institutionalisation.

4.3 Social and Political Context

4.3.1 Social Stigma, Misunderstandings and Denial of Services

A consultant psychiatrist working in the public health told the Trust that a lot of social stigma and shame surrounds mental health in Jordan:

*Unfortunately, social culture means that most families treat people with mental illnesses like they are mad because of stigma. If a guest comes around they hide him [the person with mental illness] and if they go out they lock the door behind them.*⁹⁰

He further explained that a career in mental health work is not an attractive one. “The shame and social stigma is not only for those with mental health but for their families and the people who work with them”, he explained.⁹¹

We also spoke with Haifa al-Bashir, director of the Al-Saf-Saf Rehabilitation Centre in Amman, Jordan. In her view, the level of social stigma and shame faced by persons with mental disabilities in Jordan is high. She explained that “there is a lot of stigma surrounding mental illness. Society thinks that it cannot be cured like other illnesses, and thus rehabilitation treatment seems strange to lots of people”.⁹²

88 NCHR, *The 12th Annual Report on the Human Rights Situation in Jordan in 2015*, October 2015, pp. 228–229, available at: <http://www.nchr.org.jo/Arabic/ModulesFiles/PublicationsFiles/Files/The%2012th%20Annual%20Report.pdf>.

89 Equal Rights Trust telephone interview with Dr Mohannad Al-Azzeh, 21 December 2016.

90 Equal Rights Trust interview with a consultant psychiatrist working in the public health, Ministry of Health, 27 December 2015, Amman, Jordan. The psychiatrist asked to remain anonymous.

91 *Ibid.*

92 Equal Rights Trust interview with Haifa al-Bashir, 2 February 2016, Amman, Jordan. She trained as a nurse in Jordan and the United States of America before specialising in mental health. She has been the director of the Al-Saf-Saf Rehabilitation Centre in Amman, Jordan for 12 years. The Al Saf-Saf Rehabilitation Centre opened in 1994 and offers holistic therapy programmes for persons with mental disabilities.

Rozan, who has suffered from depression for the last seven years, told the Trust that she feels that many people try to hide their mental health condition:

For example, there might be someone (...) studying at university and his family doesn't know that he has a problem. He goes to the doctor and he is told that he is mad, so he tip-toes around his family and takes drugs and has therapy (...) his teachers won't know his diagnosis either.⁹³

Ghassan explained to the Trust that when he was first employed, he did not disclose his mental health condition, especially given the type of condition (which caused him to be fearful around other people), because he was afraid of being discriminated against during the recruitment process. He was afraid that if he were to share his mental illness with employers, he would not be hired.

I have been getting treatment for my condition and I am doing much better. But no one will understand that. Most employers do not want to hire someone with a mental illness or disability because they think that the person will be mistreated and exploited [by other employees]. They think that the person will not be able to take the pressure and quit. They don't want to be responsible for mistreatment or for employees who quit a job shortly after being hired.⁹⁴

Ghassan said that he was not aware of a system that would allow him to file a complaint for being denied employment due to his mental illness.⁹⁵

Worries over not being able to find employment due to a mental disability were reported by a number of individuals either in relation to themselves or their children.⁹⁶ It was reported by many parents who spoke with the Trust that their children experienced verbal insults or harassment from neighbours, in school, and sometimes from doctors.⁹⁷ The first thing the doctor said to Safaa when her son was born was "he is a mongoloid child."⁹⁸ Reem has two sons with Down syndrome. She explained that it was common for her to hear others insult or pity her sons.

Once I was waiting with my boys for the school bus. A woman walked by and stopped for a bit, stared at us and then said "oh poor thing she

93 Equal Rights Trust interview with Rozan, 21 February 2016, Amman, Jordan.

94 Equal Right Trust interview with Ghassan, 31 October 2016, Amman, Jordan.

95 *Ibid.*

96 *Ibid.*; Equal Right Trust interview with Dunya, 7 November 2016, Amman, Jordan; Equal Rights Trust interview with Ziyad, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Abeer, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Safaa, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Duaa, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Reem, 10 November 2016, Amman, Jordan.

97 Equal Right Trust interview with Mariam, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Safaa, 10 November 2016, Amman, Jordan; and Equal Right Trust interview with Reem, 10 November 2016, Amman, Jordan.

98 Equal Right Trust interview with Safaa, 10 November 2016, Amman, Jordan.

*has two of them with disabilities.” I just ignored her. What was I supposed to say? It used to exhaust me when I heard people say things. Now I have learnt to ignore them.*⁹⁹

Mariam’s 10-year-old son, Musa, has Down syndrome and she expressed similar frustrations at the type of insults her son used to face in school. She reported that it was not uncommon for him to be called “stupid” or “airhead” by school students. When she complained to the teachers, they would do nothing. She noted that “it is [my son’s] right to find a place that offers [him] proper attention and activities.”¹⁰⁰

There is also a significant lack of understanding, with no recognition of the variety of different individual circumstances which fall under the very broad umbrella of “mental disability”. Aside from a small number of people working in the medical profession, the individuals the Trust spoke with were unaware, for example, of the distinction between intellectual and psychosocial disabilities.

Further, access to services is an ongoing problem. A number of parents discussed the difficulties they faced in enrolling their children in school or finding activities for them to engage in, for example. Four women whose children have Down syndrome and who are members of a civil society group and rehabilitation centre for individuals with Down syndrome, the Jasmine Centre, spoke with the Trust.¹⁰¹ All four explained that there are few, if any, provisions made for children with Down syndrome to attend government run schools. They noted that segregated education is the norm. Ruba, the mother of a six-year-old boy with Down syndrome, told us that her son was turned away from a public nursery because the nursery said that “he couldn’t be understood”. She subsequently enrolled him in a private, fee-paying nursery, but was asked to pay higher fees than other parents. “Unfortunately, we couldn’t afford it (...) for other children, it was 500 dinars a month, but they asked me for 1000 dinars [a month]”. Ruba now pays 4000 dinars a year to send her son to a private school.¹⁰² One of the women, Leyla, noted that she had managed to successfully enrol her daughter in a private non-segregated school. However, Leyla stated that her daughter is harassed by the other students there.¹⁰³

Several other parents reported to the Trust that they unsuccessfully had tried to register their children at public schools, with the school telling them that it was unable to provide proper educational services for children with mental disabilities.¹⁰⁴ Those families reported that their second option was to try

99 Equal Rights Trust interview with Reem, 10 November 2016, Amman, Jordan.

100 Equal Rights Trust interview with Mariam, 7 November 2016, Amman, Jordan.

101 Equal Rights Trust interview with Ruba, The Jasmine Centre, 19 February 2016, Amman, Jordan; Equal Rights Trust interview with Leyla, The Jasmine Centre, 19 February 2016, Amman, Jordan; Equal Rights Trust interview with Fatima, The Jasmine Centre, 19 February 2016, Amman, Jordan.

102 Equal Rights Trust interview with Ruba, The Jasmine Centre, 19 February 2016, Amman, Jordan.

103 Equal Rights Trust interview with Leyla, The Jasmine Centre, 19 February 2016, Amman, Jordan.

104 Equal Right Trust interview with Barah, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Zaynab, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Noora, 7 November 2016,

to enrol their child in a private school, but even then, they were told by the private schools that they were not able to offer proper care and services to their children.¹⁰⁵ Many now send their children to non-governmental organisations (NGOs) that have non-formal education programs and offer other services to their children including physiotherapy, vocational training, and psychosocial support.¹⁰⁶

Barah is one parent who relies on an NGO to provide education to her daughter.

I remember one day seeing her very upset. I couldn't understand what was wrong. I kept asking her and she couldn't express herself. She kept trying to compare herself to the other girls around her but I didn't understand what she wanted. I finally realised later that she was trying to tell me she wants to be on the same level as the other girls and wanted to go to school. The day I understood she wanted to go to school, she was happy, flying like a butterfly.¹⁰⁷

In addition to the above circumstances which often amount to denials of the fundamental rights of the individuals concerned, this background also provides important context when considering the treatment of individuals in institutions and healthcare settings.

4.3.2 Lack of Government Support

Our research identified a number of general shortcomings in the government's approach to supporting persons with mental disabilities. It is unclear whether these are problems of a lack of willingness or inadequate implementation mechanisms. However, the problems have a significant impact on the individuals concerned. For example, many of the individuals who spoke with the Trust stated

Amman, Jordan; Equal Right Trust interview with Nada, 7 November 2016, Amman, Jordan; Equal Rights Trust interview with Ziyad, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Abeer, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Safaa, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Duaa, 10 November 2016, Amman, Jordan; and Equal Rights Trust interview with Reem, 10 November 2016, Amman, Jordan.

105 Equal Right Trust interview with Barah, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Noora, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Nada, 7 November 2016, Amman, Jordan; Equal Rights Trust interview with Abeer, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Safaa, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Duaa, 10 November 2016, Amman, Jordan; and Equal Rights Trust interview with Reem, 10 November 2016, Amman, Jordan.

106 Equal Right Trust interview with Salma, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Barah, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Zaynab, 7 November 2016, Amman, Jordan; Equal Rights Trust interview with Dunya, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Noora, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Nada, 7 November 2016, Amman, Jordan; Equal Rights Trust interview with Ziyad, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Abeer, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Safaa, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Duaa, 10 November 2016, Amman, Jordan; and Equal Rights Trust interview with Reem, 10 November 2016, Amman, Jordan.

107 Equal Right Trust interview with Barah, 7 November 2016, Amman, Jordan.

that the government does not provide sufficient financial support and medical resources to those diagnosed with a mental illness.¹⁰⁸

After her son Malik was sexually abused at a public medical institution, Dunya explained that she decided to care for him and his brother at home. She stated that she relies on government financial assistance to take care of her family because she is unable to work as a result of staying at home to care for her children. As a single mother, she is eligible for rent-free housing. However, when she applied for housing, she was given a house in an isolated location without any consideration of the needs of her children.

*There is no supermarket, no hospital, no public transportation anywhere near the apartment they gave me. What am I supposed to do if one of my children has a seizure or a medical emergency and I need to take him to the hospital? There is nothing close to me. To get to the nearest supermarket, I would either have to take all three children with me or leave them at home, and both options wouldn't work. I tried appealing and explaining my situation to them. They said I either accept the apartment and location they offered me or I won't get any help.*¹⁰⁹

A number of the individuals who sought financial support from the government reported to the Trust that they were not always able to receive it. Ziyad's son, who has Down syndrome and is now 28-years-old, was denied government disability assistance on the basis that Ziyad's salary is sufficient to support him. Ziyad queries this, "what does my son have to do with my salary? He is 28 years old and independent from me. He should be evaluated on that basis."¹¹⁰ Abeer, a mother of a 16-year-old son who was diagnosed with a "minor mental disability", was unable to renew the support this year, as she was informed that the law had changed and she would only be eligible to receive support if her household had two or more children with disabilities or if she was in receipt of welfare support.¹¹¹

108 Equal Rights Trust interview with Nisreen, 31 October 2016, Amman, Jordan; Equal Right Trust interview with Salma, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Barah, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Zaynab, 7 November 2016, Amman, Jordan; Equal Rights Trust interview with Dunya, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Noora, 7 November 2016, Amman, Jordan; Equal Rights Trust interview with Ziyad, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Abeer, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Safaa, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Duaa, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Reem, 10 November 2016, Amman, Jordan.

109 Equal Right Trust interview with Dunya, 7 November 2016, Amman, Jordan.

110 Equal Right Trust interview with Ziyad, 10 November 2016, Amman, Jordan. Equal Right Trust interview with Duaa, 10 November 2016, Amman, Jordan. Duaa is a single mother with two adult sons and a 16-year-old daughter who has Down syndrome. She requested disability support for herself and her daughter but was told she cannot receive financial support from the government until her sons are married. In the meantime, her sons are expected to support her.

111 Equal Rights Trust interview with Abeer, 10 November 2016, Amman, Jordan. Rozan, a 40-year-old woman who has suffered from depression for the last seven years, told us that she is from a poor neighbourhood and feels that there is no government support for people like her. "[We] just need simple help with childcare and food" she said, "I feel quite restricted". Equal Rights Trust interview with Rozan, 21 February 2016, Amman, Jordan.

Several parents explained that they paid part of the cost of their children's institutionalisation or education, with the government contributing the remaining part. Some respondents also reported that they received financial support from the government. For example, Mohammed contributes 100 dinars a month towards his son's care and the government pays 400 dinars.¹¹² Aseel pays 2,000 dinar a year towards her son's care in a private centre and the state matches her contribution.¹¹³ Haifa al-Bashir, who runs the Al Rawad Rehabilitation Centre, explained that families must pay to admit relatives to the centre, but "the government helps with the expenses of the centre [and gives] 200 dinars per client."¹¹⁴

Children with mental disabilities in Jordan are entitled to receive an insurance card from the government which entitles them to receive medical care at a subsidised rate.¹¹⁵ However, many reported inadequacies and failings in this system. Some individuals shared that public medical facilities do not necessarily provide proper care and support when they are presented with this insurance card.¹¹⁶ Noora explained to the Trust that a hospital pharmacy has refused more than once to provide her son's medication to her when she sought to purchase it using his insurance card.¹¹⁷ She said that she was not aware of how to make a complaint and even if she was, no one would listen. Dunya's children each have a disability insurance card but she explained that due to a change in the law, her sons' cards now expire once every three months rather than once every three years.

*Why would they do that to us? It's too short. It's costly to go back and forth every three months to renew their health care card. If I was unable to renew [the card] and they have a medical emergency, I would either have to pay the full cost or wait until I was able to renew it and they wouldn't receive the help they needed.*¹¹⁸

Some challenges attach to Jordan's retention of discriminatory nationality laws and the knock-on impact on a child's eligibility for an insurance card. Safaa, a Jordanian national and mother of a child with Down syndrome, explained that she is unable to get any medical care for her son because her husband is a Pales-

112 Equal Rights Trust interview with Mohammed, 22 February 2016, Amman, Jordan.

113 Equal Rights Trust interview with Aseel, 17 February 2016, Amman, Jordan.

114 Equal Rights Trust interview with Haifa al-Bashir, 2 February 2016, Amman, Jordan.

115 Equal Right Trust interview with Salma, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Barah, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Zaynab, 7 November 2016, Amman, Jordan; Equal Rights Trust interview with Dunya, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Noora, 7 November 2016, Amman, Jordan; Equal Rights Trust interview with Ziyad, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Abeer, 10 November 2016, Amman, Jordan.

116 Equal Right Trust interview with Salma, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Barah, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Zaynab, 7 November 2016, Amman, Jordan; Equal Rights Trust interview with Dunya, 7 November 2016, Amman, Jordan; Equal Right Trust interview with Noora, 7 November 2016, Amman, Jordan; Equal Rights Trust interview with Ziyad, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Abeer, 10 November 2016, Amman, Jordan.

117 Equal Right Trust interview with Noora, 7 November 2016, Amman, Jordan.

118 Equal Right Trust interview with Dunya, 7 November 2016, Amman, Jordan.

tinian national and she could not pass her Jordanian nationality to her son when he was born. With a recent change in the law, she had heard that she would be able to pass on certain rights and her son could get a Jordanian ID card. However, she explained that even with the change in law, she is still unable to obtain an insurance card for her son, which would allow him to receive medical care at a subsidised rate.¹¹⁹

Mohammed stressed the lack of support that his son and other people with mental disabilities received from the government. Recent government focus on the subject through the commissioning of a study in 2015 has, in Mohammed's view, amounted to nothing.

*There was no change after the study, the problems continue. They passed Law 31 in 2007 but there hasn't been any effect. There are no morals, no humanity, no law.*¹²⁰

It is against this backdrop of social stigma and lack of knowledge and inadequate systems of state support, that the focus of our research into the torture and ill-treatment of persons with mental disabilities is situated.

4.4 Torture and Other Ill-Treatment of Persons with Mental Disabilities in Jordan

This part of the report sets out the Trust's findings based on the research it carried out into the treatment of persons with mental disabilities in Jordan. As noted in Part 1.3, the Trust carried out this research between November 2015 and February 2016 and in October and November of 2016. In total, the Trust spoke with 77 individuals comprising persons with mental disabilities, family members of persons with disabilities and persons who worked to care or advocate for persons with mental disabilities.

4.4.1 Involuntary Detention

As noted in Part 4.2, Jordanian law allows for persons suffering from mental illness to be detained involuntarily, which violates the requirement for medical treatment to be carried out only with consent and which may amount to torture or ill-treatment. The Trust either spoke to, or was told by a family member about, 15 individuals who had been institutionalised involuntarily, seven of whom were adults and eight were children. All except two had been referred to an institution by a family member – the other two had been referred by police. Suaad, who was institutionalised as an adult in 2016, explained that her brother took her to Al-Fhais after she locked herself in her room for several days. She challenged her detention several times and was told that she could only be released with the

¹¹⁹ Equal Rights Trust interview with Safaa, 10 November 2016, Amman, Jordan.

¹²⁰ Equal Rights Trust interview with Mohammed, 2 February 2016, Amman, Jordan.

permission of a doctor and her brother. She was then able to contact her brother who agreed that she could be released.¹²¹ Samir, who was an adult at the time that he was institutionalised, shared that he had an angry outburst at his family, who then involved the police. The police took him to Al-Fhais. He was taken by the police to Al-Fhais twice in the past two years as a result of his mental health condition, both times involuntarily.¹²²

Tamer, who only agreed to speak to the Trust after ensuring that the location of his detention would be kept confidential, explained that he was taken by his family to a mental health institution three years ago, aged 17, after he had experienced severe depression and suicidal thoughts. His family took him to the institution after a recommendation from a psychiatrist that he be institutionalised. Tamer is unsure what the motivation for this recommendation was and it is unclear whether this was a matter of disability discrimination or discrimination on grounds of sexual orientation. Either way, Tamer's story is alarming. He explained that he discussed his sexual orientation with the psychiatrist, believing the conversation was confidential. He realised after he was released that the psychiatrist had told his parents about his sexual orientation and he wondered what role this played in his institutionalisation. He was admitted to the institution twice in an eight-month period, both times for two weeks. He felt that the doctors were trying to cure his sexual orientation:

*The psychiatrist told my family [about my sexuality] (...) despite having told me that he would keep it confidential. His idea was to involve my parents in my treatment but this is wrong and unethical because the doctors and my family were trying to treat [my sexual orientation]. I had gone to other psychiatrists before and they told me this is not a mental health issue and does not need treatment.*¹²³

Tamer reported that “[I] would overhear the doctors refer to me (...) as a case of homosexuality. Then I would see the way the nurses looked at me.”¹²⁴ He explained that he felt humiliated by being made to feel like his sexual orientation was an illness and that as a result, he felt it was more difficult for him to overcome his severe depression and suicidal thoughts. After he left the institution, Tamer attempted suicide on several occasions and was again institutionalised. Tamer reported that he was only released after having to lie to his family about his sexual orientation.¹²⁵

In all cases involving children, the Trust was told that the children had been institutionalised at the request of their parents. Dunya, a single mother of three children with mental disabilities, two of whom she described as having “severe

121 Equal Right Trust interview with Suaad, 16 November 2016, Amman, Jordan.

122 Equal Right Trust interview with Tamer, 16 November 2016, Amman, Jordan.

123 *Ibid.*

124 *Ibid.*

125 *Ibid.*

mental disabilities,” reported that she needed to rely on the specialised care provided by an institution run by the Ministry of Social Development to help her with her children. She placed her two sons in a facility that offered educational and vocational training for children.¹²⁶

Some parents noted that they felt that having their child placed in an institution was the only option available to them. Mohammed was told by doctors that Ahmed, now 26, “has the brain capacity of a four-year-old”. Mohammed explained that, in 2004, “we had to put our son Ahmed in the Jerrash Centre (...) aged 14. The danger he posed to us was greater than the suffering he would face in there.”¹²⁷ Ahmed was then in and out of institutions for several years, against his will. Mohammed said that he felt helpless due to his son’s situation and that he felt he had no choice but to have Ahmed placed into an institution due to his violent behaviour.

Aseel placed her son in a private residential centre in Amman, The Arabic School for Special Education. She reiterated repeatedly to the Trust that she thought he would be cared for in the centre, “I thought it would be better than keeping him at home”.¹²⁸

In a 2012 report on Jordan’s compliance with the CRPD prepared by a coalition of civil society organisations (CRPD Report), it was noted that there were reports of instances of involuntary detention of longer than twenty years.¹²⁹ The Report also stated that there had been two suicides at Al-Fhais; a patient with schizophrenia committed suicide after being at the centre for over 20 years and another patient in his thirties committed suicide in circumstances which were not made public.¹³⁰

As noted in Part 4.1.2, the CRPD prohibits the involuntary institutionalisation of both children and adults. Involuntary institutionalisation on the basis of a perceived or actual impairment will always amount to arbitrary detention, a denial of a person’s right to exercise legal capacity and to live in the community, and the right to non-discrimination. Jordan is therefore, at a minimum, in violation of a number of its obligations under the CRPD through the continued use of institutionalisation and is also in violation of Article 9(1) of the ICCPR, which prohibits arbitrary detention, and Article 26 of the ICCPR, which prohibits discrimination, including on the basis of disability.

In addition, involuntary institutionalisation of persons with mental disabilities may amount to torture or other ill-treatment.¹³¹ The treatment of Tamer, who

126 Equal Rights Trust interview with Dunya, 7 November 2016, Amman, Jordan.

127 Equal Rights Trust interview with Mohammed, 22 February 2016, Amman, Jordan.

128 Equal Rights Trust interview with Aseel, 7 February 2016, Amman, Jordan.

129 See Al-Azzeh above, note 65, p. 33.

130 *Ibid.*, p. 106.

131 See discussion in Part 4.1.2.

at age 17, experienced humiliation while institutionalised as a result of being made to feel that his sexual orientation was an illness, and who felt that this made it more difficult for him to overcome his depression, amounts to degrading treatment. As noted above in Part 2.3, treatment which humiliates a person will amount to degrading treatment regardless of whether there is an intention to humiliate the person. The involuntary detention of Tamer also violates the right to non-discrimination on the basis of sexual orientation pursuant to Article 26 of the ICCPR. Detaining persons for discriminatory reasons, including on the basis of their sexual orientation, amounts to arbitrary detention in violation of Article 9(1) of the ICCPR.¹³²

As discussed above in Part 4.1.3, institutionalisation of children has severe and long-term detrimental effects on their health and development such that any institutionalisation of children, whether public or private, is likely cause suffering which, at a minimum, amounts to ill-treatment and may reach the level of severe pain and suffering to amount to torture. The specific allegations made by each of Dunya, Mohammed and Aseel in relation to their children are discussed in further detail in Part 4.4.2 below.

4.4.2 Physical and Sexual Abuse

Almost all specific allegations of physical or sexual abuse that were reported to the Trust related to children. Abuse was reported as having taken place both in public and private institutions and allegations related to treatment which had taken place in the past 15 years, up to the present day. In almost all cases, those reporting the incidents have felt unable to take action due to fear of reprisals and/or a perception that such attempts at justice will be futile. In some cases where allegations date back many years, the additional challenge of identifying individual perpetrators is particularly acute.

Mohammed admitted his son Ahmed to the government run Jerrash Centre in 2004 when Ahmed was 14. He was visited there by his parents, who saw “signs that he had been beaten”. They complained, in response to which the staff sought to justify the signs of physical abuse by explaining that Ahmed himself was very violent.¹³³

Aseel spoke to the Trust about her son, Iqbal. She told us that he lived in a private institution, the Arabic School for Special Education, from the age of seven until he was 16. Aseel stated that Iqbal is “mentally handicapped and cannot speak”. She told us that Iqbal was beaten in the centre.¹³⁴ She explained that she visited her son in a dedicated visitors’ room and never witnessed the conditions of the centre. She became aware that something had happened to her son on a visit to the centre in 2004:

132 See Human Rights Committee above, note 43, Para 17; see above, note 26, Para 40.

133 Equal Rights Trust interview with Mohammed, 2 February 2016, Amman, Jordan.

134 Equal Rights Trust interview with Aseel, 17 February 2016, Amman, Jordan.

*At first, there was a lump on his ear, they said it was just a boil. But the doctor has [now] said that it is the result of many beatings and his ear is now malformed. Then, his eye was swollen, all green and blue. He couldn't speak, so he couldn't tell me.*¹³⁵

Two years later, Aseel said that her son was permanently visually impaired in one eye. A teacher at the centre raised concerns about Iqbal's safety unofficially, telling Aseel that he had been hit in the eye. Aseel then removed her son from the institution.¹³⁶ Aseel successfully sought compensation from the centre through the courts.

While visiting the public facility in which her children were living in 2005, Dunya noticed that her son, Malik, had a broken arm that was severely bruised, cut, and bleeding. She asked Malik what had happened and he told her that he was sexually assaulted. She removed both Malik and his brother from the facility and now cares for them at home.¹³⁷

*I did not want to send my daughter to the facility because I heard rumours that this happens to girls. But my son was also sexually assaulted. They take advantage of them because they think that they are unable to talk to us.*¹³⁸

Dunya told the Trust that she felt unable to file a complaint about the incident at the facility because Malik was initially hesitant to explain to her what had happened and at the time she had not taken him to a doctor or psychiatrist. She explained that his hesitation to share the incident and her inability to obtain more information about the incident from him led her to believe that she could not prove the allegations.¹³⁹

A group of psychiatrists spoke to the Trust about the abuse they had witnessed in the overnight centres and hospitals where they had previously worked. Two psychiatrists stated that they had recently seen children "beaten and screamed at",¹⁴⁰ with one explaining:

*The staff don't know how to deal with them [patients with psychological impairments]. There is no humanity. They shout at the patients if they complain or ask for anything extra. There is intimidation.*¹⁴¹

135 *Ibid.*

136 *Ibid.*

137 Equal Rights Trust interview with Dunya, 7 November 2016, Amman, Jordan.

138 *Ibid.*

139 *Ibid.*

140 Equal Rights Trust focus group discussion, 17 November 2016, Amman, Jordan.

141 *Ibid.*

During a focus group discussion with the Equal Rights Trust, two health care practitioners reported seeing or being aware of physical abuse. One told us that in a private care centre for children with Down syndrome, she had heard of instances where the children had been “sexually abused”. She said “it’s the sort of thing that is covered up”.¹⁴² Another individual stated “I saw ill-treatment with my own eyes, especially against girls. There was one guy, who was feared by everyone because of what he did”.¹⁴³ Due to fear of reprisals, such instances remain unreported and unverifiable.

Mona spoke to us about the recent experience of her son in a private day centre for children with disabilities. Due to oxygen deprivation at birth, Mona’s son developed palsy on the left-hand side of his body. When he was a toddler, doctors told her that the condition would be permanent so she found a day centre for him to attend. She removed him from the centre when she realised that there had been ill-treatment there.¹⁴⁴

*At first, we were really engaged with the project, we thought his health and his interaction with society would improve, but then he started to refuse to go. Then we realised there had been ill-treatment from the instructors, the supervisors and the specialists – it had a bad effect on his mental health. He would cry in the mornings, and scream “I don’t want to go”. They would beat the children and shout at the children. When I went to the centre, I’d see other kids who had been beaten, crying, asking for their mothers. It was really upsetting.*¹⁴⁵

Zaynab is a mother of two children with disabilities. Her daughter, Najla, has what Zaynab describes as a “severe mental disability” and a physical disability. She told us that she decided to send her daughter to a public care and rehabilitation centre run by the Ministry of Social Development, hoping that physiotherapy would improve her daughter’s condition. One day, after taking Najla home from the centre, Zaynab noticed something very odd about Najla’s arm. Because of Najla’s disability, Zaynab was unable to properly communicate with Najla to ask her what had happened to her arm. Concerned, she took her immediately to the hospital to have her arm checked. After an X-ray, the doctor told Zaynab that Najla’s arm was broken. She suspected it was the rehabilitation centre but she was not certain.

Zaynab continued sending Najla to the rehabilitation centre in the hope that her physical condition would improve with ongoing physiotherapy. Najla’s sister, Maha, attended a session with Najla one day. After finishing the session, the therapist told Maha to take Najla outside and sit in the sun. Zaynab explained that Maha told her that when she lifted Najla, Najla started to scream and tears

¹⁴² Equal Rights Trust focus group discussion, 9 November 2016, Amman, Jordan.

¹⁴³ *Ibid.*

¹⁴⁴ Equal Rights Trust interview with Mona, 16 November 2016, Amman, Jordan.

¹⁴⁵ *Ibid.*

flooded her eyes. Maha called Zaynab, telling her that she thought that Najla's arm was broken. Zaynab once again took her to the hospital and explained that, to her sadness and frustration, Najla's arm was broken again. She confronted the physiotherapists at the centre, which denied being the source of Najla's broken arm. "She had only been there for two months (...) so I took her out of the centre."¹⁴⁶ This had happened the month before Zaynab spoke to the Trust.

The testimonies shared with the Trust in relation to private care reflect the findings made by BBC Arabic in an investigation carried out into physical abuse at private care homes for children with mental disabilities in May 2012. The investigation uncovered numerous instances of abuse including a being child jumped on until he stopped moving by a staff member for refusing to go to bed,¹⁴⁷ a child being beaten after spilling ice cream on themselves,¹⁴⁸ and a child being repeatedly kicked by a staff member on the way to the toilet.¹⁴⁹ The investigation also reported that a child was deliberately burned by a chemical substance at Arab City Centre in Amman.¹⁵⁰ In a 2012 report on Jordan's compliance with the CRPD prepared by a coalition of civil society organisations (CRPD Report), it was reported that a head teacher of a "special education association" burnt the back of pupil's hands with a hot metal spoon.¹⁵¹

A number of the allegations of physical and sexual abuse of children with mental disabilities made to the Trust amount to torture. Where children are detained in institutions, the cumulative effects of physical and sexual abuse together with the impact of institutionalisation must be considered together.¹⁵² In a number of cases before international courts, acts of sexual abuse and violence in situations of detention have been considered to amount to torture.¹⁵³ The Istanbul Protocol notes that:

Sexual torture begins with forced nudity, which in many countries is a constant factor in torture situations. An individual is never as vulnerable as when naked and helpless. (...) Furthermore, verbal sexual

146 Equal Right Trust interview with Zaynab, 7 November 2016, Amman, Jordan.

147 BBC Arabic, "Behind the Wall of Silence: BBC documentary on the care of children in Jordan", *BBC*, 14 May 2012, available at: http://www.bbc.com/arabic/middleeast/2012/05/120514_bbc_children_doc.shtml (in Arabic).

148 Arab Reporters for Investigative Journalism, "Abuse at Jordan's private care homes for mentally disabled kids", *Arab Reporters for Investigative Journalism*, 9 June 2006, available at: <http://en.arij.net/report/abuse-at-jordans-private-care-homes-for-mentally-disabled-kids>.

149 *Ibid.*

150 See above, note 147.

151 See Al-Azzeh above, note 65, p. 111; see also Saraya, "Headteacher punishes students by heating a spoon and burning them", *Saraya News*, 7 December 2009, available at: <http://www.sarayanews.com/index.php?page=article&id=16067> (in Arabic).

152 See above, Part 2.2.1 and 2.3.

153 See, for example, European Court of Human Rights (ECtHR), *Aydin v Turkey*, Application No. 23178/94, 25 September 1997, Paras 83–84; Inter-American Court of Human Rights, *Case of the Miguel Castro-Castro Prison v Peru*, 25 November 2006, Paras 309–311; Rodley, N. with Pollard, M., *The Treatment of Prisoners Under International Law*, Oxford University Press, 3rd ed., 2009, p. 96.

*threats, abuse and mocking are also part of sexual torture, as they enhance the humiliation and its degrading aspects (...) The groping of women is traumatic in all cases and is considered to be torture.*¹⁵⁴

Dunya reported to the Trust that her son had been sexually abused while resident in a government run institution. The pain and suffering caused by acts of sexual abuse, together with the suffering caused though being institutionalised, clearly amounts to the intentional infliction of severe pain and suffering and thus, in this particular case, the state must respond to an allegation of torture. Similarly, the physical abuse of children with mental disabilities in both public and private institutions may also amount to torture where the pain and suffering caused is severe. The allegations reported to the Trust of the beating of children, such as Ahmed, who was institutionalised in a public institution over a period of years, and Iqbal, who lost his sight as a result of his injuries in a private institution, are likely to have caused them severe physical and mental pain and suffering. Such treatment in a public institution always involves the state and so amounts to torture. The beating of Iqbal, in a private institution, will amount to torture if Jordan failed to take sufficient steps to monitor the centre. Again, these are serious allegations to which the state is urged to respond.

The Trust also spoke with a number of health care practitioners who reported instances of abuse of adults. Healthcare practitioners at the Al-Saf-Saf Centre,¹⁵⁵ which is an NGO-run “rehabilitative day centre”, spoke about the physical abuse that they had witnessed in other private and public hospitals where they had previously worked. One doctor told us that he worked in the Marka Military Hospital during his training. He explained that the nurses working there “used to beat [the patients] because they weren’t mental health nurses, they didn’t know or understand how to deal with [the patients]”. He stated that he once observed the director of the hospital spit on a patient with schizophrenia.¹⁵⁶ Spitting on a patient is highly likely to humiliate them, and be intended to humiliate them, and so be considered to be degrading treatment. Another doctor during the same discussion reported that her colleagues had witnessed physical abuse in a private hospital whilst training:

*[S]ome university colleagues of mine told me that when they were training in an expensive private hospital, there was woman with a mental disability who had been there for three years, paying thousands of pounds (...) she was beaten and they put cigarettes out on her skin.*¹⁵⁷

Such treatment is clearly discriminatory and very likely to cause severe pain and suffering such that it may amount to torture. As noted above, treatment

154 Istanbul Protocol, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1999, Chapter I, Para 215.

155 Equal Rights Trust focus group discussion with practitioners, Al Saf-Saf Rehabilitation Centre, 2 February 2016, Amman, Jordan.

156 Equal Rights Trust focus group discussion, Al-Saf-Saf Centre, 2 February 2016, Amman, Jordan.

157 *Ibid.*

in private institutions may be considered to be torture where the state fails to implement a system of monitoring and so may be considered as consenting to the torture. Conversations with specialists in Jordan indicate that this treatment continues today. An academic specialising in nursing spoke to the Trust about her views on treatment in public residential hospitals:

*We are not satisfied with the state of public institutions. This is a human rights issue. Public hospitals are not good at giving the right doses of drugs, there are beatings and not enough specialists.*¹⁵⁸

4.4.3 Sedation

Although a number of health care practitioners reported that they knew of patients being sedated when institutionalised, the Trust only spoke directly with one patient who reported that she was subjected to this herself. Rawan, a 50-year-old woman, is a current day patient at Al Saf-Saf, a rehabilitative day centre. She explained that before she came to the centre, she spent 10 days in a local government hospital because she had suffered from “hallucinations and fits”.¹⁵⁹ Rawan told us that her sister, who is a psychologist, took her to the hospital where “a report was made which said that I had psychosis and schizophrenia”. During the 10-day period, she remembers being awake for only two hours each day because of the medication she was given. She does not remember which medication she took, she only told us that “I took my medication, obviously. The doctor was responsible for that and for my supervision. He was responsible for me”. She reported being upset and overwhelmed by the experience and believed that it led to a bout of depression, “I felt empty there (...) I took anti-depressant medication after leaving the hospital.”¹⁶⁰

Service providers explained that sedation was used in public hospitals. In one focus group, a healthcare practitioner told the Trust that there was a policy to keep patients asleep in the government hospital where she once worked. She refused to name the hospital. She stated that “those with slightly more advanced conditions than the others [more severe mental disabilities] are given sedatives so that they remain asleep”.¹⁶¹ This testimony was supported by medical professionals in another focus group. In a conversation about public hospitals, one doctor told us that “high doses keep [patients] asleep”.¹⁶² A psychiatrist reported during another discussion that “the staff give [the patients] sedatives so they stay asleep”.¹⁶³ This was also reported by Dr Al-Azzeh, who told us that “chemical restriction, [that is] giving the patients medicine to make them relaxed and

158 Equal Rights Trust interview with an academic specialising in the provision of nursing care, 2 September 2016, Amman, Jordan. The academic asked to remain anonymous.

159 Equal Rights Trust interview with Rawan, 2 January 2016, Amman, Jordan. Rawan did not wish to provide the Trust with the name of the hospital.

160 *Ibid.*

161 Equal Rights Trust focus group discussion, 9 November 2016, Amman, Jordan.

162 Equal Rights Trust focus group discussion, The Queen Ranya Centre, 13 December 2015, Amman, Jordan.

163 Equal Rights Trust focus group discussion, 17 November 2016, Amman, Jordan.

not able to react (...) is a common thing". He highlighted that the practice could be problematic from a human rights perspective because "there is an issue of informed consent. [Patients] don't know what the alternatives are".¹⁶⁴

The use of sedation should be considered a form of restraint when its primary intended use is to restrain the movement or behaviour of a patient or it restricts the ability of a patient to make decisions.¹⁶⁵ The Special Rapporteur has noted that prolonged use of restraints may amount to torture or other ill-treatment.¹⁶⁶ The Inter-American Court of Human Rights has stated that it "considers that restraint is one of the most aggressive measures to which a patient under psychiatric treatment can be subjected."¹⁶⁷ In addition, the use of sedation without the consent of the patient will amount to a violation of the right to security of person,¹⁶⁸ a violation of the right to be treated with dignity while detained¹⁶⁹ and a violation of the requirement for medical treatment to be provided only with the informed consent of the patient.¹⁷⁰ There is some evidence to indicate that the sedation of patients in Jordan occurs without their fully informed consent and therefore amounts to a violation of the CRPD.

4.4.4 Denial of, or Lack of, Adequate Medical Care

4.4.4.1 Lack of Appropriate Care

A number of people told the Trust that they, or their child, were not provided with what they felt would have been adequate medical care. Mohammed told the Trust that his son, Ahmed did not to his knowledge receive any treatment at all while he was in the Jerrash Centre.

*I was not allowed to visit certain rooms so I can't comment on the state of the centre. My son can't speak so he can't tell us about it. Their work was easy (...) The centre was purely commercial, there were illusions of treatment and behavioural changes but it was all an illusion.*¹⁷¹

Despite this, Mohammed was frustrated when the Centre made the decision to discharge Ahmed "because there was a waiting list." Ahmed was sent home and

164 Equal Rights Trust telephone interview with Mohannad Al-Azzeh, 21 December 2016.

165 Mental Disability Advocacy Centre, *Cage beds and coercion in Czech psychiatric institutions*, 2014, p. 20; and Inter-American Court of Human Rights, *Ximenes-Lopes v Brazil*, 4 July 2006, Para 133.

166 See above, note 8, Para 63; see above, note 7, Para 55. Neither of the reports specifies in which circumstances the use of restraints will amount to torture and in which circumstances it will amount to other ill-treatment, but given that both reports are referring to persons with disabilities in institutions, presumably the distinction is based on the severity of the pain and suffering involved.

167 See Inter-American Court of Human Rights above, note 165, Para 134.

168 International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, 1966, Article 9(1). The Human Rights Committee has explained that "[t]he right to security of person protects individuals against intentional infliction of bodily or mental injury", see Human Rights Committee above, note 43, Para 9.

169 ICCPR, Article 10(1).

170 CRPD, Article 25(d).

171 Equal Rights Trust interview with Mohammed, 22 February 2016, Amman, Jordan.

given a monthly prescription, yet Mohammed told us that “they didn’t make any checks to see if he had improved or not”.¹⁷²

Adam was in his 30’s when he was diagnosed with schizophrenia in 2008. He told us that his two brothers did not feel able to cope with him at home and therefore sought to have him admitted to Al Fhais, where he spent 18 months in residential care. He reported that each morning, he was attended by a nurse who would give him his medicine. In the afternoons, his door would be locked, and there would be no medical support.

*The only people that came in the afternoon were unqualified people, they couldn’t give me drugs. I was locked in, I couldn’t leave. I would have liked to see a nurse in the afternoons.*¹⁷³

Suaad, who was involuntarily taken to Al-Fhais, similarly explained that, “you are just there for medication. The doctors and nurses don’t try to connect with us. There is no compassion and no care.”¹⁷⁴ Maha told the Trust that her nephew spent some time in Al-Fhais after outgrowing specialist centres in Amman and Zaifa. She told us that the “hospital was overcrowded, there weren’t enough rooms to accommodate everyone there, there wasn’t any therapy”. She also spoke about her uncle:

*My uncle has Alzheimer’s, he couldn’t look after himself so we took him to a hospital and we thought he’d be treated there. The first night we took him there, we made sure there was a special nurse who could look after him and stay with him. We were really surprised when we visited and didn’t find a nurse anywhere near him. There was a lack of care.*¹⁷⁵

One doctor reported that in a hospital that he had previously worked in, patients were not allowed to leave their rooms although “they might be allowed to move about in the corridors”.¹⁷⁶

The existence of medication distribution centres which offer no other complementary services was noted by health care providers and patients alike.¹⁷⁷ Rozan, attends a drug distribution centre. She explained to the Trust that she does not want to take medication, but after the closure of the behavioural therapy centre she attended, her details were passed to a medication distribution centre. The centre is only equipped to distribute medication, and she goes there to collect

172 *Ibid.*

173 Equal Rights Trust interview with Adam, 1 February 2016, Amman, Jordan.

174 Equal Right Trust interview with Suaad, 16 November 2016, Amman, Jordan.

175 Equal Rights Trust interview with Maha, 16 November 2016, Amman, Jordan.

176 Equal Rights Trust focus group discussion, Al-Saf-Saf Centre, 2 February 2016, Amman, Jordan.

177 Equal Rights Trust interview with Maha, 16 November 2016, Amman, Jordan; Equal Rights Trust interview with Rozan, 21st February 2016, Amman, Jordan; Equal Rights Trust interview with Haifa al-Bashir, 2 February 2016, Amman, Jordan.

her anti-depressant pills. She feels that she has no other option: “I don’t like taking the medication”.¹⁷⁸

Failing to provide adequate medical care to persons with disabilities violates their right to the enjoyment of the highest attainable standard of health.¹⁷⁹ This is particularly true where persons are detained involuntarily in institutions, as in the case of Ahmed and Suaad, as such persons have no ability to seek medical care themselves. Persons who are detained must be provided with appropriate health-care and a failure to do so violates their right to be treated with humanity and respect for their dignity.¹⁸⁰ As noted above in Part 4.1.1, failing to provide adequate medical care may also lead to mental or physical suffering that, where severe, violates the prohibition on torture and, where less than severe, other ill-treatment. At best, Jordan is therefore failing in its obligations to safeguard against torture and other ill-treatment.¹⁸¹ In addition, in circumstances in which a failure to provide adequate treatment risks the life of a patient, Jordan is failing to safeguard patient’s right to life. As the European Court of Human Rights (ECtHR) has noted, in comments which apply equally to international human rights obligations:

*Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Where the authorities decide to place and maintain in detention a person with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to his special needs resulting from his disability.*¹⁸²

4.4.4.2 Failure to Inform of Diagnosis or Explain Treatment

A number of individuals that the Trust spoke to also explained that they were not told of their own diagnosis or did not have their treatment explained to them. Rawan explained that she did not know the name of the hospital nor her diagnosis after her sister took her to the hospital for treatment: “I was behaving strangely and my doctor confirmed that I was in a kind of stupor. I don’t know what the diagnosis was exactly.”¹⁸³

Nisreen was diagnosed in her late teens with severe chronic depression. Twenty years later, in 2016, she explained that she still experiences difficulties

178 Equal Rights Trust interview with Rozan, 21 February 2016, Amman, Jordan.

179 CRPD, Article 25; International Covenant on Economic, Social and Cultural Rights (ICESCR), 993 U.N.T.S. 3, 1966, Article 12.

180 ICCPR, Article 10(1); Human Rights Committee, *McCallum v South Africa*, Communication No. 1818/2008, UN Doc. CCPR/C/100/D/1818/2008, 2 November 2010, Paras 6.8 and 7, which discussed healthcare in a prison setting.

181 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1465, U.N.T.S. 85, 1984, Article 2(1).

182 ECtHR, *Jasinskis v Latvia*, Application No. 45744/0821, 21 December 2010, Para 59. The case was considered under Article 2 of the ECHR (the right to life) as it concerned the death in police custody of the applicant’s son, who was deaf and unable to speak.

183 Equal Rights Trust interview with Rawan, 2 January 2016, Amman, Jordan.

when seeking support for her mental illness. She noted that even when doctors are willing to provide care to patients, they may not explain the type of care they are providing and the possible side effects associated with the care. This takes away the ability of the patient to make decisions about their own care:

*I consider it my right to understand my treatment. And if I can't because of my disability or illness? Then it is important for caregivers to be present to understand because they will be the one seeing the impact of the medication. Some doctors see patients as a testing group for new medication. They will try to give them new medicine to see if it helps their mental illness and would not even tell the patient this is happening to get their approval.*¹⁸⁴

One healthcare practitioner reported to the Trust that there is an inconsistency between services and diagnoses across centres.

*We see a child for two minutes and he is behaving strangely – for example, he might not be engaging socially – so we say that he has a problem. Then when the same child goes to the national centre, he goes to a session which lasts between five and ten minutes and then they write that he is not suffering from a mental illness.*¹⁸⁵

This view was supported by the example provided to the Trust by a case-worker who saw a child who had suffered domestic abuse:

*We had a case (...) A doctor from the Ministry of Social Development told the patient that she had a severe mental illness and a mental health doctor saw her and told her the same thing. So, we sent her to the child protection centre and they sent her to the Bashir Hospital and Bashir sent her to the national centre [at Al Fhais] where they wrote a report saying that she didn't have any illness. My role as a case worker was to visit her and I saw her condition – she was suffering from a neurological illness.*¹⁸⁶

One academic with experience in the provision of nursing care believed that lack of consistency could be linked to a “lack [of] competent social workers to work with the families and inform them of their rights and options.”¹⁸⁷ The editor of the CRPD Report, Dr Mohannad Al-Azzeh, noted that social stigma and a general lack of expertise in psychiatry in Jordan were barriers to achieving clear diagnosis and understanding among patients and their families.¹⁸⁸

184 Equal Rights Trust interview with Nisreen, 31 October 2016, Amman, Jordan.

185 Equal Rights Trust focus group discussion, The Queen Ranya Centre, 13 December 2015, Amman, Jordan.

186 Equal Rights Trust focus group discussion, The Queen Ranya Centre, 13 December 2015, Amman, Jordan.

187 Equal Rights Trust interview with an academic specialising in the provision of nursing care, 2 September 2016, Amman, Jordan. The academic asked to remain anonymous.

188 Equal Rights Trust telephone interview with Dr Mohannad Al-Azzeh, 21 December 2016.

Maha reported that her nephew's psychological illness has never been diagnosed:

*One doctor told us it was a mental illness, the other said it was a psychiatric illness, we had lots of different diagnosis. Every doctor who saw him gave him medicine, each type of medicine different from the first.*¹⁸⁹

The testimonies gathered by the Trust support those in the CRPD Report, which notes that persons reported being given medication without knowledge of what the medication was or its effects.¹⁹⁰ Failing to provide persons with disabilities with information about their diagnosis or the medical treatment they receive is a blatant violation of their right to provide free and informed consent to medical treatment.¹⁹¹ As noted above in Part 4.1.1, providing this information to a substituted decision maker or parent is not sufficient. Furthermore, any form of medical or scientific experimentation without consent, as alleged by Nisreen, is expressly prohibited in both the CRPD and the ICCPR.¹⁹²

4.4.4.3 Insufficient Healthcare Facilities

The Trust was told on a number of occasions that facilities for mental health care in Jordan are not adequate. Nisreen explained that she was frustrated due to the lack of flexibility with, and limited availability of, appointments at the Ministry of Health psychiatric facilities. She was told by the employees of these facilities that because of limited government facilities and specialists available at these facilities, it could take two to three weeks to secure an appointment date for an individual with an open case who needs to immediately see a psychiatrist because they are suicidal.

*What happens when someone has an emergency need to see a specialist, let's say [she is] experiencing suicidal thoughts. The answer? Wait your turn. But I can't wait my turn. I have an urgent need and if I wait it might be over. There needs to be a method in which appointments can be prioritised. Not everyone needs to see a doctor urgently or on a regular basis.*¹⁹³

Nisreen's views are supported by the reports provided to the Trust by health care practitioners. A consultant psychiatrist working in the public health sector stated that government hospitals are understaffed. "We would like to have more

189 Equal Rights Trust interview with Maha, 16 November 2016, Amman, Jordan.

190 See Al-Azzeh above, note 65, p. 121.

191 CRPD, Article 25(d).

192 CRPD, Article 15(1); ICCPR, Article 7.

193 Equal Rights Trust interview with Nisreen, 31 October 2016, Amman, Jordan.

staff. [With regards to] global standards we don't have enough staff".¹⁹⁴ This was supported by another healthcare practitioner, who commented that the government hospital where she was first posted was understaffed: "The doctors spent five minutes per week with each patient, and there was no psychiatric consultant".¹⁹⁵ Another doctor raised the same point, noting that, "we don't have many mental health specialists and the number of mental health cases is increasing because of Syrian refugees - we have eight specialists and they can see between four and five people a day, five days a week."¹⁹⁶ As noted in Part 4.2, Dr Al-Azzeh reported that he was aware of only one specialist paediatric psychiatrist in Jordan.¹⁹⁷ Dunya reported that while visiting her sons in a public medical facility, she noted that there was no proper supervision or activities for the children. She stated that they had spent all day sitting outside in the garden doing nothing.¹⁹⁸ Marwan's children, one of whom had a mental disability, were both placed in an orphanage which was also understaffed.

*There are supervisors but the boys are always grouped together, it was chaotic. When I went to see my children they'd always be too scared to speak.*¹⁹⁹

As noted above in Part 4.1.1, the right to health requires that Jordan provide a good quality of health care to persons with mental disabilities, including sufficient numbers of adequately trained staff.²⁰⁰ The reports provided to the Trust indicate that there are far too few psychiatrists in Jordan, particularly those who can provide care to children.

4.4.4.4 Discriminatory Refusal to Provide Other Medical Care

A number of parents told the Trust that their children were refused medical care for conditions and illnesses unrelated to their disability. Abeer explained her experience ten years ago of taking her then seven year old son to the Tutanji Hospital in Sahab district in Amman:

*Once my son accidentally drank lighter fluid, he didn't know what he was doing. I took him to the emergency room because he couldn't breathe and was turning blue. They refused to help him because he had insurance for individuals with disabilities (...) they said that either I pay out of pocket or they won't help.*²⁰¹

194 Equal Rights Trust interview with a consultant psychiatrist working in the public health, Ministry of Health, 27 December 2015, Amman, Jordan. The psychiatrist asked to remain anonymous.

195 Equal Rights Trust focus group discussion, 9 November 2016, Amman, Jordan.

196 Equal Rights Trust focus group discussion, The Queen Ranya Centre, 13 December 2015, Amman, Jordan.

197 Equal Rights Trust telephone interview with Dr Mohannad Al-Azzeh, 21 December 2016.

198 Equal Rights Trust interview with Dunya, 7 November 2016, Amman, Jordan.

199 Equal Rights Trust interview with Marwan, 16 November 2016, Amman, Jordan.

200 See above, note 13, Para 12.

201 Equal Right Trust interview with Abeer, 10 November 2016, Amman, Jordan.

Doctors treated Abeer's son but only after she agreed to pay and not use her son's insurance. At the time, she complained about the refusal to accept her son's insurance directly to the doctors but they did not react to her complaint. She explained that she did not think about filing a complaint to anyone else after the incident, as she had been so focussed on getting her son medical help. Looking back on the incident, Abeer said that even if it did cross her mind to file a complaint, she would not know where to go to file the complaint and it would take too long and require too much follow up from her.²⁰²

Mariam explained to the Trust that she takes her son for regular medical care at a public hospital. On one occasion in 2016, the doctor that usually provided her son with medical care was not available so her son had to see another doctor. When they entered the examination room, the second doctor looked at her son and refused to provide him with medical care. Mariam reports that she was disappointed and frustrated because the medical issue her son needed assistance with was not even related to his mental disability.²⁰³ Mariam said that when she asked about the previous doctor, she was initially told that doctor did not work at the hospital anymore. Upon further inquiry, she was told by a nurse that the previous doctor was now refusing to treat her son. Eventually a third doctor stepped in, apparently telling Mariam that she did so because "she disapproved of the other doctors' discriminatory treatment."²⁰⁴

Similarly, Salma stated that her daughter experienced "discriminatory treatment from a doctor",²⁰⁵ who refused to provide her with medical care.²⁰⁶ Abeer explained to the Trust that she was told by some doctors that they refuse to treat children with mental disabilities: "Doctors think that if they were to provide our children with medical care, the child could get severely injured or have a break down and hurt the doctor."²⁰⁷ She noted that there are some doctors who treat children with mental disabilities, but stated that they are not always known unless families share this information with each other.

Leyla's 15-year-old daughter has Down syndrome. Her experiences with doctors have also been negative. She described how her consultant advised that if she was a "good mother" she would take her daughter to a "specialist hospital which costs 150 dinars a day".²⁰⁸ Fatima also told the Trust about her experiences with medical professionals when seeking treatment for her child, who has Down Syndrome. "There is no support" she explained, "doctors, opticians and dentists can refuse to deal with [children with Down syndrome]".²⁰⁹

202 *Ibid.*

203 Equal Right Trust interview with Mariam, 7 November 2016, Amman, Jordan.

204 *Ibid.*

205 Equal Right Trust interview with Salma, 7 November 2016, Amman, Jordan.

206 *Ibid.*

207 Equal Right Trust interview with Abeer, 10 November 2016, Amman, Jordan.

208 Equal Rights Trust interview with Leyla, The Jasmine Centre, 19 February 2016, Amman, Jordan.

209 Equal Rights Trust interview with Fatima, The Jasmine Centre, 19 February 2016, Amman, Jordan.

Like Fatima, several parents who spoke with the Trust stated that their children were denied dental care due to dentist's fears of treating with persons with mental disabilities.²¹⁰ Duaa has tried taking her daughter to numerous dentists with no success.

*I only wish I could pay the expenses of a private care dentist. Because no dentist I visit is willing to provide dental care for my daughter stating they don't have the resources for her teeth, her teeth [are] getting worse and it is affecting her.*²¹¹

Ziyad experienced a similar situation with his son. He explained that all of the dentists that he spoke to at public care centres refused to provide his son with dental care. He was not aware of any complaint system being in place that would allow him to complain about the refusals to treat his son, but even if there was a system, the process would be long, require much energy and have an uncertain outcome. The only solution Ziyad could find was to cover the full expense of taking his son to a private dentist himself.²¹²

The cases reported to the Trust indicate blatant discrimination in the provision of healthcare services to persons with disabilities, in violation of their right to the enjoyment of the highest attainable standard of health.²¹³ The denial of emergency healthcare in the case of Abeer's son, who had drunk lighter fluid and was having difficulty breathing, is of particular concern. In addition to being discriminatory, the physical and mental pain and suffering caused by a denial of emergency healthcare in such circumstances is likely to reach the minimum level of severity to be considered inhuman treatment. As the denial has allegedly taken place in a public hospital, this would amount to a violation of the prohibition on other ill-treatment. The state has a clear obligation to investigate such incidents and ensure there are adequate prevention mechanisms in place.

4.4.5 Lack of Oversight of Medical Care

As noted in Part 4.2, the Ministry of Social Development is responsible for monitoring the provision of public health care and for monitoring and licensing private healthcare providers.²¹⁴ However, the Trust was told on a number of occasions that monitoring was not sufficient. Two healthcare practitioners who reported that they had either seen or heard of instances of children being sexually assaulted in institutions explained that they both believed that the abuse would not have happened had there been more surveillance and

210 Equal Rights Trust interview with Abeer, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Ziyad, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Duaa, 10 November 2016, Amman, Jordan; Equal Rights Trust interview with Safaa, 10 November 2016, Amman, Jordan.

211 Equal Right Trust interview with Duaa, 10 November 2016, Amman, Jordan.

212 Equal Rights Trust interview with Ziyad, 10 November 2016, Amman, Jordan.

213 CRPD, Article 25; ICESCR, Article 12.

214 See Al-Azzeh above, note 65, p. 199; Equal Rights Trust telephone interview with Dr Mohannad Al-Azzeh, 21 December 2016.

monitoring, citing that the installation of video cameras or the threat of global investigations would be a possible deterrent to this behaviour. In the same discussion, another healthcare practitioner told us that there was a need for stricter conditions when giving licenses to private institutions.²¹⁵

Marwan, whose son was sexually assaulted in an institution, told the Trust that there needed to be more supervision of public institutions, “[t]here should be surprise inspections and interviews with the children, there is no follow up.”²¹⁶ Salma, a mother of three girls, two of whom have mental disabilities, spoke to the Trust about care centres:

*There is no accountability and monitoring of these centers. Resources and staff capacity are low so you will see this type of behaviour [physical and sexual abuse]. Their programs are not evaluated so you cannot tell if what they offer helps the children improve [in their development].*²¹⁷

Dr Al-Azzeh noted that although the Ministry of Social Development had increased its efforts to monitor institutions in recent years and new licensing regulations had been put in place in 2014, there was still a need for better monitoring and documentation mechanisms in Jordan.²¹⁸

As part of its obligations to prevent torture and other ill-treatment, Jordan must:

*[E]stablish independent monitoring mechanisms at all places of deprivation of liberty, including places run by private actors, through regular and unannounced visits, and to include civil society organizations in the monitoring of places of deprivation of liberty.*²¹⁹

Where Jordan fails to properly implement systems for monitoring it becomes responsible for the acts of private individuals in private health care centres and institutions, including where such acts otherwise amount to torture or other ill-treatment.

4.5 Conclusions and Recommendations

The research carried out by the Trust demonstrated widespread discrimination against persons with mental disabilities in Jordan, including in particular in access to healthcare and education, with societal stigma and a lack of appropriate government action being particularly prevalent. The research indicates that

215 Equal Rights Trust focus group discussion, 9 November 2016, Amman, Jordan.

216 Equal Rights Trust interview with Marwan, 16 November 2016, Amman, Jordan.

217 Equal Right Trust interview with Salma, 7 November 2016, Amman, Jordan.

218 Equal Rights Trust telephone interview with Mohannad Al-Azzeh, 21 December 2016.

219 See above, note 57, Para 85(r). See also above, note 8, Para 85(b).

Jordan is also failing in its obligations under the CRPD by continuing to provide segregated schooling and by failing to provide inclusive education.

Most notably, the research carried out by the Trust points to the existence of egregious instances of discriminatory torture and other ill-treatment occurring in relation to the physical and sexual abuse of children in institutions, and also in day and rehabilitation centres. Such instances have been alleged to be taking place in both public and private institutions. This indicates both direct violations by the state as well as serious failings in its due diligence obligations.

Further, institutionalisation is, in and of itself, a violation of the CRPD and, in many cases, will itself amount to a violation of the right to freedom from cruel, inhuman and degrading treatment. Involuntary institutionalisation on the basis of disability will always be arbitrary and violate the right to liberty of person. In this regard, it is important to note that depriving a person of their legal capacity or providing them with a substitute decision maker does not negate the need for the person to provide informed consent. The research revealed several instances in which people had been institutionalised without their consent, or provided with medical treatment without their fully informed consent. A number of people reported that they were not aware of their own diagnosis or what medication they were taking. In addition, further violating the right to health of persons with disabilities, a number of people reported receiving inadequate medical care to treat their disability or being denied medical care for other illnesses. Such instances may amount to ill-treatment where they cause sufficient pain and suffering. It is clear that Jordan is failing to safeguard against the torture and other ill-treatment of persons with mental disabilities in the provision of medical care through failing to monitor both public and private institutions and other care centres.

4.5.1 Recommendations to the Jordanian Government

In light of the above findings and conclusions, it is recommended that Jordan:

Immediately end the institutionalisation of adults and children with mental disabilities and instead provide for community based living. The families of children with mental disabilities should be provided with the support necessary to allow their children to live at home. Where this is not possible, children should be placed in a family setting. In this regard, Jordan must repeal Article 14(a) of the Public Health Act, which provides for involuntary institutionalisation on the basis of mental illness.

Investigate and prosecute acts of abuse against persons with disabilities, including as torture pursuant to Article 208 of the Penal Code. Where physical and sexual abuse are perpetrated against persons with mental disabilities in institutional or health care settings (whether public or private), prosecutors should work from a presumption that such abuse amounts to torture and only charge with a lesser offence if the circumstances conclusively show that torture cannot be established. In this regard, Jordan should increase the penalty for torture to reflect its abhorrent nature. Jordan should introduce aggravated punishment for

crimes committed with discriminatory motives and ensure that all investigations of crimes seek to unmask such motives.²²⁰

Increase efforts to monitor health care and other services to persons with mental disabilities such that a comprehensive system of monitoring which is able to uncover instances of torture and other ill-treatment and other human rights violations, is implemented and enforced. Such a system must be independent (including from the Ministry of Social Development) and sufficiently resourced both financially and through a sufficient number of appropriately trained staff. All monitoring visits must be unannounced. The monitoring system should cover not only hospitals and other health care providers but all places where persons with disabilities are provided with services, such as schools.

Amend legislative provisions which allow for persons with disabilities to be deprived of their legal capacity and which provide for substituted decision-making. Jordan should implement a system of supported decision making for persons with disabilities.

Amend Article 6 of the Constitution in order to explicitly prohibit discrimination on the basis of disability (and other grounds) and introduce comprehensive anti-discrimination law to prohibit discrimination against all minority groups. Such legislation should, amongst other things, provide a definition of discrimination which encompasses both direct and indirect discrimination, harassment and failure to make reasonable accommodation,²²¹ prohibit discrimination in all areas of life regulated by law, require positive measures to be taken by the state to ensure equality,²²² prohibit victimisation of persons alleging discrimination²²³ and also provide for procedural safeguards, including allowing for a reversal of the burden of proof.²²⁴

Ensure that the proposed new Law on the Rights of Persons with Disabilities complies with the provisions of the CRPD and provides persons with disabilities with enforceable rights. End the use of segregated schooling and provide children with disabilities with the support needed to ensure their attendance in mainstream schooling in an inclusive manner. Schools should be provided with sufficient financial resources to allow for inclusive education and staff should be provided with training on the rights of children with disabilities.

Provide sufficient financial resources to healthcare services to ensure that persons with mental disabilities receive adequate care and ensure that healthcare staff receive training on the rights of persons with disabilities and what

220 See ECtHR, *Identoba and Others v Georgia*, Application No. 73235/12, 12 May 2015, Para 67; ECtHR, *MC and AC v Romania*, Application No. 12060/12, 12 April 2016, Para 113. See also ECtHR, *Nachova and Others v Bulgaria*, Application No. 43577/98 and 43579/98, 6 July 2005, Para 160.

221 Equal Rights Trust, *Declaration of Principles on Equality*, London, Principle 5.

222 *Ibid.*, Principle 3.

223 *Ibid.*, Principle 19.

224 *Ibid.*, Principle 21.

amounts to discrimination. Efforts should also be made to increase the number of health care practitioners specialising in the care of persons with mental disabilities in Jordan.

Implement public awareness campaigns to reduce the stigma associated with mental disabilities, to promote the rights of persons with disabilities and to educate people on the different situations and needs of individuals with intellectual and psychosocial disabilities.

Honour its standing invitation to special rapporteurs and welcome a visit from the Special Rapporteur on the rights of persons with disabilities.

4.5.2 Recommendations to International Human Rights Bodies

As has been noted elsewhere, there are a number of apparent inconsistencies in the interpretation of human rights law as it relates to persons with disabilities. For example, the CRC refers to placing children who cannot remain with their family in “suitable institutions for the care of children”.²²⁵ This apparently contradicts the provisions of the CRPD which do not allow for children to be placed in institutions.²²⁶ It is therefore recommended that treaty bodies and special procedures work together to establish unified standards to protect the rights of persons with disabilities based on the standards established in the CRPD. In relation to Jordan specifically, it is recommended that:

Treaty bodies who are reviewing Jordan reviewing Jordan, in particular the CRPD Committee whose review of Jordan is forthcoming, seek information on instances of discriminatory torture and other ill-treatment of persons with disabilities in Jordan and press for Jordan to prosecute such instances, including through the Article 208 prohibition of torture in the Penal Code. All bodies, not just the Committee Against Torture, should recommend that Jordan amend the Penal Code to increase the punishment for torture.

The Special Rapporteur on the rights of persons with disabilities should request to visit Jordan as soon as possible. This visit would provide Jordan with vital expertise as it seeks to amend its Law on the Rights of Persons with Disabilities.

4.5.3 Recommendations to Civil Society

Civil society is urged to work to monitor violations of the rights of persons with disabilities in Jordan and to publicise widely the findings of such monitoring, including to international human rights bodies and the Jordanian government. It is also recommended that civil society advocate for the achievement of the recommendations set out in Part 4.5.1.

²²⁵ CRC, Article 20(3).

²²⁶ See Rosenthal above, note 9, p. 21.

5. PROTECTIVE CUSTODY

Violence against women represents one of the most pressing challenges to the equality of women in Jordan. It is reported that over a third of women in Jordan experience physical violence in their lifetime, with 70% of women agreeing that a husband was justified to beat his wife in certain circumstances.¹ Gender-based violence² is prevalent. In 2015, the Committee Against Torture noted that it was:

[S]eriously concerned that gender-based violence, including domestic violence and crimes committed in the name of “honour”, remains widespread in the State party.³

Similarly, in 2012, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) expressed “concern at the high prevalence of violence against women in [Jordan].”⁴ Of particular concern, 2016 has seen a reported 53% increase in the number of honour killings of women.⁵ Infidelity, sex before marriage, and talking to unrelated men have been highlighted by the UN Special Rapporteur on Violence against Women as motivations for honour killings.⁶ Women’s groups have expressed concern that such forms of violence have historically not been treated with a sufficient degree of severity, with perpetrators sentenced to around six months imprisonment “due to mitigating cir-

1 Prettitore, P. “How Jordan is expanding its assistance to victims of gender-based violence”, *World Bank Blog*, 15 May 2015, available at: <http://blogs.worldbank.org/voices/how-jordan-expanding-its-assistance-victims-gender-based-violence>. The Organisation for Economic Cooperation and Development (OECD) reported in 2014 that 23% of women would experience intimate partner violence in their lifetime, OECD, *Violence Against Women*, 2014, available at: <https://data.oecd.org/inequality/violence-against-women.htm>.

2 The Committee on the Elimination of Discrimination against Women (CEDAW Committee) defines gender-based violence as “violence against a woman because she is a woman or which affects a woman disproportionately”. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” See, CEDAW Committee, *General Recommendation No. 19: Violence against women*, UN Doc. A/47/38, 1992, Para 6. This report uses the term gender-based violence to refer to violence against women. However, it should be noted that gender-based violence encompasses “any harmful act directed against individuals or groups of individuals on the basis of their gender.” See Human Rights Council, *Analytical study focusing on gender-based and sexual violence in relation to transitional justice: Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/27/21, 30 June 2014, Para 3.

3 Committee Against Torture, *Concluding observations on the third periodic report of Jordan*, UN Doc. CAT/C/JOR/CO/3, 29 January 2016, Para 39.

4 CEDAW Committee, *Concluding Observations: Jordan*, UN Doc. CEDAW/C/JOR/CO/5, 23 March 2012, Para 25.

5 Human Rights Watch, “Recorded ‘Honor’ Killings on the Rise in Jordan”, *Human Rights Watch*, 27 October 2016, available at: <https://www.hrw.org/news/2016/10/27/recorded-honor-killings-rise-jordan>.

6 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 24.

cumstances invoked by the Penal Code.”⁷ Several UN treaty bodies have also criticised Jordan for failing to adequately protect women who have been subject to violence more broadly.⁸ The CEDAW Committee has criticised,

*[T]he limited protection, counselling, rehabilitation and reintegration assistance and services the State party provides to girls and women victims of violence, including the insufficient number of shelters for victims of domestic violence, and the lack of shelters for victims of sexual abuse and for women facing death threats on grounds of so-called family honour.*⁹

However, the state continues have recourse to protective custody, which violates victim’s rights and arguably exacerbates the problem, allowing perpetrators to act with impunity.¹⁰ Protective custody refers to the detention of women ostensibly to protect them from the threat of actual or perceived violence.¹¹ Protective custody is one form of administrative detention used in Jordan (other examples of administrative detention prevalent in Jordan include migrant workers who are often detained when they do not have residency or identification papers).¹² As is detailed in Part 5.3 below, there is a lack of clarity as to how many woman are currently held in protective custody. According to the latest available statistics, 140 women imprisoned in Jordan’s Juweidah and Um al-Lulu women’s detention centres are administrative detainees, representing just under a third of all women imprisoned.¹³ The number of women who are being held in protective custody is unclear. It is reported that 67 of those 140 detainees are Jordanian nationals, the majority of whom are being held “for their protection”.¹⁴ Reports on the number of women in protective custody vary. At the end of 2011, 25 women in protective custody were identified and at least seven at the beginning of 2015.¹⁵

7 Arab Women Organization and Others, *Submission to the Committee on the Elimination of Discrimination against Women on Jordan*, 2012, p. 25, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/JOR/INT_CEDAW_NGO_JOR_51_9260_E.pdf.

8 See, for example, above, note 4, Paras 26–27; Human Rights Committee, *Concluding Observations: Jordan*, UN Doc. CCPR/C/JOR/CO/4, 18 November 2010, Para 8 (in relation to crisis centres).

9 See above, note 4, Para 27.

10 See Part 5.3 below.

11 See Part 1.3 of this report.

12 Human Rights Watch, *Guests of the Governor: Administrative Detention Undermines the Rule of Law in Jordan*, 2009, p. 2.

13 Al Emam, D., “Administrative Detention of Women for Protection is ‘Illegal’, Activists Say” *The Jordan Times*, 1 November 2016, available at: <http://jordantimes.com/news/local/administrative-detention-women-protection-illegal%E2%80%9999-activists-say>. Statistics collected by the National Centre for Human Rights (NCHR) in March 2014 suggest a greater number of administrative detainees. Of a total 513 female inmates at the Jweideh and Um Al Lulu women’s detention centres, 254 were administratively detained (49.5%). See National Centre for Human Rights, *The Status of Female Inmates at Reform and Rehabilitation Centres in Jordan*, 2014, p. 40, available at: <http://www2.unwomen.org/~media/field%20office%20jordan/attachments/what-we-do/evaw/status%20of%20female%20inmates.pdf?v=1&d=20141201T111223>.

14 *Ibid.* Al Emam, D. This is discussed further in section Part 5.3 of this report.

15 7iber, “Seven Oppressed Women: Witness Accounts on Administrative Detention under the Pretext of Protection from ‘Honour’ Crimes”, 7iber, 25 January 2015, available at: <http://www.7iber.com/2015/01/women-detention-testimonials>; see above, note 6, Para 27; Glenister, J., “Good Intentions? Can the Protective Custody of Women Amount to Torture?” *Equal Rights Review*, Vol. 16, March 2016, pp. 14–16.

The protective detention of individuals adjudged to face a risk of violence has been routinely criticised by UN treaty mechanisms¹⁶ and independent NGOs, who have called on the government to abolish the practice and have submitted proposals for change.¹⁷ At the time of writing this report, two government-run domestic violence shelters had been established and were operating within Jordan: branches of the Dar Al Wafiq Shelter in Amman, since 2007, and, Irbid since March 2015.¹⁸ This is an encouraging first step toward the elimination of discrimination against women. In addition, a Ministry of Justice official recently assured stakeholders of plans to open a “special shelter for women who are placed in protective custody” (subject to Cabinet approval).¹⁹ However, at present measures do not go far enough to ensure the adequate protection of women who have been, or may be, subject to violence and Jordan is failing to meet its obligations under international human rights law to eliminate gender-based violence.²⁰

In light of these failings and particularly the ongoing use of protective custody, this report again shines a light on the suffering caused by protective custody. The first section of this part sets out the obligations of Jordan to combat violence against women, providing a framework to consider how the use of protective custody is contrary to these obligations. Part 5.2 then provides a brief overview of the law relating to violence against women in Jordan, highlighting the illegal use of the Crime Prevention Law to justify detaining women in protective custody. Part 5.3 details women’s experiences of protective custody and is based on the findings of the Trust’s research and other pre-existing research. A total of 21 women who were, or who had been, in protective custody at Juweida Women’s Correctional Facility (Juweida) were interviewed. In addition, 23 persons who worked with women detained in protective custody, including two previous directors of Juweida and a number of lawyers were interviewed or took part in focus group discussions. The final section of this Part then sets out conclusions and recommendations

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- 16 CEDAW Committee, *Concluding Observations: Jordan*, UN Doc. CEDAW/C/JOR/CO/4, 10 August 2007, Para 25; see above, note 6, Para 88(k); see Human Rights Committee above, note 8, Paras 8–9; see above, note 3, Paras 21–22; and Human Rights Council, *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, Manfred Nowak: Addendum, Mission to Jordan, UN Doc. A/HRC/4/33/Add.3, 5 January 2007, Appendix, Para 39.
 - 17 Mizan Law Group for Human Rights, *Submission to the Committee against Torture on Jordan*, 2010, Para 7.7, available at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/JOR/INT_CAT_NGO_JOR_44_9257_E.pdf.
 - 18 Jordan Times, “Ministry Extends Social Protection to Women of all Nationalities – Abu Hassan”, *Jordan Times*, 4 November 2015, available at: <http://www.jordantimes.com/news/local/ministry-extends-social-protection-women-all-nationalities-%E2%80%94-abu-hassan>.
 - 19 Hussein, R., “Activists Urge Justice for Torture Victims”, *Jordan Times*, 25 October 2016, available at: <http://www.jordantimes.com/news/local/activists-urge-justice-torture-victims>.
 - 20 For example, see CEDAW Committee above, note 2, Paras 6 and 9, where the CEDAW Committee emphasised that gender-based violence is a form of discrimination as recognised under Article 1 of the Convention. States may be held responsible for the acts of private individuals where they “fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.” Additionally, the Human Rights Committee has stressed that honour-based crimes, where unpunished, violate the Covenant, including in relation to Article 26 (prohibition of discrimination). See Human Rights Committee, *General Comment No. 28: Equality of Rights between Men and Women*, UN Doc. CCPR/C/21/Rev.1/Add.10, 2000, Para 31.

based on this framework, noting that the use of protective custody violates a number of Jordan's human rights obligations. It is hoped that this continued focus on protective custody will finally result in the Jordanian government ending this practice.

5.1 Protective Custody in International Law

The practice of detaining women to protect them from honour crimes or other forms of gender-based violence has gained increasing international attention. In 2001, the Working Group on Arbitrary Detention urged states to "reconsider recourse to deprivation of liberty in order to protect victims", noting that detention may only be permitted where (i) subject to judicial supervision; (ii) utilised as a measure of "last resort"; and (iii) requested by a victim.²¹

The 2011 United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)²² expand upon the circumstances in which protective custody may be considered by a state. Rule 59 provides:

*Generally, non-custodial means of protection, for example in shelters managed by independent bodies, nongovernmental organisations or other community services, shall be used to protect women who need such protection. Temporary measures involving custody to protect a woman shall only be applied when necessary and expressly requested by the woman concerned and shall in all cases be supervised by judicial or other competent authorities. Such protective measures shall not be continued against the will of the woman concerned.*²³

The circumstances described by the Working Group on Arbitrary Detention and encapsulated in the Bangkok Rules on the treatment of women prisoners are narrowly defined. Any detention must be subject to legal guarantees and judicial oversight, must only be a measure of last resort and may only take place following the request of the individual in need of protection. In a commentary

21 Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, UN Doc E/CN.4/2002/77, 19 December 2001, Para 47. The recommendation followed similar observations made by the UN Special Rapporteur on Violence against Women in regards to the protective custody of victims of trafficking. See Commission on Human Rights, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy*, UN Doc. E/CN.4/2001/73/Add.2, 6 February 2001.

22 United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, G.A. Res. 2010/16, 2010. The Bangkok rules were adopted by the UN General Assembly in 2010, and set out a number of basic principles for the treatment of women prisoners in line with international law and best practice. Although properly considered a form of soft law the Rules have been cited by the CEDAW Committee, who have recognised that a failure to provide detention facilities that "address the specific needs of women constitutes discrimination". See CEDAW Committee, *Abramova v Belarus*, Communication No. 23/2009, UN Doc. CEDAW/C/49/D/23/2009, 27 September 2011, Paras 7.5 and 7.9(2)(e).

23 *Ibid.* the Bangkok Rules, Rule 59.

to the Bangkok Rules prepared by the United Nations Office on Drugs and Crime (UNODC) it is emphasised that:

[E]very effort needs to be made for the development of protection means which do not involve imprisonment, to enable authorities not to have to resort to this unacceptable and discriminatory practice.²⁴

It is clear that protective custody cannot be considered a first-choice or reasonable response to threats of gender-based violence. Where protective custody is used, states are likely to violate their obligations regarding freedom of movement, liberty of the person, the prohibition of discrimination, and the prohibition of torture and other ill-treatment.

5.1.1 Freedom of Movement and Arbitrary Detention

The right to freedom of movement is guaranteed in several international treaties,²⁵ including Article 12(1) of the International Covenant on Civil and Political Rights (ICCPR), which provides that “everyone lawfully within the territory of a State shall, within that territory have the right to liberty of movement and freedom to choose his residence.”²⁶ This right is qualified by Article 12(3), which provides that where necessary for, *inter alia*, the protection of “public health or morals or the rights and freedoms of others”, freedom of movement may be lawfully restricted by a state.²⁷

In its General Comment No. 27, the Human Rights Committee expanded upon the circumstances in which a restriction on the right to freedom of movement may be permissible. The Committee noted that any restriction must be consistent with the other rights which are guaranteed in the ICCPR and also with the “fundamental principles of equality and non-discrimination”.²⁸ As discussed below in Part 5.1.2, for this reason alone it is unlikely that protective custody would satisfy the requirements of Article 12(3). In addition, any restriction on the right to freedom of movement must be appropriate, represent the least intrusive means of achieving the desired aim, and be proportionate to the aim

24 United Nations Office on Drugs and Crime, *Commentary to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, 2011, p. 44, available at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

25 International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, 1966, Article 12(1); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1249 U.N.T.S. 13, 1979, Article 15(4) (equality between men and women in respect of freedom of movement); and Convention on the Rights of Persons with Disabilities (CRPD), 2515 U.N.T.S. 3, 2006, Article 18 (liberty of movement for persons with disabilities).

26 ICCPR, Article 12(1).

27 *Ibid.*, Article 12(3).

28 Human Rights Committee, *General Comment No. 27: Article 12 (Freedom of Movement)*, UN Doc. CCPR/C/21/Rev.1/Add.9, 1999, Para 18.

pursued.²⁹ It is clear both in practice and from the comments of UN treaty monitoring bodies that suitable alternatives to protective custody exist, which means that protective custody cannot be considered the least intrusive means of protecting women.³⁰

In addition to violating the right to free movement, protective custody also amounts to arbitrary and unlawful detention, contrary to Article 9 of the ICCPR. Article 9(1) provides:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

As will be discussed below in Part 5.2 and 5.3, there is no law in Jordan which allows for protective custody and, as such, protective custody does not occur pursuant to a procedure established by law. In addition, even if protective custody was implemented in line with Jordanian law, it would still amount to arbitrary detention. As the Human Rights Committee has made clear, even where detention is in accordance with national law, it may still be arbitrary.³¹ Arbitrariness will include an analysis of “elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”³² As discussed below in Part 5.3, given the lack of procedural guarantees, information regarding the prospective length of detention, and the ability to provide alternative measures it is clear that protective custody is arbitrary for the purposes of Article 9 of the ICCPR. The Working Group on Arbitrary Detention has found that arbitrary detention cannot be justified on the ground that the detention is for the person’s own protection.³³ In addition, as discussed in the next part, the use of protective custody is highly discriminatory, and as such, should also be considered an arbitrary form of detention.³⁴

5.1.2 Non-Discrimination

Gender-based discrimination is defined under Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as 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

29 *Ibid.*, Para 14.

30 For instance, the Human Rights Committee has recommended that Jordan “immediately terminate its practice of placing women in “protective” custody and instead provide women at risk of violence with protection and support in a way that does not violate their rights.” As discussed in Part 5.3 of this report, Jordan has begun to establish independent shelters. See Human Rights Committee above, note 8, Para 8.

31 Human Rights Committee, *General Comment No. 35: Article 9 (Liberty and Security of Person)*, UN Doc. CCPR/C/GC/35, 2014, Para 12.

32 *Ibid.*, Para 12.

33 Working Group on Arbitrary Detention, Opinion No. 9/2004, UN Doc. E/CN.4/2005/6/Add.1, 19 November 2004, pp. 47–48, Para 15.

34 See above, note 32, Para 17.

of equality of men and women, of human rights and fundamental freedoms.”³⁵ Protective custody, which largely impacts on women considered to be at a risk of violence on account of their gender, clearly falls within the above definition. Not only are women’s rights to free movement and liberty adversely affected, but the decision to release such women is often dependent on receiving a guarantee of safety from a male relative or husband.³⁶

The discriminatory impact of protective custody has been recognised by UN Special Procedures.³⁷ According to the Working Group on Arbitrary Detention:

*In some countries, women and girls are placed in custody due to the risk of gender-based violence, such as honour crimes, and their release may be conditional upon the consent of a male relative and/or a guarantor (...) There will typically be no legal basis for the detention, procedural guarantees will not be observed, and the detention will constitute discrimination.*³⁸

In accordance with state obligations to eliminate practices that discriminate against women,³⁹ the detention of those at a risk of violence must be prohibited and replaced with more appropriate protective measures.⁴⁰ As part of the duty to eliminate discriminatory practices, states have an obligation to prohibit violence against women.⁴¹ The next part discusses in further detail what this requires.

5.1.3 State Obligations to Prohibit Gender-Based Violence

States are bound under international law to pursue all appropriate means of eliminating discrimination against women.⁴² This includes gender-based vio-

35 CEDAW, Article 1.

36 See Part 5.3 below.

37 See for instance, the Special Rapporteur on Torture: “the Special Rapporteur, after talking to women concerned, is highly critical of the current policy of taking females under the provisions of the Crime Prevention Law into ‘protective’ detention because they are at risk of becoming victims of an honour crime. According to the Special Rapporteur, depriving innocent women and girls of their liberty for as long as 14 years can only be qualified as inhuman treatment, and is highly discriminatory.” See Human Rights Council above, note 17, Para 39.

38 Human Rights Council, *Report of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/27/48, 30 June 2014, Paras 78–79.

39 See for instance CEDAW, Article 2.

40 See above, note 39, Paras 78–79; Commission on Human Rights, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy*, UN Doc. E/CN.4/2003/75, 6 January 2003, Para 91.

41 See CEDAW Committee above, note 2, Para 6.

42 See CEDAW, Article 2; ICCPR, Articles 3 and 26; League of Arab States, *Arab Charter on Human Rights*, 15 September 1994, Articles 3 and 11; Human Rights Council, *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/HRC/31/57, 5 January 2016, Paras 9 and 10; CEDAW Committee and Committee on the Rights of the Child, *Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices*, UN Doc. CEDAW/C/GC/31-CRC/C/GC/18, 2014, Paras 1, 10–11.

lence,⁴³ which has been recognised as a form of discrimination and which may result in the violation of a number of other human rights.⁴⁴

As a consequence of the recognition of gender-based violence as a form of discrimination against women, states have a positive obligation to establish and implement legislation and other such measures that prohibit, prevent and protect women from acts of violence, including through the repeal of discriminatory laws, and through the adoption of appropriate preventative and protective mechanisms. States which fail to adequately perform their duty to prevent, prosecute, and protect women from acts of gender-based violence may be held responsible for the actions of private actors, including for torture and inhuman or degrading treatment.

5.1.3.1 *Obligation to Ensure an Adequate Legal Framework*

States must ensure that they have legal frameworks in place that adequately prohibit and punish rape, sexual assault, honour killings, domestic violence and other gender-based violence.⁴⁵ In addition, discriminatory laws, including those that allow for lesser punishments for crimes against women, must be repealed.⁴⁶ As the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted in relation to combating torture and other ill-treatment, states are required to repeal:

*[A]ll laws that support the discriminatory and patriarchal oppression of women, inter alia laws that exclude marital rape from the crime of rape or grant pardon to rapists who marry their victims and laws that criminalize adultery.*⁴⁷

In addition to putting in place appropriate legislative frameworks, states must ensure the effective implementation and enforcement of laws that criminalise gender-based violence.⁴⁸ This includes ensuring that police, prosecutors and the judiciary have appropriate gender-sensitive training and act promptly to inves-

43 The CEDAW Committee defines gender-based violence as “violence against a woman because she is a woman or which affects a woman disproportionately”. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” See CEDAW Committee above, note 2, Para 6. This report uses the term gender-based violence to refer to violence against women. However, it should be noted that gender-based violence encompasses “any harmful act directed against individuals or groups of individuals on the basis of their gender.” See Human Rights Council above, note 2, Para 3.

44 Such as the prohibition on torture and other forms of ill treatment. See CEDAW Committee above, note 2, Para 7.

45 *Ibid.*, Para 24.

46 See Human Rights Council above, note 43, Para 69; *ibid.* CEDAW Committee, Para 24; CEDAW Committee, *General Recommendation No. 33 on Women’s Access to Justice*, UN Doc. CEDAW/C/GC/33, 3 August 2015, Para 21.

47 See Human Rights Council above, note 43, Para 69.

48 *Ibid.* Human Rights Council, Para 69; CEDAW Committee, *Jallow v Bulgaria*, Communication No. 32/2011, UN Doc. CEDAW/C/52/D/32/2011, 2012, Para 8.8; CEDAW Committee, *Yildirim v Austria*, Communication No. 6/2005, UN Doc. CEDAW/C/39/D/6/2005, 2007, Para 12.1.2.

tigate, prosecute and punish violence against women.⁴⁹ States must also ensure women's access to justice by providing legal aid that is "accessible, sustainable and responsive to the needs of women" and, in "all fields of law",⁵⁰ guarantee "that such services are provided in a timely, continuous and effective manner at all stages of judicial or quasi-judicial proceedings, including alternative dispute resolution mechanisms and restorative justice processes."⁵¹

5.1.3.2 *Obligation to Adopt Protective Measures*

In addition to implementing and enforcing appropriate legislation relating to violence against women, states must also take a range of additional measures to protect women from gender-based violence. These measures include counselling centres, legal assistance, shelters, health care, telephone hotlines, and financial aid.⁵² States must provide a "sufficient number of accessible shelters"⁵³ which do not restrict the liberty of women.⁵⁴ States must "guarantee long-term rehabilitation and housing solutions for women victims of violence who do not have the support of their families, and/or who are under threat."⁵⁵

States are also required to implement public awareness and education campaigns in order to combat discrimination against women.⁵⁶ In this regard, the CEDAW Committee has noted that:

*States parties must take all appropriate measures to modify social and cultural patterns of conduct, with a view to eliminating prejudices and customary and all other practices that are based on the idea of the inferiority or the superiority of either sex.*⁵⁷

5.1.3.3 *Obligation to Exercise Due Diligence*

As noted in Part 2.2.4, where a state fails to exercise due diligence by preventing, investigating, prosecuting and punishing acts, including violence against

49 *Ibid.* Human Rights Council, Para 69; *ibid.* CEDAW Committee, *Jallow v Bulgaria*, Para 8.8; *ibid.* CEDAW Committee, *Yildirim v Austria*, Para 12.3. In *Vertido v Philippines*, the CEDAW Committee recognised the importance of ensuring that gender bias and stereotypes play no part in trials for violence committed against women, noting that "[S]tereotyping affects women's right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done." See CEDAW Committee, *Vertido v Philippines*, Communication No. 18/2008, UN Doc. CEDAW/C/46/D/18/2008, 22 September 2010, Para 8.9(b).

50 See CEDAW Committee above, note 47, Para 36.

51 *Ibid.*, Para 37(a).

52 Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Rashida Manjoo, UN Doc A/HRC/23/49, 14 May 2013, Para 70; see CEDAW Committee above, note 2, Para 24.

53 See CEDAW Committee above, note 17, Para 26.

54 *Ibid.*, Para 26.

55 See above, note 6, Para 88(k).

56 See Human Rights Council above, note 43, Para 69.

57 See CEDAW Committee above, note 47, Para 31.

women, that state is responsible for the acts of private individuals.⁵⁸ To this end, the CEDAW Committee has noted that, in certain circumstances, the rights of a woman at risk of violence outweigh those of the potential perpetrator not to be detained:

*The Committee considers the failure to have detained Irfan Yildirim as having been in breach of the State party's due diligence obligation to protect Fatma Yildirim. Although, the State party maintains that, at that time – an arrest warrant seemed disproportionately invasive, the Committee is of the view, as expressed in its views on another communication on domestic violence that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity.*⁵⁹

As discussed in the next part, the failure to exercise due diligence in relation to acts of gender-based violence will satisfy the requirement for state involvement in order for acts to be considered torture.

5.1.4 Protective Custody and Discriminatory Torture

Both domestic and honour-based violence have been recognised as forms of gender-based violence that may amount to torture or other ill-treatment.⁶⁰ Where a state fails to act with due diligence to prohibit and prevent such acts of violence in the private sphere, they are to be held responsible:

*Domestic violence amounts to ill-treatment or torture whenever States acquiesce in the prohibited conduct by failing to protect victims and prohibited acts, of which they knew or should have known, in the private sphere. States are internationally responsible for torture when they fail – by indifference, inaction or prosecutorial or judicial passivity – to exercise due diligence to protect against such violence or when they legitimize domestic violence by, for instance, allowing husbands to “chastise” their wives or failing to criminalize marital rape, acts that could constitute torture.*⁶¹

Far from meeting the states due diligence requirements to combat gender-based violence, protective custody undermines efforts to protect individuals from acts of gender-based violence. Detaining individuals at risk of honour crimes and placing them in the same conditions as criminals fosters and encourages discriminatory attitudes, and allows perpetrators to act with impunity. These attitudes create an environment in which women may be subject to further violence. As has been recognised by the UN Special Rapporteur on Torture:

58 See above, Part 2.2.4. See CEDAW Committee, *Yildirim v Austria*, above, note 49, Para 12.1.1; see CEDAW Committee above, note 2, Para 9.

59 See CEDAW Committee, *Yildirim v Austria*, above, note 49, Para 12.1.5.

60 See Human Rights Council above, note 43, Paras 55 and 58.

61 *Ibid.*, Para 55.

*Societal indifference to or even support for the subordinate status of women, together with the existence of discriminatory laws and patterns of State failure to punish perpetrators and protect victims, create conditions under which women may be subjected to systematic physical and mental suffering, despite their apparent freedom to resist.*⁶²

In addition to a state failure to exercise due diligence to protect and prohibit acts of gender based violence, protective custody in and of itself may amount to torture or other ill-treatment.⁶³ In 2007, the Special Rapporteur on Torture, found that lengthy detention in protective custody could be recognised as a form of torture or ill-treatment.⁶⁴ More recently, the current Special Rapporteur has recognised that protective custody may “amount to torture or ill-treatment per se.”⁶⁵ Given that it is intentional and discriminatory, provided that it reaches the minimum threshold of severity of pain and suffering, protective custody will amount to inhuman treatment and, where the pain and suffering caused is severe, it will amount to torture. In addition, conditions in detention and the treatment of women detained while in prison, where fulfilling the element of pain and suffering, may amount to torture or inhuman and degrading treatment. These issues will be explored further in Part 5.3 below, which sets out the Trust’s research into protective custody in Jordan. In order to provide the context for Part 5.3, the next part provides an overview of Jordan’s national legal framework relating to protective custody and gender-based violence.

5.2 National Legal Framework Relating to Protective Custody and Gender-Based Violence

Article 3 of the Crime Prevention Law of 1954 is often cited as the legal basis for detaining women in protective custody.⁶⁶ Article 3 provides that:

1. *Any person who is found in a public or private place in circumstances that convince the District Governor that he is about to commit, or help in committing crime.*
2. *Any person who is used to banditry, theft or the possession of stolen money, is used to protect or harbor thieves, or helps hiding or disposing of stolen money.*
3. *Any person whose release without a bail might be dangerous to people.*

⁶² *Ibid.*, Para 56.

⁶³ See Part 5.3 of this report.

⁶⁴ See Human Rights Council above, note 17, Para 39.

⁶⁵ *Ibid.*, Para 24. See also Glenister above, note 16.

⁶⁶ 7iber, “The Honour Decision-Maker: Interview with Regional Governor Hijzai Assaf”, *7iber*, 11 February 2015, available at: <http://www.7iber.com/2015/02/administrative-detention-governor/> (in Arabic); Warwick, C., *Law in the Service of Legitimacy: Gender and Politics in Jordan*, Ashgate, 2009, p. 92; see above, note 6, Para 27.

It is clear from the wording of the law that it applies only to those who are suspected of committing or intending to commit a crime. Article 3 therefore does not provide any legal basis under which women may be detained for their own protection.⁶⁷ There is no other law that allows for protective custody. The application of Article 3 to detain women in protective custody is therefore in violation of national law, and is also a violation of international human rights law, in that it is both discriminatory and arbitrary. As explained in Part 5.4, the use of Article 3 to allow for protective custody runs contrary to Jordan's obligations to prevent violence against women.

The Protection Against Family Violence Act, which was enacted in January 2008, provides some avenues for protecting women, by allowing courts to issue protection orders and to enforce these through the detention of the perpetrator.⁶⁸ However, the Act contains a number of limitations, including that it does not contain a definition of domestic violence and its application is limited to persons living in the same household.⁶⁹ More problematically, it gives preference to reconciliation over the use of protective orders, which may lead to re-victimisation of women and place them under pressure to remain with their husband.⁷⁰ While it allows for a court to prevent the perpetrator from being in the vicinity of a shelter, the Act does require shelters or other protective measures to be put in place.⁷¹

More concerning than the gaps in the Protection Against Family Violence Act, are the provisions in the Penal Code that allow for more lenient sentences to be applied, including in cases of honour crimes. Although Article 340 of the Penal Code was amended such that it no longer allows perpetrators to escape guilt for crimes committed in the name of honour, it still provides a mitigation excuse for a man who catches his wife or female relatives committing adultery or in an "illegitimate bed", and who kills or injures her or the men she is caught with.⁷² In addition, Article 98 allows for more lenient sentences for crimes committed in a fit of rage and Article 99 provides for a more lenient sentence when a per-

67 See above, note 6, Para 27.

68 Protection Against Family Violence Act, Act No. 6 of 2008, Articles 14–16.

69 See above, note 4, Para 25; see above, note 6, Para 74.

70 Article 7 states that "Preference shall be given to referrals to Family Reconciliation Committees prior to taking any of the protective measure stipulated in this law, providing that the best interests of the family is taken into consideration." See above, note 4, Para 25; see above, note 6, Para 74.

71 See above, note 69, Article 13A(2). The government has opened one shelter for women experiencing domestic violence, Dar Al-Wifaq Al-Osary. National Council for Family Affairs, "4 thousand violence cases against women and children annually", *National Council for Family Affairs*, 29 October 2015, available at: <http://ncfa.org.jo:85/NCFA/en/content/4-thousand-violence-cases-against-women-and-children-annually>; see above, note 6, Para 28.

72 The full text of Article 340(1) provides that: "Whoever surprises his wife or one of his female decedents or ancestors or sisters in the act of adultery or in illegitimate bed and murders her immediately or her lover or both of them or assaulted her or both of them and the assault resulted in death or injury or harm or permanent disfiguration, he/she shall benefit from a mitigation excuse." Article 340(2) provides the same excuse to a woman in relation to her husband or his lover, but not in relation to a woman's other family members. See above, note 6, Para 25.

petrator of a crime is excused by the victim's family.⁷³ While all three provisions apply to both men and women who commit crimes, it is evident that they are often applied in cases involving the murder of women.⁷⁴ These provisions are discriminatory⁷⁵ and provide official sanctioning in the commission of honour crimes. Such sanctioning means that Jordan may be considered to have violated its due diligence obligations to protect women from violence in individual cases and also systematically, such that it is responsible under international human rights law for failing to prevent all honour crimes.⁷⁶

In addition to these provisions, Article 308(1) of the Penal Code provides that if the perpetrator of a sexual assault marries his victim, prosecution of the case against him, or the execution of any penalty already issued, must be stopped. Article 308(2) provides that the right to prosecute the case or institute the judgment will be reinstated if he divorces the woman without legitimate cause after three years (in the case of a misdemeanour) or five years (in the case of a felony). Although an amendment to the law was approved by Cabinet in 2016, the law still applies to consensual sex with a girl aged between 15 and 18, which would otherwise be considered as statutory rape under the Penal Code.⁷⁷ Article 308, even as amended, is discriminatory and also violates the right of a woman to enter into marriage with free and full consent.⁷⁸ As noted above, such provisions sanction violence against women and violate Jordan's obligations to prevent such violence. In addition, advocates working for women in Jordan have stated that prosecutions are not re-opened when the woman divorces the man who assaulted her. Mizan for Law, who have been working to assist women in protective custody since 1999, has been told by some women that they have the impression that their husbands have further abused them in an attempt to seek to have their wife divorce them.⁷⁹

5.3 Protective Custody in Jordan

This part of the report is intended to provide an up to date picture of the experience of women in protective custody in Jordan. It outlines the findings of the

73 See above, note 6, Para 25. Article 98 does not apply to honour crimes committed against a child under the age of 15, CEDAW Committee, *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, Para 8.

74 In her 2012 report on Jordan, the Special Rapporteur on violence against women, its causes and consequences noted that "of 50 cases of murder of women committed between 2000 and 2010, in 78 per cent of the cases perpetrators benefited from reduced sentences due to families waiving their personal rights". See above, note 6, Para 25.

75 See above, note 4, Para 27.

76 See above, Part 2.1.4.

77 Hussein, 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>; Amnesty International, *Annual Report: Jordan 2015/2016*, 23 February 2016.

78 CEDAW, Article 16(b); ICCPR, Article 23(3).

79 Equal Rights Trust interview with Fatima Alhalabiya, Mizan for Law, 4 October 2016.

field research carried out by the Trust and Mizan for Law together, where applicable, with research which has been previously undertaken by other organisations.⁸⁰ As noted above, a total of 21 women who were, or who had been, in protective custody were interviewed. In addition, 23 persons who worked with women detained in protective custody, including through non-governmental organisations (NGOs) and as lawyers, were interviewed or took part in focus group discussions.

It is difficult to ascertain the exact number of women currently held in protective custody. Figures are often reported for the number of women in administrative detention but are not broken down into the numbers of women held in protective custody or for other reasons.⁸¹ According to Col. Ahed Shraideh, who heads the development and training institute at the Public Security Department's (PSD) Correctional and Rehabilitation Centres Administration, speaking in late 2016, 140 women are currently detained in administrative detention in Jordan, 73 of whom are not Jordanian nationals and 67 who are. Of those who are Jordanian nationals, it is reported that the majority are detained for their own protection in the absence of a suitable shelter.⁸² In September 2014, the National Centre for Human Rights (NCHR) reported that just under half (233) of the 476 inmates being held at Juweida were administrative detainees and 21 of the 37 detainees at Um Al-Lulu were held in administrative detention.⁸³ In December 2013, a survey was conducted by Penal Reform International (PRI) at Juweida found that, at the time of PRI's visit, 451 women were being held, of whom 43% (196 women) were administratively detained. The majority of these women (121) were foreign nationals, compared to 75 Jordanian women.⁸⁴ According to official government statistics for the same year, 1,596 women had been placed in administrative detention throughout the year.⁸⁵

Of those figures which are further broken down, reports of the number of women in protective custody have varied. Following a visit in 2011, the UN Special Rapporteur on Violence against Women reported that 120 women were being held at Juweida, 25 of whom had been detained due to a risk of honour based violence.⁸⁶ In 2010, it was estimated that at any one time there were around 25

80 In particular, see Dignity, *Conditions for Women in Detention in Jordan: Needs, Vulnerabilities and Good Practices*, 2015, available at: https://dignityinstitute.org/media/2066001/pubseriesno9_wid_jordan.pdf; see above, note 13; see NCHR above, note 14, pp. 41–42; and Penal Reform International, *Who are women prisoners? Survey results from Jordan and Tunisia*, 2014, available at: https://www.penalreform.org/wp-content/uploads/2014/09/Final-PRI_Research_report_JordanTunisia%C2%ADENG-WEB.pdf.

81 It is reported that the Department of Correction and Rehabilitation Centres does not keep separate statistics on the number of women detained in protective custody, 7iber, "Imprisoning the Victim: Detaining Women Under the Pretext of Protecting Them From 'Honour' Crimes", 7iber, 21 January 2015, available at: <http://www.7iber.com/2015/01/womenadministrative-detention/> (in Arabic); see also Glenister above, note 16, p. 15.

82 See Al Emam, D. above, note 14.

83 See NCHR above, note 14, p. 40.

84 See Penal Reform International above, note 81, p. 9.

85 Committee Against Torture, *Third Periodic Report: Jordan*, UN Doc. CAT/C/JOR/3, 20 August 2014, p. 28.

86 See above, note 6, Para 27.

women in protective custody.⁸⁷ Government statistics from 2005 noted that between 50 and 70 women were kept in protective custody at any one time and that 524 women in total were held in protective custody during 2004.⁸⁸

5.3.1 Reasons for Protective Custody

5.3.1.1 Jordanian Women

A number of different reasons were reported for detaining women in protective custody. The main reason cited by lawyers and non-governmental actors for the use of protective custody is to protect women who have been threatened with violence because it is alleged that they have behaved in a way which threatens their family's honour or because they left, or were absent from, their home.⁸⁹ In its 2009 study, Human Rights Watch made a similar observation, noting that the Crime Prevention Law is often used to "detain persons simply for acting outside local norms, such as women alone in public at night or in the company of men who are not their relatives".⁹⁰ Buthaina Fraihat, head of the Women and Children's Rights and Vulnerable Groups Units at the NCHR,⁹¹ noted that some women had reported to the Centre that they were forced to leave their home

87 Husseini, R., "Jordan" in Kelly, S. and Breslin, J. (eds.) *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, Freedom House, 2010, p. 6.

88 CEDAW Committee, *Combined third and fourth reports of States Parties: Jordan*, UN Doc. CEDAW/C/JOR/3-4, 10 March 2006, Para 22; see also Glenister above, note 16, p. 15.

89 Equal Rights Trust interview with Susan Fayd, 20 January 2016, Amman, Jordan. Ms Fayd is the Training and Prison Visits Manager at Tamkeen Support Centre, where she has worked since 2011. Tamkeen is an NGO that provides support to female migrant workers in Jordan; Equal Rights Trust interview with Mai Dababna, 23 January 2016, Amman, Jordan. Ms Dababna was the Director of Juweida between 2011 and 2013; Equal Rights Trust interview with Ahmed Matalgah, 20 January 2016, Amman, Jordan. Mr Matalgah is a lawyer practicing in Irbid, Jordan. Since 2011, he has been working with Tamkeen Support Centre to provide legal advice to women in protective custody; Equal Rights Trust interview with Lamis Nasser, 30 January 2016, Amman, Jordan. Lamis Nasser is a women's rights activist in Jordan. She has been an activist for over 20 years and has previously sat on the board of the National Centre for Human Rights; Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan; Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan; Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015, Amman, Jordan. Mukarim Odai is the General Secretary of the Jordanian Women's Union. The Jordanian Women's Union Refuge is a shelter for women who have left protective custody. The four additional staff members interviewed are employed at the Refuge as a lawyer, social worker, psychologist and housekeeper; Equal Rights Trust focus group discussion with Anas Alfuhha, Mina Abu Sal and Areej Samreen, 13 February 2016, Amman, Jordan; Equal Rights focus group discussion with International Institution for Women's Solidarity, 20 January 2016, Amman, Jordan; Equal Rights Trust focus group discussion with lawyers Majde Azoka, Takreed Al-Maiqara, Haya Al-Abadi and Lena Salama, 13 February 2016, Amman, Jordan. All four lawyers provide legal representation to women in protective custody, and have eight, five, two and six years experience respectively.

90 See above, note 13, p. 2. Dignity noted in its 2015 report that women detained in protective custody included "those who had been detained because (or partly because) they were fighting for custody of their children; had been raped and become pregnant; had become pregnant outside of marriage; had tried to leave their families after being forcibly married and divorced from different men for profit; and women who had suffered and survived shootings, stabbings and burnings, from fathers, brothers or uncles. Some women also spoke of inmates who had finished serving sentences for harming or killing a family member, and had then immediately been returned to prison against their will as protection from reprisals by their family or community." See Dignity above, note 81, pp. 29–30. See also Warwick, C. above, note 67, p. 7.

91 The NCHR is Jordan's national human rights institute, established by Law 51 of 2006.

by their parents or step-parents and subsequently ended up being detained in protective custody.⁹²

Lawyers and NGOs assisting women in protective custody explained that women reported voluntarily entering protective custody because they felt it was the only viable solution to escape the threat of violence against them.⁹³ Ms Mai Dababna, who was the Director of Juweida between 2011 and 2013, also noted that women voluntarily entered protective custody to escape the threat of violence.⁹⁴ Samia faced this situation when her brother forced her to remarry after a divorce. Her second husband was abusive so she decided to leave the house one day without telling him. Her brother and husband filed a report with the police who then found and detained her. When her brother and husband came to sponsor her and take her home, she refused to leave the police station because she was afraid of what her brother would do to her. She was transferred to protective custody at her request and had been detained for three months when she spoke with the Trust in early 2016.⁹⁵

In 1994, Aida witnessed the honour killing of her sister at the hands of her brother and father and was almost killed herself. She spent several months in hospital recovering and the police then asked her where she wanted to be taken. She asked to be taken to prison, where she spent 14 years. She described what happened to her:

[I was] hit once on the head, once on the leg and on the neck, and I spent 9 months in hospital. A policeman came and asked me where I wanted to go. I asked them to take me to the prison. Afterwards, my family tried to visit me – I wasn't mobile, and I didn't want to see my family because my dad killed my sister.⁹⁶

Noor and her sister left their home after experiencing repeated abuse from their father and brother. Speaking to the Trust, Noor explained that they found an apartment and worked to pay the rent. Noor explained that they wanted to live alone and away from the abuse of their family. One day, the police came to their apartment and told them that their family had made a complaint about them living on their own. When they arrived at the police station, the Family Protection Department interviewed both women. Noor was then taken into protective custody at Juweida and her sister was placed in a shelter until she reached the age of 18, when she was transferred to Juweida. Their father and uncle told Noor

92 Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan.

93 Equal Rights Trust interview with Lamis Nasser, 30 January 2016, Amman, Jordan; Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015, Amman, Jordan. See also Dignity above, note 81, p. 28.

94 Equal Rights Trust interview with Mai Dababna, 23 January 2016, Amman, Jordan.

95 Equal Rights Trust interview with Samia, 28 February 2016, Amman, Jordan. Samia told the Trust that she had been detained in Juweida for 3 months (she was still detained at the time of her interview).

96 Equal Rights Trust interview with Aida, Amman, 26 November 2015.

that they would sponsor them to be released if they married relatives. Noor explained that she and her sister refused because their grandfather had told them that their father still wanted to kill them and they were afraid. Noor and her sister insisted they would rather stay in protective custody.⁹⁷ At the time that Noor spoke with the Trust, she had been in protective custody for nearly a year.

Other women reported being detained despite feeling that they did not require protection. Dana, who had left her home around midnight but had been gone for less than an hour before she was detained, explains that she was detained in protective custody as the police wrongly thought she would commit suicide:

I was walking on the bridge when a car packed with men pulled up next to me. They started to verbally harass me telling me to come into the car with them. I was scared of them and did not know what to do. To avoid them I crossed one of the rails to the other side of the bridge. It happened so quickly, as if those men had called the police, because within seconds of me putting my foot on the other side a police car pulled up and thought I was about to commit suicide. The police didn't even say anything to the men who had harassed me. I told them that I was trying to get away from the men, but they did not believe me. They held me tightly thinking I was going to throw myself on the road, and then took me to the police station.⁹⁸

She spent eight days in Juweida in November 2015.⁹⁹ Lama, was placed in protective custody in October 2010 for six months after her father filed a false complaint against her.¹⁰⁰ Both Lama and Dana reported their sense of frustration that the authorities did not listen to their stories.

Several of the women the Trust spoke to and the organisations who work with the women expressed the view that protective custody is used to protect women who society considers have behaved in a manner that is considered to be culturally unacceptable, such as by having a relationship with a man outside of marriage.¹⁰¹ Several lawyers, amongst others, noted that they believed this amounted to discrimination because men who behave in a similar manner are not detained

97 Equal Rights Trust interview with Noor, 28 February 2016, Amman, Jordan. Noor told the Trust that she had been detained in Juweida since 1 March 2015 (she was still detained at the time of her interview).

98 Equal Rights Trust interview with Dana, 22 December 2015, Amman, Jordan. Dana told the Trust that she was detained for 8 days in Juweida in November 2015 (she has now been released).

99 *Ibid.*

100 Equal Rights Trust interview with Lama, 4 February 2016, Amman, Jordan.

101 Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015, Amman, Jordan; Equal Rights Trust focus group discussion with Rana Abu Sondos, Amel al-Adlea, Ala Kshawanai and Diana Hadadi at the International Institute for Women's Solidarity, Amman, Jordan, 20 January 2016. The International Institute for Women's Solidarity is an NGO which provides legal and non-legal support to women in protective custody; Equal Rights Trust interview with Fatin, 28 February 2016, Amman, Jordan; Equal Rights Interview with Amal, 28 February 2016, Amman, Jordan; and Equal Rights Trust interview with Fatima Alhalabiya, Mizan for Law, 7 December 2016. See also Penal Reform International above, note 81, pp. 10–16.

as often as women.¹⁰² It was noted that “men are not taken into custody for being absent from the home for a while.”¹⁰³

5.3.1.2 Foreign Women

Susan Fayd, Training and Prison Visits Manager at Tamkeen Support Centre, an NGO that provides support to foreign women in detention, explained that protective custody has also been used to detain foreign women who have been trafficked or who have left their employer’s home due to abuse by their employer. In either case, the response was to hold the women in protective custody until they were able to be returned to their home country.¹⁰⁴

*Some women ran away from their employer having been subjected to violations of a number of their rights [during their employment] including not being given their salary, having their passport confiscated by their employer and being physically and sexually assaulted. In these circumstances, they have had to flee their sponsor’s home to end the problem they are facing. And then they face a new problem, detention.*¹⁰⁵

Ms Fayd discussed the example of Betty, who came to Jordan from Ethiopia when a Sudanese man lent her money to pay for a flight ticket having promised her better employment in Jordan. Instead, Betty reported that she was forced to work in homes for long hours and the man who brought her to Jordan refused to provide her with a residency card or a work permit. Someone reported her situation to the authorities and she was taken into protective custody. The man who trafficked her fled.¹⁰⁶

Ms Fayd and Ahmed Matalgah, a lawyer who has been advising women in protective custody since 2011, explained that some of the foreign women they meet in detention do not know why they are detained. Some were taken by the police without an explanation and then transferred to a detention centre.¹⁰⁷

*What bothers me the most is that these foreign women are forced to be [in detention centres] and they do not know why. They only know that they did not commit a crime.*¹⁰⁸

102 Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women’s Union (Itiha’ad Al Maraa) Refuge, 15 December 2015, Amman, Jordan; Equal Rights Trust interview with International Institute for Women’s Solidarity, 20 January 2016, Amman, Jordan.

103 Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women’s Union (Itiha’ad Al Maraa) Refuge, 15 December 2015, Amman, Jordan.

104 Equal Rights Trust interview with Susan Fayd, 20 January 2016, Amman, Jordan; Equal Rights Trust interview with Ahmed Matalgah, 20 January 2016, Amman, Jordan.

105 Equal Rights Trust interview with Susan Fayd, 20 January 2016, Amman, Jordan.

106 *Ibid.*

107 *Ibid.*; Equal Rights Trust interview with Ahmed Matalgah, 20 January 2016, Amman, Jordan.

108 Equal Rights Trust interview with Susan Fayd, 20 January 2016, Amman, Jordan.

While in protective custody, women wait for someone to cover the cost of leaving Jordan.¹⁰⁹ These costs may be met through their embassy, friends and family, or in some cases by the Jordanian government.¹¹⁰

5.3.1.3 Crime Prevention Law

Lawyers, non-governmental actors, and women held in protective custody all reported being told or hearing that the Crime Prevention Law provides the legal justification to detain women for their own safety, including when they are threatened by a family member.¹¹¹ However, most lawyers and non-governmental actors agreed that the Crime Prevention Law is used incorrectly and does not allow for women to be held in protective custody.¹¹²

*Governors refer to the Crime Prevention Law to protect women, however, in the Crime Prevention Law there is no article that allows for the detention of a woman to protect her life.*¹¹³

*The Crime Prevention Law is implemented incorrectly. It is unjust to place a woman in a detention centre because she could be harmed.*¹¹⁴

Staff at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge noted that "a person should never be detained without a trial or verdict and that detention should be based on a decision from a judge."¹¹⁵ One NGO shared that in some cases, the perpetrator who explicitly threatened a woman is known but instead of holding the perpetrator accountable, the woman is placed in protective custody.¹¹⁶

109 *Ibid.*; Equal Rights Trust interview with Ahmed Matalgah, 20 January 2016, Amman, Jordan.

110 *Ibid.*; Equal Rights Trust interview with Dr. Nahla Al-Momani, 4 February 2016, Amman, Jordan.

111 Equal Rights Trust interview with Mai Dababna, 23 January 2016, Amman, Jordan; Equal Rights Trust interview with Lamis Nasser, 30 January 2016, Amman, Jordan; Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan; Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015, Amman, Jordan; Equal Rights Trust focus group discussion with Anas Alfughha, Mina Abu Sal and Areej Samreen, 13 February 2016, Amman, Jordan; Equal Rights focus group discussion with International Institution for Women's Solidarity, 20 January 2016, Amman, Jordan; Equal Rights Trust focus group discussion with lawyers Majde Azoka, Takreed Al-Maiqara, Haya Al-Abadi and Lena Salama, 13 February 2016, Amman, Jordan.

112 Equal Rights Trust interview with Lamis Nasser, 30 January 2016, Amman, Jordan; Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan; Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015, Amman, Jordan; Equal Rights focus group discussion with Equal Rights Trust focus group discussion with Anas Alfughha, Mina Abu Sal and Areej Samreen, 13 February 2016, Amman, Jordan; Equal Rights focus group discussion with International Institution for Women's Solidarity, 20 January 2016, Amman, Jordan; Equal Rights Trust focus group discussion with lawyers Majde Azoka, Takreed Al-Maiqara, Haya Al-Abadi and Lena Salama, 13 February 2016, Amman, Jordan. See also Penal Reform International above, note 81, p. 8; see NCHR above, note 14, p. 13.

113 Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan.

114 Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015.

115 *Ibid.*

116 Equal Rights Trust focus group discussion with International Institute for Women's Solidarity, 20 January 2016, Amman, Jordan.

*This is legal discrimination. According to the law the person to be detained is the perpetrator, not the victim. The violent person not the person threatened with violence.*¹¹⁷

Furthermore, it was noted by staff at the Refuge that because the law is being implemented incorrectly, there is no guidance on how long a woman may be held in protective custody.¹¹⁸ As a result, women can be held for between several weeks to over ten years because the Governor has the discretion to decide when he considers it safe for a woman to leave.¹¹⁹

Persons detained in administrative detention can theoretically challenge the decision to detain them through the courts.¹²⁰ However, this appears to be an option that is extremely rarely, if ever, taken up by women in protective custody – something which is attributed to the risks and pressure that women would face if they brought such a case.¹²¹ Ms Eva Abu Halaweh, Executive Director of Mizan for Law, explained that a person detained under the Crime Prevention Law requires a sponsor in order to be released. However, as the law is incorrectly applied to detain women in protective custody, there is no legal basis for a sponsor to be required before a woman may be released.¹²² Despite this, women in protective custody and the NGOs supporting them are almost always told that a male relative needs to sponsor a woman before she can leave protective custody.¹²³

Alternatively, women are told that they will be released if they get married. Nawal, who had been detained in Juweida for over a year when she spoke with the Trust, explained that the Governor insisted that she needed a husband that she could be released to.¹²⁴ After enduring abuse from her brother, she left her family home when she turned 18 to seek a better life. When she heard that her brother was looking for her and had threatened her life, she sought the support

117 *Ibid.*

118 Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015.

119 *Ibid.*

120 Equal Rights Trust interview with Mai Dababna, 23 January 2016, Amman, Jordan; Equal Rights Trust interview with Ahmed Matalgah, 20 January 2016, Amman, Jordan. See also Penal Reform International above, note 81, p. 8; see 7iber above, note 82.

121 *Ibid.* 7iber.

122 Equal Rights Trust interview with Eva Abu Halaweh, 29 November 2016, Amman, Jordan.

123 Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015; Equal Rights Trust focus group discussion with Anas Alfuqha, Mina Abu Sal and Areej Samreen, 13 February 2016, Amman, Jordan; Equal Rights Trust focus group discussion with International Institute for Women's Solidarity, 20 January 2016, Amman, Jordan; Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan; Equal Rights Trust focus group discussion with lawyers Majde Azoka, Takreed Al-Maiqara, Haya Al-Abadi and Lena Salama, 13 February 2016, Amman, Jordan; Equal Rights Trust interview with Eva Abu Halaweh, 29 November 2016, Amman, Jordan. Previous research has also reported that Governors typically require a male family member to act as sponsor, see for example Dignity above, note 81, pp. 29–30; see Penal Reform International above, note 81, p. 8; see above, note 13, p. 13.

124 Equal Rights Trust interview with Nawal, 28 February 2016, Amman, Jordan. Nawal told the Trust that she was detained in Juweida on 19 January 2015 (she was still detained at the time of her interview).

of the Family Protection Department. There she found out that her brother had filed a complaint against her and she was transferred to Juweida:

*I sent a letter to the governor. He said he would not authorise my release because he feared for my life (...) The Governor is insisting I need to have a husband [to be released], but where am I supposed to find one when I am locked up?*¹²⁵

In its 2015 report, Dignity noted the difficulties women face when trying to arrange a marriage from within protective custody:

*Since this is almost impossible for the women to arrange themselves from the prison (given the restricted communication) many make seemingly desperate choices. Among those spoken to by DIGNITY, were a woman who married her rapist, and another who became the third wife and nurse of an elderly man.*¹²⁶

Ms Abu Halaweh noted that requiring women to marry to secure their release potentially exposed them to more harm:

*The Governor is exposing her to further rights violations and exploitation because her goal is not marriage, it is to be released. When she is released she does not know what her new environment will be like given that she has been married to a man she does not know.*¹²⁷

When a Governor allows the release of a woman in protective custody, there is no follow-up or action taken to monitor the situation.¹²⁸ Staff at the Itiha'ad Al Maraa Refuge reported that they knew of cases when the Governor stated that it was safe for a woman to leave because her family was willing to sponsor her, but the woman herself has stated she is afraid that being released to her family will jeopardise her life: "we have seen these cases. Women killed immediately after being released from protective custody."¹²⁹ Several cases have been reported of women who have been killed by male relatives they have been released to and who have signed a guarantee not to harm them.¹³⁰

125 Equal Rights Trust interview with Nawal, 28 February, Amman, Jordan.

126 See Dignity above, note 81, pp. 30.

127 Equal Rights Trust interview with Eva Abu Halaweh, 29 November 2016, Amman, Jordan.

128 Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015; Equal Rights Trust focus group discussion with International Institute for Women's Solidarity, 20 January 2016, Amman, Jordan.

129 Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015.

130 Hussein, R., "Man receives 10 years for killing sister", *The Jordan Times*, 13 July 2010, available at: <http://www.jordantimes.com/news/local/man-receives-10-years-killing-sister>; see Warwick, C. above, note 67, p. 91; see above, note 88, pp. 5-6.

5.3.1.4 International Legal Analysis

The reasons reported to the Trust for the detention of women in protective custody, and the practice of needing a male relative or husband to act as guarantor before a woman can be released, further reiterate the conclusions noted by numerous NGOs and UN treaty bodies and special procedures¹³¹ that protective custody is highly discriminatory. It predominantly affects women and is implemented as a result of discriminatory attitudes towards women, placing a lesser value on their liberty than on the liberty of those who seek to harm them. The threat of violence or harm to women which results in women being detained is also a result of discrimination.¹³² All instances of protective custody should be seen as a violation of the prohibition of discrimination. As noted above in Part 5.1, protective custody also amounts to arbitrary detention and an unlawful restriction on freedom of movement. As discussed above, while some women choose to stay in protective custody, in all cases that were explained to the Trust, this was as a result of a lack of any other available options. In these circumstances, women cannot be considered as consenting to their detention such that it becomes lawful.¹³³

The fact that women have requested to be placed in protective custody as they do not feel there is another way in which they may be protected from the risk of violence, and also the number of women continuing to be detained in protective custody, strongly indicates that the protective and preventative mechanisms established by Jordan to tackle violence against women are insufficient. Focusing on removing women from the home rather than investigating and prosecuting the perpetrators of such acts is a clear violation of Jordan's due diligence obligations in respect of the right to be free from torture and ill-treatment.¹³⁴ This is on the basis that some acts of violence against women in such scenarios, clearly meet the threshold for ill-treatment. Further, given the stories told to the Trust about the violence that women experienced prior to entering protective custody, such as in the case of Aida, it is apparent that in many cases women will have experienced severe pain and suffering as a result of the violence which leads to their detention in protective custody. In some cases, the severity of pain and suffering caused may reach the torture threshold.

In addition to amounting to state complicity in acts of torture and other ill-treatment, in the most severe of cases, it is conceivable that protective custody may in and of itself amount to torture.¹³⁵ In 2007, the Special Rapporteur, speaking about the use of protective custody in Jordan, found that, at the least, "depriving

131 See above Part 5.1.2.

132 See above Part 4 and Part 5.1.

133 The Human Rights Committee notes in General Comment no. 35 that "deprivation of personal liberty is without free consent". It is important to stress that the Committee is referring to *free* consent. Consent given in the circumstances facing women at risk of violence cannot be considered free – they simply have no other option. See above, note 32, Para 6.

134 See above Part 5.1.4.

135 *Ibid.*

innocent women and girls of their liberty for as long as 14 years can only be qualified as inhuman treatment, and is highly discriminatory.”¹³⁶ Among most recent comments, the UN Special Rapporteur on Torture, noted in early 2016 that the use of protective custody of women who have been raped or subject to honour-based violence or other abuses in order to ensure that they testify “further victimizes women, deters them from reporting rape and sexual abuse and can amount to torture or ill-treatment per se.”¹³⁷

Of the ten women whom the Trust spoke with who were detained in Juweida at the time of their interview, the shortest period of detention was three months and the longest was five years. Half had been detained for more than a year, including periods of three years and two and a half years. This shows that women are still being detained in protective custody for significant periods of time.¹³⁸

The Human Rights Committee has found a violation of Article 7 of the ICCPR in relation to periods of detention of two years and of 14 months:

*The Committee considers that the combination of the arbitrary character of the authors' detention, its protracted and/or indefinite duration, the refusal to provide information and procedural rights to the authors and the difficult conditions of detention are cumulatively inflicting serious psychological harm upon them, and constitute treatment contrary to article 7 of the Covenant.*¹³⁹

While the specific context of the protective custody in a given case will be highly relevant to the categorisation of the human rights violations in question, there is, in summary, a compelling basis for concluding that protective custody does not absolve the state of its due diligence requirements to prevent and protect women from torture and ill-treatment. It may also be concluded that the custody itself will likely amount to ill-treatment and, in some particularly severe circumstances, may amount to torture.

5.3.2 Treatment in Detention

According to those to whom we spoke, from the outset of their time in detention, women in protective custody are treated almost indistinguishably from the wider prison population. Ghada and Deema expressed frustration and irritation

136 See Human Rights Council above, note 17, Para 39.

137 See Human Rights Council above, note 43, Para 24.

138 However, it should be noted that these periods appear to have shortened considerably from earlier reports, see above, note 13, p. 11; SBS, “Jordan – Jailing the Innocent”, SBS, 1 October 2008, transcript available at: <http://www.sbs.com.au/news/dateline/story/jordan-jailing-innocent>; Amman Centre for Human Rights Studies, *NGOs Coalition Report Universal Periodical Review of Human Rights in Jordan NGOs Coalition for the UPR – Joint UPR Submission – Jordan*, October 2013, Para 4; see also Glenister above, note 16, p. 17.

139 Human Rights Committee, *F.K.A.G. et al v Australia*, Communication No. 2094/2011, 20 August 2013, Para 9.8.

at the poor treatment they would experience from other prison inmates.¹⁴⁰ They also reported witnessing or hearing possible signs of sexual assault carried out by other inmates at Juweida.¹⁴¹

*You could hear it at night. You could hear the voices and just knew what was happening to them (...) I never had anything happen to me (...) [B]ut I heard and saw other women sexually assaulted (...) they could complain but everyone was too scared to say anything to the officers.*¹⁴²

Aida also reported that there was a lot of fighting between the inmates.¹⁴³ Ghada reported that she was not comfortable complaining for fear she would be hurt by the other inmates if it was discovered that she was the source of the complaint.¹⁴⁴ According to Dignity, “some administrative and pre-trial inmates reported being fearful of convicted cellmates”¹⁴⁵ and also reported that it had been told of “several instances in which prison staff failed to intervene in the physical or psychological abuse of weaker inmates by stronger prisoners (...) including beatings and burnings”.¹⁴⁶ It is not clear if these instances related to women in protective custody.

Women reported varying treatment by custodial officers at Juweida.¹⁴⁷ Some reported that they felt they were poorly treated.¹⁴⁸ Rawan was taken into protective custody in 2004 after her brother murdered her sister. She stayed in protective custody at Juweida for 15 years before she received help from a local organisation to be released. She mentioned the problems she had with one officer:

*Everything was good except one officer would interact with me in a vicious manner. When it was time for me to take my medication, she would throw it at me. She behaved this way because she was a relative of the guy my sister made a mistake with.*¹⁴⁹

140 Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan; Equal Rights Trust interview with Deema, 28 February 2016, Amman, Jordan. Deema told the Trust that she was detained on 1 September 2013 (she was still detained at the time of her interview).

141 *Ibid.*

142 Equal Right Trust interview with Ghada, 6 February 2016, Amman, Jordan.

143 Equal Rights Trust interview with Aida, 26 November 2015, Amman, Jordan.

144 Equal Right Trust interview with Ghada, 6 February 2016, Amman, Jordan.

145 See Dignity above, note 81, p. 39.

146 *Ibid.*, p. 43.

147 Equal Rights Trust Interview with Aida, 26 November 2015, Amman, Jordan.

148 Equal Rights Trust Interview with Rawan, 26 November 2015, Amman, Jordan. Rawan told the Trust that she was detained in Juweida for 15 years (she has now been released); Equal Rights Trust Interview with Lama, 23 January 2016, Amman, Jordan; Equal Rights Trust Interview with Hala, 28 February 2016, Amman, Jordan. Hala told the Trust that she had been detained in Juweida for 5 years (she was still detained at the time of her interview); Equal Rights Trust Interview with Fatin, 28 February 2016, Amman, Jordan. Fatin told the Trust that she was detained in Juweida on 14 November 2015 (she was still detained at the time of her interview); Equal Rights Trust Interview with Hadeel, 28 February 2016, Amman, Jordan. Hadeel told the Trust that she was detained in Juweida on 18 March 2014 (she was still detained at the time of her interview).

149 Equal Rights Trust interview with Rawan, 26 November 2015, Amman, Jordan. Rawan reported that the treatment later ceased after she raised a complaint which was handled by the authority.

We received mixed reports of the treatment of women by officers. Two women mentioned that they had witnessed officers yell at, or hit, women,¹⁵⁰ one of whom reported seeing an officer hit a pregnant woman.¹⁵¹ Dignity also noted that women had reported seeing cellmates being beaten by prison staff and that inmates also reported “regular verbal abuse and taunting, the rough treatment and isolation of women who had self-harmed.”¹⁵² Other women interviewed by the Trust reported that they were treated well by the officers and had no problems interacting with them.¹⁵³ Whilst it is not clear whether reported instances of violence were ever committed against women detained in protective custody, it appears that some women in protective custody have been forced to witness violent acts, potentially impacting upon their overall mental wellbeing and causing them to be fearful of being verbally or physically assaulted by either fellow inmates or prison staff.

5.3.3 Conditions of Detention

Both regional and international bodies have recognised that conditions of detention may amount to torture or ill-treatment. In addition to the prohibition on torture under Article 7, Article 10(1) of the ICCPR provides a right for “all persons deprived of their liberty [to] be treated with humanity and with respect for the inherent dignity of the human person”.¹⁵⁴

In its jurisprudence, the Human Rights Committee has highlighted that states are obliged under Article 7 to ensure, as a minimum, observance of several standards set out in the Standard Minimum Rules for the Treatment of Prisoners; including that accommodation meets health requirements such as minimum floor space and ventilation (Rule 10), the provision of sanitary installations (Rule 12), suitable clothing (Rule 17), a separate bed and bedding (Rule 19), and nutritional food and drinking water (Rule 20).¹⁵⁵

Respect for human dignity has also been recognised by the ECtHR who, in its interpretation of Article 3 of the ECHR (the prohibition on torture), has stressed that states are obliged to ensure:

150 Equal Rights Trust Interview with Marwa, 3 February 2016, Amman, Jordan; Equal Rights Trust Interview with Amal, 28 February 2016, Amman, Jordan. At the time of her interview, Amal had been detained in Juweida for six months.

151 Equal Rights Trust Interview with Amal, 28 February 2016, Amman, Jordan.

152 See Dignity above, note 81, p. 43.

153 Equal Rights Trust Interview with Rawan, 26 November 2015, Amman, Jordan; Equal Rights Trust Interview with Lama, 23 January 2016, Amman, Jordan. The Special Rapporteur noted that no allegations of ill-treatment were made in relation to Juweida during his 2006 visit, see Human Rights Council above, note 17, Para 39.

154 ICCPR, Article 10(1).

155 Human Rights Committee, *Mukong v Cameroon*, Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991, 1994, Para 9.3. See also, Human Rights Committee, *General Comment No. 21: Article 10*, 1994, UN Doc. HRI/GEN/1/Rev.1, p. 33, Para 5; Association for the Prevention of Torture, *Torture in International Law: A Guide to Jurisprudence*, 2008, p. 39, available at: http://www.ap.t.ch/content/files_res/jurisprudenceguide.pdf.

[T]hat prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured by, among other things, providing them with the requisite medical assistance.¹⁵⁶

Consequently, the ECtHR has held that failure to provide adequate detention conditions, including due to a lack of hygiene in cells,¹⁵⁷ prison overcrowding and a lack of cell space,¹⁵⁸ ill-treatment by prison staff¹⁵⁹ or cellmates¹⁶⁰ may each amount to a violation of Article 3 of the ECHR.

5.3.3.1 Overcrowding and Hygiene

According to the NCHR, the Women's Reform and Rehabilitation Center (RRC) at Juweida was initially designed to house around 350 inmates.¹⁶¹ However, as of 2014, 476 women were held in the facility,¹⁶² contributing to a significant problem of overcrowding and affecting the standard of services provided.¹⁶³ More recent statistics suggest that a marginally smaller total number of women are currently being held in Jordanian prisons (450).¹⁶⁴ Several lawyers and NGOs reported to the Trust that a lack of sufficient space has led to overcrowding in Juweida.¹⁶⁵ One of the consequences of overcrowding in the Juweida is a lack of available beds. The NCHR reported that inmates have been forced to sleep on mattresses on the floor due to the high number of female detainees.¹⁶⁶ One woman detained in protective custody interviewed by the Trust confirmed that this had been the case for her.¹⁶⁷ However, another woman reported that there were enough beds for each woman at that facility.¹⁶⁸ According to accounts from

156 European Court of Human Rights, *Gelfmann v France*, Application No. 25875/03, 14 December 2004, Para 50.

157 European Court of Human Rights, *Peers v Greece*, Application No. 28524/95, 19 April 2001, Para 75.

158 European Court of Human Rights, *Mandić and Jović v Slovenia*, Applications Nos. 5774/10 and 5985/10, 20 October 2011, Para 80.

159 European Court of Human Rights, *Tali v Estonia*, Application No. 66393/10, 13 February 2014, Para 82.

160 European Court of Human Rights, *Boris Ivanov v Russia*, Application No. 12311/06, 6 October 2015, Paras 39 and 45.

161 See NCHR above, note 14, pp. 14–15.

162 *Ibid.*, p. 40.

163 *Ibid.*, pp. 14–15.

164 See Al Emam above, note 14. The Trust has not been able to verify these statistics.

165 Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan; Equal Rights Trust interview with Dr. Nahla Al-Momani, 4 February 2016, Amman, Jordan.

166 In some instances, women reportedly “rent their beds to other inmates due to their need for cash”. See NCHR above, note 14, p. 17.

167 Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan.

168 Equal Rights Trust interview with Dana, 22 December 2015, Amman, Jordan.

lawyers and NGOs, women shared with them that overall Juweida is liveable but unpleasant.¹⁶⁹ Cleanliness was noted as an issue, particularly in the rooms occupied by foreigners.¹⁷⁰ This is apparently because the rooms occupied by foreign women are overcrowded, and guards do not follow up to make sure they clean their areas.¹⁷¹

Juweida is an old facility and consequently has significant problems with its plumbing and sewage system. The NCHR, in its 2014 report, explains that the building relies upon a cesspool to get rid of drain water.¹⁷² Dr. Nahla Al-Momani, a lawyer who works at the NCHR, and who assisted with drafting the NCHR's 2014 report, shared that women detained in Juweida reported that the plumbing is so bad that water from the sewers can flood certain areas. In addition, Dr Al-Momani stated that visiting health care workers complained that the foul odours and unsanitary conditions affected their ability to treat inmates.¹⁷³ Women also shared with her that bugs are sometimes seen crawling everywhere.¹⁷⁴ Women in protective custody at Juweida reported that the structural problems and cleanliness in Juweida become a greater issue for them when they need to wash their clothes, bed sheets, or any other items, which they are required to do themselves.¹⁷⁵

Bathroom facilities in Juweida are also limited. Ghada reported that 12 women usually share one bathroom in Juweida, and that many more women shared the showers as there are only two of them.¹⁷⁶ She also reported that hot water is not available and that sometimes there is not enough water available for showering.¹⁷⁷ This reflected the findings of the NCHR.¹⁷⁸ Women noted that basic hygiene items such as soap and shampoo had to be purchased in Juweida,¹⁷⁹ explaining that each detainee received an allowance of ten Jordanian Dinars from the prison:¹⁸⁰

169 Equal Rights Trust interview with Susan Fayd, 20 January 2016, Amman, Jordan; Equal Rights Trust interview with Lamis Nasser, 4 February 2016, Amman, Jordan; Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan.

170 Equal Rights Trust interview with Susan Fayd, 20 January 2016, Amman, Jordan. The NCHR notes that it witnessed the sewers flooding into the dental clinic during a visit in March 2014, see NCHR above, note 14, p. 16, fn. 1.

171 Equal Rights Trust interview with Susan Fayd, 20 January 2016, Amman, Jordan.

172 See NCHR above, note 14, p. 16.

173 Equal Right Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan.

174 *Ibid.* See also NCHR above, note 14, p. 16.

175 Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan; Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan.

176 Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan.

177 *Ibid.*; Equal Rights Trust interview with Marwa, 3 February 2016, Amman, Jordan.

178 See NCHR above, note 14, p. 22.

179 Equal Rights Trust interview with Rawan, 26 November 2015, Amman, Jordan; Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan.

180 Dignity also reported that inmates received an allowance of 10 dinars per month, whereas the earlier research carried out by the NCHR noted that women receive an allowance of 20 dinars per month. See Dignity above, note 81, p. 41; see also NCHR above, note 14, p. 12.

*Some women were not financially supported [by family] and so they could not buy hygiene items. Each detainee would get 10 Jordanian Dinars from the prison and this would not be enough for women whose family did not visit [when families visited they would leave some money for the detainees]. So we used to help each other. If there were extra materials we would give it to those women. Some of them would borrow money and when they got their 10 Jordanian Dinars they would give it back.*¹⁸¹

5.3.3.2 Health Care

Lawyers working with women in protective custody in Juweida reported that a doctor and nurses are available for certain hours during the day and that women are able to make appointments to see them.¹⁸² However, Ghada noted that emergencies are not necessarily addressed on the spot if no appointment has been made.¹⁸³ It was noted that one of the biggest obstacles to seeking medical care in Juweida is that no female doctor is available. A number of lawyers stated that many women are not comfortable being seen by a male doctor and may shy away from discussing symptoms or health care issues if only presented with a male doctor.¹⁸⁴ Also of concern are the shortcomings highlighted by Dignity in the provision of medical care to victims of “honour” crimes who are detained. While in some instances, healthcare would appear to meet the needs of inmates, in others, more specialised treatment was required.¹⁸⁵

*Those women who are recovering from ‘honour crimes’ and violent attacks constitute a group with particular and urgent health needs that are not always adequately met. They have often suffered serious injuries, requiring substantial time in hospital before their administrative detention. DIGNITY heard mixed reports of their post-hospital care in prison. One woman was grateful for regular cell visits by the doctor, while she was immobile, and for being nursed to health by fellow inmates. Yet given the serious nature of her injuries and the likelihood of Post-Traumatic Stress Disorder, the specialist medical care required was not provided.*¹⁸⁶

Lawyers and NGOs working with women in protective custody told the Trust that women with mental health complaints are able to meet with a specialist

181 Equal Rights Trust interview with Rawan, 26 November 2015, Amman, Jordan. Rawan was detained in Juweida in protective custody for 15 years.

182 Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan; Equal Rights Trust focus group with Anas Alfquha, Mina Abu Sal and Areej Samreen, 13 February 2016, Amman, Jordan.

183 Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan.

184 Equal Rights Trust Interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan; and Equal Rights Trust focus group discussion with lawyers Majde Azoka, Takreed Al-Maiqara, Haya Al-Abadi and Lena Salama, 13 February 2016, Amman, Jordan. See also Dignity above, note 81, p. 49; see also NCHR above, note 14, p. 26.

185 See Dignity above, note 81, p. 49.

186 *Ibid.*, p. 49.

who would often attend the detention centre.¹⁸⁷ However, the NCHR noted in 2014 that one psychiatrist visited the prison once per week and that this was not sufficient to meet the needs of the number of inmates.¹⁸⁸

Women with severe medical issues or who need specialist care in Juweida are granted permission to be taken to a public hospital.¹⁸⁹ Along with their lawyers and advocates, women reported that the experience of visiting a hospital is shameful and embarrassing because even though they are in protective custody and not criminals, they are not allowed to wear civilian clothes when entering the hospital and are subjected to the disapproving stares of other individuals in the hospital.¹⁹⁰ This contradicts international best practice, which provides that “whenever a prisoner is removed outside the institution for an authorised purpose he shall be allowed to wear his own clothing or other inconspicuous clothing.”¹⁹¹ The Human Rights Committee have held that the requirement that clothing “shall be in no manner degrading or humiliating” is a minimum standard and should be observed by all states.¹⁹²

5.3.3.3 Children and Pregnant Women

Buthaina Fraihat of the NCHR reported that pregnant women in protective custody at Juweida are not provided with adequate prenatal care.¹⁹³ In addition, Ms Fraihat explained that although women should be taken to the hospital to give birth, there have been some cases where women gave birth in Juweida.¹⁹⁴

Children born to women within Jordan’s RRCs, including those held in protective custody, may be kept with their mother until the age of three years old,¹⁹⁵ after which, according to legislation, they may be kept with family or receive care from staff “at a specialised centre.”¹⁹⁶ However, Ms Abu Halaweh informed the Trust that children who are born out of wedlock are often removed from the care of their mother:

187 Equal Rights Trust interview with Mai Dababna, 23 January 2016, Amman, Jordan; Equal Rights Trust focus group discussion with International Institute for Women’s Solidarity, 20 January 2016, Amman, Jordan; Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women’s Union (Itiha’ad Al Mara’a) Refuge, 15 December 2015.

188 See NCHR above, note 14, p. 27.

189 Equal Rights Trust focus group discussion with International Institute for Women’s Solidarity, 20 January 2016, Amman, Jordan; Equal Rights interview with Lama, 23 January 2016, Amman, Jordan.

190 *Ibid.*

191 Economic and Social Council, *Standard Minimum Rules for the Treatment of Prisoners*, Res. 663 C (XXIV), 30 August 1955.

192 See Human Rights Committee, *Mukong v Cameroon* above, note 158, Para 9.3.

193 Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan.

194 *Ibid.* See also NCHR above, note 14, pp. 28–29.

195 Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan; Equal Rights Trust interview with Eva Abu Halaweh, 29 November 2016, Amman, Jordan.

196 Reform and Rehabilitation Centers Act No. 9 of 2004, Articles 15(c-d), as quoted in Dignity above, note 81, p. 22.

[T]he majority of women who have children out of wedlock are prevented by the authorities from being with their children. If the family of the mother does not want the child and no family is willing to adopt the child, then the child is taken to care centres for children operated by the Ministry of Social Development. The authorities justify taking the child from the mother on the basis that they are afraid the mother might hurt the child as a result of the stigmatisation she may face.¹⁹⁷

Dignity reported a similar finding, noting the anguish caused to women whose children are removed from them:

Among the greatest causes for concern in Jordan, are women who have given birth to ‘illegitimate’ children, conceived outside marriage. During interviews it was these women who appeared to feel among the most helpless regarding information and agency, because of direct discrimination by staff (...) In at least one case DIGNITY was informed that a child was removed from a detainee’s custody without her permission. Researchers also observed the disdainful attitude of staff towards such women firsthand. “Because it was out of wedlock, they took him. I did not sign my son away, but they took him. This hurt the most. I’m dead if I go outside this prison, but I’m dead in here. It’s just the same.”¹⁹⁸

Dignity also noted that these women were reported to be at high risk of depression.¹⁹⁹ Dr Al Momani and Ms Fraihat from the NCHR also told the Trust that the mental and emotional health of women who were made to give up their child was strained and these women may always wonder what happened to the child that was taken away.²⁰⁰ The removal of “illegitimate” children from women in protective custody is in clear breach of international law. Under Article 9(1) of the Convention on the Rights of the Child (CRC), states are required to “ensure that a child shall not be separated from his or her parents against their will”, except in procedures established by law, subject to review, and when “necessary for the best interests of the child”.²⁰¹ There is no provision in Jordanian law which authorises the removal of illegitimate children from their mothers. However, Ms Eva Abu Halaweh reports that in practice the authorities do this, stating that it is in the best interests of the child. Where a parent and child are separated by the states, states are required to “provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision

197 Equal Rights Trust interview with Eva Abu Halaweh, 29 November 2016, Amman, Jordan.

198 See Dignity above, note 81, pp. 57.

199 *Ibid.*, p. 50.

200 Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan; Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan.

201 Convention on the Rights of the Child (CRC), 1577 U.N.T.S. 3, 1989, Article 9(1).

of the information would be detrimental to the well-being of the child.”²⁰² Such requests for information are reportedly denied to women in Jordan.²⁰³

It was reported to the Trust that children who are in detention with their mothers are placed in a nursery and not in the same room as the mother.²⁰⁴ Mothers are allowed to visit their children at any time they want and for any length of time.²⁰⁵ However, the NCHR noted that children stay with their mother in a special dorm:

*The Juweidah nursery is supervised by a lady official pertaining to the Ministry of Social Development who provides children with clothes, food and suitable toys. The woman in charge of the nursery says that the child remains with his mother at the nursery until 5.00 p.m. Thereafter, he is moved with her to a special dormitory called the “incubating dormitory”, but there is a question about the prospects of providing the mother and her child with a bedroom due to over crowdedness, excess of inmates over and above the RRC capacity and the shortage in the number of the dormitories.*²⁰⁶

It was reported that the nursery at Juweida does not have proper ventilation, which can cause problems for the children’s health.²⁰⁷ Contrary to the comments made to the NCHR, the Trust was told by staff at the Refuge that women were not provided with all the basic necessities for their child, and so tried to share and trade items with other women with children.²⁰⁸ It was also noted that it can be difficult for a mother to obtain the resources she needs and so sometimes her child will be taken away from her because she is considered unable to take care of the child.²⁰⁹

5.3.3.4 Visitation Rights

Contact with the outside world for women in protective custody is made either through visits or by telephone.²¹⁰ Over half of the women spoken to who are currently in protective custody in Juweida stated that, although they do have

202 ICCPR, Article 9(4).

203 See Dignity above, note 81, p. 61.

204 Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan.

205 Equal Rights Trust interview with Eva Abu Halaweh, 29 November 2016, Amman, Jordan.

206 See NCHR above, note 14, p. 29.

207 Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan; *ibid.* National Centre for Human Rights, p. 29.

208 Equal Right Trust focus group discussion with International Institution for Women’s Solidarity, 20 January 2016, Amman, Jordan.

209 Equal Rights Trust focus group discussion with Anas Alfuqha, Mina Abu Sal and Areej Samreen, 13 February 2016, Amman, Jordan.

210 Dignity and the NCHR both noted that women are allowed one phone call per week of around 5 minutes duration, see NCHR above, note 14, p. 36; see Dignity above, note 81, p. 59.

visitation rights, no one from their family visits them.²¹¹ A few women reported that they occasionally receive a visitor and that sometimes someone calls to see if they need help, but that they usually do not see or speak to anyone.²¹² Two women reported that their brother or father had visited them in order to threaten to kill them should they be released from protective custody.²¹³

Both Susan Fayd and Eva Abu Halaweh explained that women who do receive visitors are not given any privacy during their visits and that they see their visitors in the same place as women detained for criminal offences.²¹⁴ When the women receive a visit from a lawyer or advocate, there is always someone from the prison present and so the women are not able to speak confidentially.²¹⁵ Ghada explained to the Trust the difficulties that she had when her mother visited meant that she was not able to communicate with her at all. She explained that she was only allowed to visit her mother in a visitation room that had a glass partition between the two of them.²¹⁶ This meant that they had to speak through phones as there was no other way to hear each other through the glass. However, as her mother has difficulty hearing, she could not hear Ghada even using the phone and so they could not speak. She explained that if there was no glass she would have been able to speak with her mother face to face and so they would have been able to understand one another. She said that she “kept trying to ask for permission for a private visit but they would not let me see my mum.”²¹⁷

5.3.3.5 *Work and Recreation*

Women reported to one NGO that they had no opportunities to participate in activities or vocational training, although the same NGO reported being allowed to hold activities for women during the year.²¹⁸ Dignity noted that although there was education available, very few women took this up due to a clash between

211 Equal Rights Trust interview with Lama, 23 February 2016, Amman, Jordan; Equal Rights Trust Interview with Noor, 28 February 2016, Amman, Jordan; Equal Rights Trust interview with Hala, 28 February 2016, Amman, Jordan; Equal Rights Trust interview with Samia, 28 February 2016, Amman, Jordan; Equal Rights Trust interview with Hadeel, 28 February 2016, Amman, Jordan.

212 Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan; Equal Rights Trust interview with Sawsan, 28 February 2016, Amman, Jordan; Equal Rights Trust interview with Aseel, 28 February 2016, Amman, Jordan. Aseel told the Trust that she had been detained in Juweida for three years (she was still detained at the time of her interview).

213 Equal Rights Trust interview with Samia, 28 February 2016, Amman, Jordan; Equal Rights Trust interview with Nawal, 28 February 2016, Amman, Jordan.

214 Equal Rights Trust interview with Susan Fayd, 20 January 2016, Amman, Jordan; Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan; Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan.

215 Equal Rights Trust interview with Susan Fayd, 20 January 2016, Amman, Jordan; Equal Rights Trust interview with Eva Abu Halaweh, 29 November 2016, Amman, Jordan. See also NCHR above, note 14, p. 37; see also Dignity above, note 81, p. 60. Dignity reported that women may be denied visits from their lawyer on disciplinary grounds.

216 *Ibid.* Dignity, p. 59.

217 Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan.

218 Equal Rights Trust focus group discussion with International Institute for Women’s Solidarity, 20 January 2016, Amman, Jordan.

class times and the times in which paid work was available and also possibly due to depression.²¹⁹

Women are able to work and earn a minimal salary,²²⁰ which is reportedly below the minimum wage.²²¹ However, it is not clear if there is sufficient work for all women who wish to work.²²² According to the NCHR, administrative detainees, including women in protective custody, are classed as “temporary” inmates, and so may be excluded from other “training, employment or education opportunities that are enjoyed by convicted female inmates”.²²³

Lama explained that she was constantly frustrated and depressed while detained in Juweida, having been placed in protective custody following what she considered to be a wrongful accusation by her father that she had shamed her family. She stated that being able to undertake activities would have provided a welcome distraction while she was detained; “recreational activities keep us busy to forget the world we are in and not think a lot about why we are locked here.”²²⁴

5.3.4 Impact of Protective Custody

Periods of detention are likely to adversely impact any individual’s mental well-being. For women in protective custody, however, the situation is likely to be considerably worse. They are detained without committing any crime, often following significant violence or threats of violence, and have no prospective release date or any real ability to influence their prospects of release.

Statistics show that administratively detained women are more likely to report experiencing psychological problems than women in judicial detention. According to a 2014 Penal Reform International survey undertaken at Juweida, of those women in judicial detention, 56% suffered from depression, 13% had self-harmed, 15% had suicidal thoughts and 39% experienced insomnia.²²⁵ This was compared to 62%, 24%, 24% and 52% (respectively) of Jordanian nationals held in administrative detention. All of the latter group believed that their “problem had worsened in prison”.²²⁶ The survey also noted that:

[T]he most significant consequence of imprisonment for (...) Jordanian women in administrative detention (...) related to family breakdown and social isolation – a quarter said their children had been taken away, a quarter that their family

219 See Dignity above, note 81, p. 63.

220 Equal Rights Trust focus group discussion with International Institute for Women’s Solidarity, 20 January 2016, Amman, Jordan.

221 See Dignity above, note 81, p. 62.

222 *Ibid.*, p. 63.

223 See NCHR above, note 14, p. 42.

224 Equal Rights Trust interview with Lama, 23 January 2016, Amman, Jordan.

225 See Penal Reform International above, note 81, p. 16.

226 *Ibid.*, p. 16.

had broken up and nearly twenty percent that they were stigmatised by their family and community.²²⁷

The depression reported by administrative detainees was mirrored in the comments made to the Trust about women in protective custody. Women in protective custody reported that they feel depressed and that they find their time in detention difficult.²²⁸ Advocates shared that “detention centres take away your freedom and this is difficult for someone who didn’t commit a crime”²²⁹ and that “society hurts her, the law hurts her, and thus she ends up being impacted negatively [when detained without doing anything wrong].”²³⁰ Hala, who entered protective custody after becoming pregnant outside of marriage and being threatened by her brother, was unable to contact her family and then became depressed when she finally received an update:

*My mother passed away while I have been locked in here. I wanted to be freed, to leave Jordan and work. The Governor tells me to be freed I must find someone to marry. How do I find someone while I am in here? After my mother died there is nothing left.*²³¹

In addition to explaining that the lack of activities leads to her dwelling on her detention, Lama expressed her frustration that detention would not fix the problems she experienced – “the problem does not go away during detention (...) it still exists when you leave.”²³² She also explained her frustration at being detained without reason:

*My father filed a complaint against me so they took me to Juwieda. I was locked away unjustly. All I kept thinking was I had to disprove the complaint. I had to prove my innocence.*²³³

This sense of hopelessness at being unable to be released was also reported by a number of other women.²³⁴ Prior to being placed in protective custody, Ghada had served three years in Juweida for committing a crime relating to honour. She believed she was wrongfully convicted. She was excited when the three years

227 *Ibid.*, p. 15.

228 Equal Rights Trust interview with Lamis Nasser, 30 January 2016, Amman, Jordan; Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan.

229 Equal Rights Trust focus group discussion with International Institute for Women’s Solidarity, 20 January 2016, Amman, Jordan.

230 Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan.

231 Equal Rights Trust interview with Hala, 28 January 2016, Amman, Jordan.

232 Equal Rights Trust interview with Lama, 4 February 2016, Amman, Jordan.

233 *Ibid.*

234 *Ibid.*; Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan; Equal Rights Trust interview with Hala, 28 February 2016, Amman, Jordan; Equal Rights Trust interview with Samia, 28 February 2016, Amman, Jordan; Equal Rights Trust interview with Sawsan, 28 February 2016, Amman, Jordan; Equal Rights Trust interview with Aseel, 28 February 2016, Amman, Jordan; Equal Rights Trust interview with Tala, 28 February 2016, Amman, Jordan; Equal Rights Trust interview with Rasha, 28 February 2016, Amman, Jordan.

finally came to an end and looking forward to being released to continue her life. When she prepared to leave, the police officers told her that she would be moved to protective custody because no one from her family agreed to sponsor her. She shared feeling very depressed when she found out that not only was she in Juweida based on a wrongful conviction, but now the law would not allow her to leave after serving her time:

*I felt as though I had been sentenced to death because no one wanted me and I had to go back to the injustice [of Juweida] (...) You are forced to sit in a small room, of course it's bad [being in Juweida]. And of course to make it worse, I'm sitting with other women in that room. I don't have a room to myself.*²³⁵

Ghada was later released through the support of a local organisation. Another detainee at Juweida, Marwa, reported that women are often told that they will be released from protective custody only to be returned again.²³⁶ Dr Al-Mohmani noted that some women reported going on hunger strikes in support of their demands to be released.²³⁷

As noted above in Part 5.3.1.4, the length of detention together with its arbitrary and disproportionate nature, mean that protective custody is likely to amount to inhuman treatment, and where the pain and suffering it causes goes beyond the minimum threshold to be severe, it will amount to torture. The conditions of detention noted above, and the impact that detention has on women, further support the conclusion that protective custody will almost always cause mental pain and suffering such that it must be considered inhuman.

Examining the individual stories discussed above of women who were still detained when they spoke with the Trust, demonstrates the extent of mental pain and suffering that women may experience. Samia, detained for three months at the time of her interview explained how one of her male relatives came to Juweida and threatened to kill her and also expressed that she felt hopeless. Similarly, Nawal, detained for 11 months, also had a male family member come to Juweida to threaten to kill her. She expressed her frustration that the Governor insisted she needed a husband to be released, given she had no ability to find one in detention.²³⁸ Deema reported she was poorly treated by the other inmates and had heard women being sexually assaulted at night. She had been detained for two and a half years when the Trust spoke with her.²³⁹ Hala reported that she felt poorly treated by prison staff. She had been detained for five years when she spoke to the Trust and spoke of feeling hopeless and depressed and of her wish to be free. Like Nawal, she too was told that she must find someone

235 Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan.

236 Equal Rights Trust interview with Marwa, 3 February 2016, Amman, Jordan. According to Mizan for Law, Marwa left protective custody in 2014.

237 Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan.

238 See above, Part 5.3.3.4.

239 See above, Part 5.3.2.

to marry in order to leave, and questioned how she would do that from within Juweida.²⁴⁰ Aseel, detained for three years, also reported feeling hopeless. For all these women, their mental pain and suffering, combined with the poor conditions of detention, is such to amount to inhuman treatment.

5.3.5 Life After Protective Custody

Many women are assisted by NGOs to be released from protective custody and are then supported by NGOs to carry on with their lives.²⁴¹ Organisations provide women with access to vocational training, support to negotiate with their families, and support to find accommodation and a job.²⁴² For example, in 2007, Mizan for Law developed a programme called New Start. The purpose of the programme was to work with authorities to release women from protective custody and reintegrate them back into society. To date, Mizan has worked to release 57 women from protective custody, including some women who were held for 15 years. Eva Abu Halaweh noted that:

*Releasing even one woman takes a lot of time as it must be ensured that she has a place to stay and is provided with psychological counselling. Mizan also considers the length of time a woman was held because some women have been held for so long that they do not know what a cell phone is and do not understand how banks work.*²⁴³

Dr Al-Momani of the NCHR explained that the way in which women are released from protective custody may cause difficulties: “a woman can be released late in the night because she first has to go to the police station before she can go home.”²⁴⁴ Several lawyers who have been able to assist women to be released from protective custody despite looming threats from family reported that they did not receive support from authorities when a woman was released. They explained that they try to come up with ways to disguise the women or find a time for a woman to be released when her family may not be informed or may be away.²⁴⁵

Staff from the Jordanian Women’s Union (Itiha’ad Al Maraa) Refuge, explained that although some women were successfully able to carry on with their lives after being released from protective custody, many experienced difficulties integrating back into society because of the social stigma attached to being

240 See above Part 5.3.2.

241 Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women’s Union (Itiha’ad Al Maraa) Refuge, 15 December 2015.

242 Equal Rights Trust focus group discussion with International Institution for Women’s Solidarity, 20 January 2016, Amman, Jordan.

243 Equal Rights Trust interview with Eva Abu Halaweh, 29 November 2016, Amman, Jordan.

244 Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan.

245 Equal Rights Trust focus group discussion with lawyers Majde Azoka, Takreed Al-Maiqara, Haya Al-Abadi and Lena Salama, 13 February 2016, Amman, Jordan. All four lawyers provide legal representation to women in protective custody, and have eight, five, two and six years experience respectively.

detained.²⁴⁶ Buthaina Fraihat noted that it is assumed that either the woman was convicted of a criminal offense or that she had done something that is considered culturally unacceptable such as having a sexual relationship outside of marriage.

*Society does not allow her to reintegrate easily. For employment when asked about her vocational training and she cites the prison, it is assumed she is a criminal or she was sent to protective custody after offending her family honour (...) The law thinks that it is taking care of the woman. No, it is not. Not when they are put in with criminals. Instead you present her to society as someone who committed a crime.*²⁴⁷

Marwa's story illustrates the difficulties that women may have when they are released from protective custody. Marwa explained that when she was released after seven years in Juweida she had no family, friends or financial support on release. She tried unsuccessfully to seek help from the Ministry of Social Development. After that she attempted to seek financial support from private companies and was labelled "crazy". One day she heard of a Minister visiting a shelter and went to share her story. Upon hearing her story, the Minister's office supported her by helping her find housing and a job.²⁴⁸

5.4 Conclusions and Recommendations

5.4.1 Conclusions

Jordan is not currently meeting its obligations under international human rights law to combat violence against women. The Jordanian legal framework not only fails to provide for adequate protection for women who have experienced violence but it also contains a number of provisions which condone violence against women. Several provisions of the Penal Code allow for more lenient sentences in relation to certain honour-based crimes. In addition, Article 308(1) of the Penal Code, which allows the perpetrator of a sexual assault to escape punishment if he marries his victim, is highly discriminatory. The emphasis placed on reconciliation in domestic violence cases pursuant to the Protection Against Family Violence Act, also places pressure on women to reconcile with abusive family members.

246 Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015; Equal Rights Trust focus group discussion with lawyers Majde Azoka, Takreed Al-Maiqara, Haya Al-Abadi and Lena Salama, 13 February 2016, Amman, Jordan; Equal Rights Trust focus group discussion with International Institution for Women's Solidarity, 20 January 2016, Amman, Jordan.

247 Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan.

248 Equal Right Trust interview with Marwa, 3 February 2016, Amman, Jordan.

In addition to deficiencies in the legislative framework, other state measures to prevent acts of gender-based violence are clearly insufficient. As set out at the outset of this part, women and girls continue to be the subject of significant levels of gender-based violence. It is particularly concerning that honour killings increased in 2016. Treaty monitoring bodies have criticised the lack of protection and rehabilitation services offered within Jordan. Only two state-run domestic violence shelters have been established, supplemented by the work of NGOs that struggle to operate with inadequate funding. Consequently, some women request to be placed into custody for their own protection. Others are placed in protective custody at the discretion of the Governor.

Placing victims of honour crimes and other forms of gender-based violence into protective custody is a clear violation of international law. Protective custody deprives women of their liberty and agency and contributes to entrenching gender stereotypes that damage long-term prospects of equality and increase the risk of gender-based violence. Not only does protective custody fail to prevent honour-based crimes; in order to escape detention women are told they must secure the sponsorship of a male family member. In some cases, this forces women to choose between staying in protective custody and seeking sponsorship from the very family member that abused them. Protective custody punishes those who have been subjected to violence and threats, while allowing perpetrators to act with impunity.

The use of protective custody will always amount to a violation of Jordan's obligations to protect women from gender-based violence, including by taking steps to punish the perpetrators of such violence. This failure of due diligence means that, in any case where a woman is placed in protective custody, Jordan must be considered to condone that violence and therefore be involved in the violence. If the violence or threat of violence experienced by a woman causes her pain and suffering which meets the minimum threshold to be considered inhuman or degrading treatment, the state will therefore be in violation of the prohibition of ill-treatment. Where the pain and suffering caused is severe, the state will violate the prohibition of torture, as acts of gender-based violence always meet the remaining elements of the definition of torture as set out in Part 2 in that they are intentional and discriminatory.

In addition to violating Jordan's due diligence obligations, depending on the specific circumstances of the case, protective custody is also likely to amount to ill-treatment in and of itself, given the mental suffering that it causes and in some cases may amount to torture. As discussed above in Part 4.3, women continue to be detained for significant periods of time in Jordan. The average length of detention in protective custody of the women who were detained at the time they spoke to the Trust was 18 months, with one woman having been in detention for five years. The significant length of detention, together with the feelings of hopelessness and depression reported by women in protective custody due to the arbitrary nature of their detention, means that protective custody is likely to cause mental pain and suffering amounting to inhuman treatment, and in some cases, severe enough to amount to torture. The conditions of detention that women face will also exacerbate their suffering.

5.4.2 Recommendations

In light of the foregoing analysis, this Part offers a series of recommendations to the Jordanian Government and the international community regarding future steps to ensure the rights of victims of gender-based violence in line with international law and best practice. These recommendations, while in some instances specific to the Jordanian context, are also intended to be of use to all countries who currently, or are considering, placing women in protective custody. The recommendations are made on the basis of equality and non-discrimination, as established under international law and further elaborated through the Declaration of Principles on Equality.

5.4.2.1 Recommendations to the Jordanian Government

In light of the above findings and conclusion, it is recommended that Jordan:

- a. Discontinue and prohibit the practice of protective custody with immediate effect. Jordan must ensure the adequate provision of housing for women who have experienced gender-based violence. Jordan should adopt further measures to combat honour crimes and other forms of gender-based violence, including gender-sensitive training for members of the judiciary, police and prison staff, counselling centres, free legal advice, health care (including psychological assistance), and financial aid. These measures should be guaranteed in law and receive adequately financing from the state. Eva Abu Halaweh, Executive Director of Mizan for Law, noted that it is essential that Jordan develop programs aimed at raising public awareness so that families learn to work to address issues when they believe their female relatives have behaved in an inappropriate way and do not resort to harming them.²⁴⁹
- b. Transfer all women currently detained in protective custody at Juweida or the Um Al-Lulu Detention Centre into safe housing. Lawyers and advocates that the Trust spoke with stated that it is imperative that the government recognise its role to establish housing that provides women with safety when threatened with violence but which also allow them to continue living their lives.²⁵⁰
- c. Amend its legislation in order to ensure compliance with its international obligations to prevent and punish violence against women and to prohibit discrimination, including:
 - i. Amend the Crime Prevention Law of 1954 to expressly prohibit the law from being used to detain persons who have been subject to crimes or the threat of crimes.

249 Equal Rights Trust interview with Eva Abu Halaweh, 29 November 2016, Amman, Jordan.

250 Equal Rights Trust focus group discussion with Anas Alfuhqa, Mina Abu Sal and Areej Samreen, 13 February 2016, Amman, Jordan; Equal Rights Trust interview with Lamis, 20 January 2016, Amman, Jordan; Equal Rights Trust interview with Dr. Nahla, 4 February 2016, Amman, Jordan.

- ii. Repeal Articles 98 and 99 of the Penal Code, which allow for more lenient sentencing where a crime is committed in a fit of rage, or where the perpetrator of a crime is excused by a victim's family. These provisions have the effect of sanctioning honour crimes, in violation of Jordan's international obligations to prohibit and prosecute acts of gender-based violence. Several organisations that the Trust spoke with expressed the importance of treating honour crimes as homicide and not considering punishment for such crimes as something to be negotiated between the government and the tribe involved.²⁵¹
- iii. Repeal Article 308 of the Penal Code which permits an individual convicted of consensual sex with a person between the ages of 15 and 18 to escape punishment provided that they subsequently marry the victim. This provision violates the right of a woman to enter into marriage with free and full consent and is also highly discriminatory.
- iv. Amend and replace the Protection Against Family Violence Act. The Act should include a definition of domestic-violence and should not see reconciliation as a mechanism of resolution. Protective and preventative measures contained in the Act should be strengthened and extended. To this end, Jordan should ensure the Act's compliance with international standards and best practice, including in particular, the CEDAW, as interpreted by the CEDAW Committee in its General Recommendation No. 19 on Violence against Women.
- d. Commission an independent investigation into conditions of detention at women's correctional facilities within the state. The investigation should cover allegations of violence, overcrowding and poor hygiene standards, failure to separate women placed in administrative detention from those convicted of a crime, and the inadequate provision of psychological and other health care. Jordan should investigate the serious allegation that children born outside of marriage are being removed from the care of their mothers and placed into the care of the state without consent. The results of the investigation should be published and made freely available. The state must ensure that it improves detention conditions so that they are in line with international standards and ensure that individuals deprived of their liberty are treated with humanity and respect for their inherent dignity as a person.
- e. Jordan should ensure that NGOs working for the protection of victims of gender-based violence are provided with adequate resources, including funding and training. Women's and other civil society groups should be

²⁵¹ Equal Rights Trust focus group discussion with Mukarim Odai and four other staff members (who chose to remain anonymous) at the Jordanian Women's Union (Itiha'ad Al Maraa) Refuge, 15 December 2015; Equal Rights Trust focus group discussion with Anas Alfuqha, Mina Abu Sal and Areej Samreen, 13 February 2016, Amman, Jordan; Equal Rights Trust focus group discussion with International Institute for Women's Solidarity, 20 January 2016, Amman, Jordan.

consulted on any prospective changes to the Protection Against Family Violence Act and other laws with a bearing on the right to gender equality.

- f. Collect and publicise relevant data on gender-based violence and gender equality more broadly, including any relevant statistical data, in order to identify and to analyse the effectiveness of measures to combat gender-based violence and promote equality. Wherever statistics are collected, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within the Jordanian society.
- g. Allow for individual communications to be made to treaty bodies, including ratifying the Optional Protocol to the Convention on the Elimination of Discrimination against Women. Jordan should also withdraw the declarations it has made to the CEDAW.

5.4.2.2 *Recommendations to the International Community*

Those bodies tasked with implementing and enforcing international human rights law in relation to gender equality in Jordan, including UN special procedures and treaty monitoring bodies, are urged to:

- a. Continue to recommend the total abolition of protective custody and other similar practices, both in Jordan and abroad. In particular, international bodies are urged to explicitly recognise and emphasise that:
 - i. Protective custody encourages gender-based violence by punishing victims and allowing perpetrators to act with impunity.
 - ii. States which fail to act with due diligence to prevent, prohibit and prosecute acts of gender-based violence will be held responsible for torture and inhuman or degrading treatment or punishment. In particular, the international community should emphasise that states which aim to protect women from violence by detaining them, with or without their “consent”, fail to exercise due diligence as required by international law.
 - iii. Protective custody will almost always amount to ill-treatment and in some cases may amount to torture. Treaty monitoring bodies and special procedures should start with the presumption that protective custody is a form of ill-treatment and require states to disprove this allegation.
- b. Continue to recommend that Jordan amend its legal framework in line with international standards. In particular, international bodies should recommend the abolition of those laws discussed above which have the effect of discriminating against women and condoning honour-based violence.

- c. Encourage and support measures designed to combat gender-based violence in Jordan. In particular, such bodies should continue to recommend the establishment of safe housing for women experiencing violence, as well as other preventative and protective mechanisms.

5.4.2.3 Recommendations to Civil Society

Civil society is urged to work to monitor gender-based violence and to publicise widely the findings of such monitoring, including to international human rights bodies and the Jordanian government. It is also recommended that civil society continue to advocate for the achievement of the recommendations set out in relation to the Jordanian government.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

Discriminatory torture and ill-treatment is distinct in its character from other forms of torture and ill-treatment. It demands particular attention. To date, at the international level, it has received insufficient focus. Torture “for reasons of discrimination” remains an underutilised human rights protection as the relative lack of awareness of this key element of the torture definition remains. An adequate focus on *discriminatory* torture and ill-treatment can have a significant impact, both to the extent that it ensures the correct categorisation of a particular act or omission as torture or ill-treatment and because it can help to secure an appropriate response to tackling the treatment in question.

Jordan is, undoubtedly, currently in breach of its obligations to ensure people enjoy freedom from torture and other ill-treatment and non-discrimination. Its laws do not provide adequate protection from such treatment. Notably, the law still provides for “protective custody” of women in situations of violence and also still permits the involuntary detention of persons with mental disabilities for a wide range of obscure reasons including the possibility of “moral harm”. The situation for both groups in practice is no better. In fact, in respect of women in “protective custody” our research indicates that, in addition to their incarceration in and of itself, women are in some cases suffering abusive treatment, a fear for their safety and living in unsanitary conditions. These findings demand immediate action from the government.

Arguably even more pressing is an urgent response to serious allegations of abuse against children with mental disabilities (and some adults) in institutions and health care settings. Some of these allegations, including that on patient’s arm was broken and another was sexually assaulted, amount to torture. The pain and suffering reported by interviewees was marked and, in some cases, very severe. And yet, to date, inadequate measures have been taken by the state to ensure that torture and ill-treatment ceases and that perpetrators are punished.

6.2 Recommendations

In light of the foregoing analysis, the Equal Rights Trust offers a series of recommendations to the government of Jordan and the international community which aim to ensure that the practice of discriminatory torture and other ill-treatment is eradicated and that the broader rights to equality and non-discrimination are fulfilled. As discussed throughout this report, the issues of discrimination

and torture and other ill-treatment cannot be viewed in isolation. There is significant further work to be done not just by Jordan but also internationally, to ensure that, in responding to violations, an isolated approach which ignores the discriminatory element of a case, is not taken.

The recommendations which follow seek to assist Jordan with achieving full compliance with international and regional human rights standards. They are based on the unified human rights framework contained within the Declaration of Principles on Equality.

This report has made recommendations specific to the case studies on the treatment of persons with mental disabilities and protective custody in Parts 4 and 5 respectively. Without seeking to repeat those here, there are lessons to be drawn about the broader approach to combatting discriminatory torture and ill-treatment in all its forms from the examples given. A holistic approach involving legislative and policy reform; awareness and capacity building among state authorities, the judiciary and the public; and the implementation of measures to improve the monitoring and reporting of discrimination are necessary.

The recommendations are presented below.

6.2.1 Recommendations to the Jordanian Government

a. Strengthen International Commitments Related to Torture, Ill-treatment and Equality

Jordan should improve its approach to protecting and promoting equality by taking steps to strengthen its international commitments. The Trust recommends the following specific actions:

- Jordan should rescind its reservations to the Convention on the Elimination of All Forms of Discrimination against Women;
- Jordan should allow individual complaints to treaty bodies;
- The government should address concerns raised by the treaty bodies and special mechanisms of the United Nations in relation to alleged human rights violations in the country.

b. Ensure Compliance of the Jordanian Constitution with International Standards

As per Principle 5 of the Declaration of Principles on Equality, discrimination must be prohibited on the basis of an extensive and open-ended list of characteristics. Article 6(1) of the Jordanian Constitution, which contains a guarantee that Jordanians shall be equal before the law, only prohibits discrimination on the grounds of race, religion and language. In light of the widespread discrimination faced by women and persons with disabilities, the absence of gender and disability as protected characteristics in the Constitution is particularly concerning. Jordan should include a broader range of characteristics in Article 6 in order to ensure that it complies with international standards on equality and non-discrimination.

c. Amend the National Legislative Framework to Comply with International Standards

In light of the report's earlier analysis, Jordan should make the following amendments to ensure that its national legal framework is in line with international human rights standards and best practice:

- Repeal Article 14(a) of the Public Health Act, which provides for involuntary institutionalisation on the basis of mental illness;
- Amend legislative provisions which allow for persons with disabilities to be deprived of their legal capacity and which provide for substituted-decision making;
- Ensure that the proposed new Law on the Rights of Persons with Disabilities complies with the provisions of the Convention on the Rights of Persons with Disabilities and provides persons with disabilities with enforceable rights;
- Amend the Crime Prevention Law of 1954 to expressly prohibit the law from being used to detain persons who have been subject to crimes or the threat of crimes;
- Repeal Articles 98 and 99 of the Penal Code, which allow for more lenient sentencing where a crime is committed in a fit of rage, or where the perpetrator of a crime is excused by a victim's family;
- Repeal Article 308 of the Penal Code which permits an individual convicted of consensual sex with a person between the ages of 15 and 18 to escape punishment provided that they subsequently marry the victim;
- Amend and replace the Protection Against Family Violence Act to include a definition of domestic-violence, remove reconciliation as a mechanism of resolution and extend its protective and preventative measures.

d. Implement and Enforce the Existing Legislative Framework

Those who have the responsibility for implementing national laws, including the courts, should ensure that they do so in accordance with the standards established by international and regional law on the rights to equality and non-discrimination and freedom from torture and ill-treatment. In addition, Jordan should ensure that sufficient financial resources are allocated to enable the responsible authorities to fully and effectively enforce the existing laws which prohibit torture, ill-treatment and discrimination.

e. Implement Comprehensive Anti-Discrimination Legislation

After consulting with the public and civil society, Jordan is urged to develop comprehensive anti-discrimination legislation in line with international best practice. Such legislation should, amongst other things, provide a definition of discrimination which encompasses both direct and indirect discrimination, harassment and failure to make reasonable accommodation, prohibit discrimination in all areas of life regulated by law, require the state to take positive measures to ensure equality, prohibit victimisation of persons alleging discrimination and also provide for procedural safeguards, such as allowing for a reversal of the

burden of proof. It should recognise and address discrimination on multiple or intersectional grounds.

f. Implement a Comprehensive Framework on Torture and Other Ill-Treatment

Jordan should develop a comprehensive framework to ensure the protection of all persons from torture and other ill-treatment, paying particular regard to those at increased risk of discriminatory torture or ill-treatment because they possess protected characteristic(s). In line with international best practice, the framework should employ direct prevention techniques to address the root causes of torture and other ill-treatment, including discrimination. It should also employ indirect prevention techniques, such as investigating and documenting past cases and prosecuting perpetrators, to ensure that incidents of torture and other ill-treatment are not repeated.

g. Judicial Training

The Jordanian authorities responsible for professional training of the judiciary should ensure that judges are given adequate training on international and regional human rights standards relating to equality, non-discrimination and torture and other ill-treatment.

h. Adopt Other Measures to Combat Discrimination and Inequality

Jordan should adopt a wide range of measures to prohibit and eliminate discrimination which may contribute to the practice of torture and other ill-treatment. These should include, but not be limited to, the following activities:

- Training state authorities, including ombudspersons, the police, prosecutors and senior public officials, to prevent discrimination by officials and by third parties;
- Raising public awareness about equality and the impact of discrimination by developing education programmes which counter prevalent discriminatory attitudes towards or beliefs about persons with protected characteristics;
- Creating procedures to enable persons facing discrimination and crimes against them to report their experiences and have them addressed appropriately by the authorities;
- Ensure that civil society organisations working for the protection of persons faced with discrimination are provided with adequate resources, including funding and training.

6.2.2 Recommendations to the International Community and Civil Society

Those bodies tasked with implementing and enforcing international and regional law and policy on the rights freedom from torture and ill-treatment and to equality and non-discrimination, including the special procedures, treaty bodies and agencies of the United Nations and the United Nations High

Commissioner for Human Rights, should both recognise and take a firm stance against all forms of discriminatory torture and ill-treatment and make recommendations to Jordan accordingly. In particular, the Trust recommends that the following actions are taken:

- a. The international community should adopt the phrase “discriminatory torture and ill-treatment” and ensure that it recognises the causative links between discrimination and torture and other ill-treatment in its approach to assessing states’ compliance with their international obligations. By taking this approach, the international community can best recognise the specific nature and extent of the relevant human rights violations and identify and recommend appropriate targeted action which deals with the root problems;
- b. Treaty bodies reviewing Jordan must seek information on instances of discriminatory torture and other ill-treatment of all persons in Jordan and press for Jordan to prosecute such instances under Article 208 of the Jordanian Penal Code;
- c. The treaty bodies and special procedures must work together to establish unified standards to protect the rights of persons with disabilities based on the standards established in the Convention on the Rights of Persons with Disabilities and the Convention Against Torture;
- d. The international community should continue to recommend the total abolition of “protective custody” and institutionalisation of persons with mental disabilities;
- e. The Special Rapporteur on the rights of persons with disabilities should request to visit Jordan as soon as possible.

In addition, the importance of the role of civil society in ensuring that efforts to combat discriminatory torture and ill-treatment properly reflect the needs of those exposed to it cannot be understated. In respect of this civil society is urged to:

- f. Adopt the notion of “discriminatory torture and other ill-treatment” set out in this report and (i) explore and expose it in its variety of forms and wherever it takes place; (ii) push for its wider adoption such that violations may be appropriately categorised and tackled.
- g. Continue to work to monitor violations of the rights of women and persons with disabilities in Jordan and to publicise widely the findings of such monitoring, including to international human rights bodies and the Jordanian government.

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You could hear it at night. You could hear the voices and just knew what was happening to them (...) They could complain but everyone was too scared to say anything.

To date, one of the most egregious human rights violations remains underexplored: **discriminatory** torture and other ill-treatment. This report examines the phenomenon, recognising that discrimination is a key ingredient in the story of many acts of brutality, abuse and humiliation. It argues that failing to identify discriminatory motives, whether on the grounds of race, sex, disability or otherwise, is a failure both to fully understand the nature of the treatment and to develop appropriate responses.

The report presents two case studies from Jordan which are considered through the lens of discriminatory torture and other ill-treatment: the “protective custody” of women and the treatment of persons with mental disabilities, particularly in institutions. By combining desk-based research and first-hand testimony from members of these stigmatised and often unheard groups, the report offers new perspectives and concludes that both Jordan and the international community need to take action to recognise discriminatory torture and other ill-treatment and protect people from it on an equal basis.

The Equal Rights Trust is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.

Mizan for Law works to promote human rights and democracy in Jordan. It seeks to develop legislation and increase awareness on human rights to enhance protection for victims of human rights violations.



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