



## Submission to the 66<sup>th</sup> session of the Committee on the Elimination of All Forms of Discrimination against Women in relation to the sixth periodic report of

### Jordan

January 2017

#### Statement of Interest

1. The Equal Rights Trust submits this parallel report to the 66<sup>th</sup> session of the Committee on the Elimination of Discrimination against Women (the Committee) in advance of its consideration of the sixth periodic report submitted by Jordan.
2. The Equal Rights Trust exists to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. We focus on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.
3. The Trust has been actively involved in strengthening the capacity of Jordanian civil society to combat discrimination and promote equality since 2013. Working in partnership with the Jordanian organisation Mizan Law Group for Human Rights (Mizan) and with the financial support of the European Union, we are undertaking a project to empower civil society to increase the protection of vulnerable groups in Jordan from discriminatory torture and ill-treatment.
4. In the course of this project, we have undertaken research into patterns of discriminatory torture and ill-treatment, with a particular focus on the treatment of women and persons with mental disabilities. This research has included extensively documenting the experiences of women placed in so-called “protective custody” because they are considered to be at risk of domestic or other forms of gender-based violence. In total, our researchers interviewed 21 women who have been detained in protective custody and 23 persons who worked with women detained in protective custody. A report presenting the findings and conclusions of our research is due to be published in March 2017. This submission presents the key findings of our research, and makes recommendations directed towards the state of Jordan.

#### List of Issues

5. As the Committee will be aware, in June 2016, the Equal Rights Trust submitted suggested questions for adoption by the Committee at its pre-session working group.<sup>1</sup> Our submission focused on three issues which we believe call into question Jordan’s compliance with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (the Convention): the continued use of so-called “protective custody”; Article 308 of the Jordanian Penal Code No. 16 of 1960, which pardons perpetrators of sexual assault if they marry their victims; and the lack of comprehensive non-discrimination legislation and the absence of any guarantee of non-discrimination on the grounds of sex and gender in the Constitution.

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<sup>1</sup> Equal Rights Trust, *Suggested issues and questions to be adopted at the 66<sup>th</sup> session of the Committee on the Elimination of Discrimination against Women (pre-session working group) in relation to the sixth periodic report submitted by: Jordan, June 2016.*

6. In this submission, we focus on the issue of “protective custody”. “Protective custody”<sup>2</sup> involves the administrative detention of women who are perceived to be at risk of certain types of violence. It is ostensibly used for their own protection. Our research, summarised below, indicates that women in Jordan are placed in “protective custody” either because they have been victims of violence, or because they are believed to be in danger of becoming victims of “honour crimes” because, for example, they are rape victims, are alleged to have had sex outside marriage or have been seen in the company of a man to whom they are not related.
7. We welcome the fact that, in its list of issues and questions, the Committee highlighted many of the concerns outlined in our submission.<sup>3</sup> In particular, we welcome the fact that the Committee asked Jordan to indicate whether any steps have been taken to ensure that the Crime Prevention Act of 1954 is not abused through use of “protective custody”, and the Committee’s confirmation that this practice breaches the State party’s obligations under Article 2(d) of the Convention.<sup>4</sup>
8. In its response, Jordan detailed a number of protective measures that it is in the process of implementing to ensure better protection of women and girls who have suffered domestic violence.<sup>5</sup> These include: increasing the number of safe houses for victims of domestic violence; improving the availability of psychological counselling; creating follow-up procedures for appropriate medical care in hospitals and health centres; improving links between state agencies; and ensuring free legal services so that the process of bringing a criminal prosecution is efficient and sensitive to the needs of the victim.<sup>6</sup> Jordan further noted that a council in the Interior Ministry has been formed to develop a mechanism to remove female victims of domestic violence from administrative detention (“protective custody”) to safe houses which have been constructed by Ministry of Social Development and the Public Security Directorate.<sup>7</sup>
9. The Equal Rights Trust is gravely concerned by Jordan’s response. As set out below, the practice of protective custody is a severe violation of the rights of women arising under the Convention, and under other international human rights laws, including in particular the International Covenant on Civil and Political Rights (the ICCPR), under which the state is obligated to guarantee *inter alia* the rights to freedom from torture and other forms of ill-treatment, to liberty of the person, and to freedom of movement. In this light, the fact that the state has not taken steps to immediately end the practice of protective custody and to provide shelters for women affected by violence is a matter of the most serious concern.

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<sup>2</sup> While we use the term “protective custody” in this submission because this is the way in which the practice is commonly described in Jordan, our use of this term does not indicate any acceptance of the term’s legitimacy.

<sup>3</sup> Committee on the Elimination of Discrimination Against Women, *List of issues and questions in relation to the sixth periodic report of Jordan* (List of Issues), UN Doc. CEDAW/C/JOR/Q/6, 2 August 2016.

<sup>4</sup> *Ibid.*, Para 3.

<sup>5</sup> Committee on the Elimination of Discrimination Against Women, *Replies of Jordan to the list of issues*, UN Doc. CEDAW/C/JOR/Q/6/Add.1, 14 November 2016, pp.17-18.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, Para 2.2.

## “Protective Custody” in Jordan

10. Women in Jordan are placed into “protective custody” following a decision of District Governors pursuant to Article 3 of the Crime Prevention Law of 1954.<sup>8</sup> Many lawyers and non-governmental actors contend that this is an incorrect interpretation of this provision.<sup>9</sup> Nevertheless, the fact remains that women in Jordan are placed in “protective custody” under this Article.
11. The Department of Correction and Rehabilitation Centres does not maintain statistics on the number of women detained in protective custody: while statistics are available on the number of women held in administrative detention, there is no credible data on the proportion of those who are being held ostensibly for reasons of their own protection.<sup>10</sup> A member of the Correctional and Rehabilitation Centres Administration, interviewed by the Trust in 2016, stated that 140 women were held in administrative detention in Jordan as of late 2016.<sup>11</sup>
12. Our research indicates that most Jordanian women detained in protective custody are placed there because they are believed to be at risk of violence, and there is no shelter available.<sup>12</sup> We found a range of different circumstances and situations which lead to women being detained in protective custody. We were informed that women are detained when it has been alleged that they have threatened their family’s honour or that they have left their home (whether voluntarily or not).<sup>13</sup> Some women reported being detained because they have behaved in a way which is deemed culturally unacceptable, such as having a relationship outside of marriage.<sup>14</sup>

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<sup>8</sup> This article provides that a District Governor may order administrative detention if: (1) a person is found in a public or private place in circumstances convincing the District Governor that he is about to commit, or help to commit, a crime; (2) a person is given to banditry, theft, possession of stolen money, protection or harbouring of thieves, or helping others to hide or dispose of stolen money; or (3) a person’s release without bail might be dangerous to other persons.

<sup>9</sup> 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.

<sup>10</sup> 7iber, “Imprisoning the Victim: Detaining Women Under the Pretext of Protecting Them From ‘Honour’ Crimes”, 21 January 2015, available at: <http://www.7iber.com/2015/01/womenadministrative-detention/>.

<sup>11</sup> 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%99-activists-say>.

<sup>12</sup> Equal Rights Trust interview with Lamis Nasser, 30 January 2016, Amman, Jordan.

<sup>13</sup> Equal Rights Trust interviews with activists, lawyers, support workers and others working with women in protective custody; Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan.

<sup>14</sup> 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.

13. It has also been reported that protective custody has been used to detain non-Jordanian women trafficked into the country, in advance of return to their home country.<sup>15</sup> As the Committee has noted in its General Recommendation No. 19, the failure to provide shelters for women exposed to or at risk of violence, and to take appropriate action to protect women victims of trafficking is a failure to meet the positive obligation under Article 2 of the Convention.<sup>16</sup>

#### *Treatment and Conditions in Detention*

14. In addition to the dehumanising and violative nature of protective custody in itself, we found evidence that women detained in protective custody can be further mistreated. One woman interviewed by the Trust described being strip-searched upon being taken into detention:

*They wouldn't let me keep any of my undergarments. I cried and begged to keep my pants under the dress uniform. One of the officers felt bad when she saw how upset I was, so she gave me my pants. When I joined the other women, I realised none of them were given their undergarments. I was the only one with pants.<sup>17</sup>*

15. A number of detainees in Juweida Women's Correctional and Rehabilitation Centre ('Juweida') explained that although some women held in protective custody were initially isolated from those convicted of criminal offences, all women in protective custody ultimately end up being held with convicted criminals.<sup>18</sup>
16. Two women detained at the Juweida facility described witnessing the sexual assault of other women by inmates at the centre, and noted that complaints were not made because detainees feared repercussions should the identity of the complainant be discovered.<sup>19</sup> Other women reported witnessing violent treatment of inmates by custodial officers, ranging from verbal abuse to rough treatment and physical beating; one interviewee described seeing an officer hit a pregnant woman.<sup>20</sup> Although it is not clear whether women detained in protective custody were themselves victims of this behaviour, being forced to witness it may have impacted their mental wellbeing and caused them to fear verbal or physical assault by inmates or prison staff.
17. The conditions of detention facilities in Jordan vary. However, our research found evidence to suggest that the conditions in the aforementioned Juweida facility do not meet the minimum standard under Article 10(1) ICCPR to treat detainees with respect for their

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<sup>15</sup> Equal Rights Trust interview with Susan Fayd, 20 January 2016, Amman, Jordan; Equal Rights Trust interview with Ahmed Matalgah, 20 January 2016, Amman, Jordan.

<sup>16</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against Women*, UN Doc. A/47/38, 1992, Paras 6 and 9.

<sup>17</sup> Equal Rights Trust interview with Dana, 22 December 2015, Amman, Jordan.

<sup>18</sup> Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan; Equal Rights Trust interview with Dina, 28 February 2016, Amman, Jordan; Equal Right Trust interview with Sawsan, 28 February 2016, Amman, Jordan.

<sup>19</sup> Equal Right Trust interview with Ghada, 6 February 2016, Amman, Jordan.

<sup>20</sup> Equal Rights Trust Interview with Marwa, 3 February 2016, Amman, Jordan; Equal Rights Trust Interview with Amal, 28 February 2016, Amman, Jordan.

inherent dignity. The Juweida facility was initially designed to house around 350 inmates, but as of 2014, 476 women were held in the facility,<sup>21</sup> causing overcrowding and reducing the standard of services provided.

18. Unsanitary conditions in the Juweida facility affect the ability of visiting health care workers to treat inmates.<sup>22</sup> Medical personnel are available at set times during the day,<sup>23</sup> but emergencies may not immediately be addressed if no appointment has been made.<sup>24</sup> The National Centre for Human Rights (NCHR) noted in 2014 that only one psychiatrist visited the prison once per week; this was insufficient to ensure the needs of all detainees were addressed.<sup>25</sup>
19. Children born to women held in protective custody may be kept with their mother until the age of three years old.<sup>26</sup> However, the Trust was informed that children born out of wedlock are often removed from the care of their mother because staff are concerned the mother might hurt the child out of fear of stigmatisation.<sup>27</sup> Alternatively, children may be taken away because the mother is considered unable to obtain the basic necessities for childcare whilst in detention.<sup>28</sup> This can strain the mental and emotional health of the mother<sup>29</sup> and arguably breaches Article 9(1) of the Convention on the Rights of the Child.<sup>30</sup>

#### *Release from Detention*

20. The lack of clarity about the application of the Crime Prevention Law in cases of protective custody means that there is no clarity surrounding how long women can be detained. According to those interviewed for our report, while the governor of a detention facility considers it unsafe to release a woman from detention, she can be detained for any length of time.<sup>31</sup> The average length of detention in protective custody of those women

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<sup>21</sup> National Centre for Human Rights, *The Status of Female Inmates at Reform and Rehabilitation Centres in Jordan*, 2014, pp. 14-15.

<sup>22</sup> Equal Right Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan.

<sup>23</sup> Equal Rights Trust interview with Buthaina Fraihat, 4 February 2016, Amman, Jordan; and Equal Rights Trust focus group discussion with Anas Alfuqha, Mina Abu Sal and Areej Samreen, 13 February 2016, Amman, Jordan.

<sup>24</sup> Equal Rights Trust interview with Ghada, 6 February 2016, Amman, Jordan.

<sup>25</sup> See above, note 21, p. 27.

<sup>26</sup> Equal Rights Trust interview with Dr. Nahla Al Momani, 4 February 2016, Amman, Jordan; and Equal Rights Trust interview with Eva Abu Halaweh, 29 November 2016, Amman, Jordan.

<sup>27</sup> *Ibid.*, Interview with Eva Abu Halaweh, 29 November 2016, Amman, Jordan.

<sup>28</sup> Equal Rights Trust focus group discussion with Anas Alfuqha, Mina Abu Sal and Areej Samreen, 13 February 2016, Amman, Jordan.

<sup>29</sup> 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.

<sup>30</sup> Article 9(1) provides that 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".

spoken to by the Trust was 18 months, though one woman had been detained for five years. Mizan have worked with women that had been detained for 15 years; some had been detained for so long that they were vastly out of touch with advancements in technology and finance.

21. Furthermore, although the opportunity to challenge administrative detention in the courts exists, it is rarely taken up by women in protective custody because of the risks and pressure associated with trying to bring a case.<sup>32</sup> Women in protective custody are frequently told that a male relative must be their sponsor.<sup>33</sup> One interviewee reported writing to the Governor requesting release from detention and being told she could not be released unless she had a husband.<sup>34</sup> The requirement to have a husband before release risks returning women to exploitative situations, as women who are forced into marriage under duress cannot reliably assess the trustworthiness of their new partner.<sup>35</sup>

### **“Protective Custody” and the Convention**

22. Article 1 the Convention defines discrimination against women as any distinction, on the basis of sex, which “has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women (...) on a basis of equality of men and women, of human rights and fundamental freedoms”. Under Article 2 of the Convention, states parties agree to pursue “a policy of eliminating discrimination against women”. Under Article 2(d), states take on the obligation to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”.
23. The Committee has found, in its General Recommendation 19 that gender-based violence constitutes discrimination within Article 1 of the Convention.<sup>36</sup> It goes on to state that gender-based violence includes “deprivations of liberty”.<sup>37</sup> It is clear that “protective custody”, which is undertaken without the consent of the women involved and is often indefinite, constitutes violence.<sup>38</sup> Moreover, it is clear that it is disproportionately women who are held in so called protective custody, and that as such, this is a form “violence that is directed against a woman because she is a woman or that affects women disproportionately” and is therefore within the scope of Article 1 of the Convention.<sup>39</sup>

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<sup>31</sup> 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.

<sup>32</sup> Ziber, “Imprisoning the Victim: Detaining Women Under the Pretext of Protecting Them From ‘Honour’ Crimes”, 21 January 2015.

<sup>33</sup> See above, note 27.

<sup>34</sup> Equal Rights Trust interview with Nawal, 28 February, Amman, Jordan.

<sup>35</sup> See above, note 27.

<sup>36</sup> See above, note 16, Para 6.

<sup>37</sup> *Ibid.*

<sup>38</sup> Baker, J. and Søndergaard, E., *Conditions for Women in Detention in Jordan: Needs, vulnerabilities and good practices*, DIGNITY, December 2015, pp. 27-8, available at: [https://dignityinstitute.org/media/2066001/pubseriesno9\\_wid\\_jordan.pdf](https://dignityinstitute.org/media/2066001/pubseriesno9_wid_jordan.pdf).

<sup>39</sup> See above, note 16, Para 6.

24. In addition to violating Article 1 of the Convention in this respect, “protective custody” is a discriminatory violation of the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment.<sup>40</sup> In 2013 the UN Special Rapporteur on Torture stated that prolonged detention can amount to inhuman treatment and is discriminatory.<sup>41</sup> Recent commentary has suggested that “protective custody” may at times amount to torture or to cruel, inhuman or degrading treatment or punishment.<sup>42</sup> It is plain that “protective custody”, constitutes a nullification of the right to be free from torture or other forms of ill-treatment on the basis of sex, and so constitutes a violation of Article 1 of the Convention in this respect also.<sup>43</sup>
25. Moreover, in addition to the fact that protective custody falls within the definition of discrimination both as a form of gender-based violence and as a nullification of the right to be free from torture or other ill-treatment, our research indicates that the manner in which protective custody is practiced may result in numerous other violations of the rights of women on the basis of their sex. Notably, the way in which women are taken into protective custody and the conditions pertaining to their release appear to constitute violations of Articles 9 and 12 of the International Covenant on Civil and Political Rights, while the conditions in which women in protective custody are held, their treatment while in protective custody, appear to constitute violations of Article 10 of the Covenant.
26. Certain consequences flow from the conclusion that “protective custody” falls within the definition of discrimination against women in Article 1. In particular, Jordan is obligated under Article 2(d) of the Convention to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”, and as such, the failure of Jordan to end the practice places it in breach of Article 2(d) of the Convention.
27. Jordan’s commitment – made in its response to the Committee’s questions on this topic – to moving women from protective custody into safe houses is manifestly insufficient to meet its obligations under Article 2(d). Article 2 establishes an obligation to pursue a policy of eliminating discrimination “without delay”. The Committee has confirmed that the words “without delay” mean “[d]o not allow for any delay or purposely chosen incremental manner in the implementation of the obligations that States assume upon ratification of or accession to the Convention”.<sup>44</sup> Arguably, the obligation to refrain from engaging in acts of discrimination is amongst the most urgent under Article 2, giving rise

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<sup>40</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966, Article 7.

<sup>41</sup> United Nations Office of the High Commissioner for Human Rights, “Statement of the United Nations Special Rapporteur on torture at the Expert Meeting on the situation of detainees held at the U.S. Naval Base at Guantanamo Bay”, 3 October 2013, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13859&#sthash.fpmPLPXh.K0ZlNBd3.dpuf>; see also, for a consideration of “protective custody” in the context of cruel, inhuman or degrading treatment or punishment, Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Jordan*, UN Doc. A/HRC/4/33/Add.3, 5 January 2007.

<sup>42</sup> See Glenister, J., “Good Intentions: Can the ‘Protective Custody’ of Women Amount to Torture?”, *Equal Rights Review*, Vol. 16, 2016, p. 14.

<sup>43</sup> See above, note 16, Para 7(b).

<sup>44</sup> Committee on Elimination of Discrimination against Women, *General Recommendation No. 28 on the core obligations of States parties under Article 2 of the Convention on the Elimination of All forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 2010, Para 29.

to an immediate obligation. Jordan was advised by the Committee to end the practice of protective custody as early as 2000.<sup>45</sup>

### **Recommendations**

28. In view of the evidence presented above, the Equal Rights Trust urges the Committee to recommend that Jordan should:
- a) Immediately cease the practice of detaining women who have been subject to, or are believed to be at risk of, gender-based violence, in so-called “protective custody”.
  - b) Immediately release any woman currently detained in so-called “protective custody” and should provide such women with appropriate protection, in line with the Committee’s guidance in its General Recommendation No. 19, in the form of refuges, shelters or other specialised centres.
  - c) Without delay, issue statutory guidance that Article 3 of the Crime Prevention Act does not permit the detention of women or any other person for reasons of their own protection
  - d) Without delay, establish an efficient and effective regime of legal, preventive and protective measures in order to provide protection from violence against women, in line with the Committee’s guidance in its General Recommendation No. 19.
  - e) Engage with non-governmental organisations working to combat violence and other forms of discrimination against women, and seek their active participation in improving its response to gender-based violence.