



# EQUAL RIGHTS TRUST

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## The Equal Rights Trust

Submission to UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on psychosocial dynamics conducive to torture and ill-treatment

June 2020

### **Introduction**

1. The Equal Rights Trust (the Trust) is grateful for this opportunity to inform the Special Rapporteur's annual interim report to the General Assembly at its 75<sup>th</sup> Session.
2. The Trust is an independent international organisation whose mission is to eliminate all forms of discrimination and ensure everyone can participate in life on an equal basis. We work in partnership with equality defenders – civil society organisations (CSOs), lawyers, government representatives and others committed to using law to create an equal world – providing them with the technical, strategic, and practical support they need to secure the adoption and implementation of comprehensive equality laws. In connection with this work, we engage with UN bodies and procedures with the aim of increasing knowledge and understanding of equality law and its role in the realisation of other rights and development.
3. In our respectful submission it is important that the Special Rapporteur's upcoming report acknowledges "discriminatory torture and ill-treatment" as a phenomenon that demands specific acknowledgment and necessitates a distinct response if torture and other forms of ill-treatment are to be effectively addressed and eradicated.

### **Discriminatory torture and other ill-treatment: the concept**

4. The relationship between discrimination and torture 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 acknowledgment and, secondly, because this qualitative difference necessitates a distinct response which combats both discrimination and torture.<sup>1</sup>

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<sup>1</sup> The Trust has a particular focus on researching the global phenomenon of discriminatory torture and ill-treatment: see, for example, Equal Rights Trust, *Shouting Through the Walls: Discriminatory Torture and Ill-Treatment, Case Studies from Jordan*, March 2017, available at [https://www.equalrightstrust.org/ertdocumentbank/Jordan%20report\\_ENG\\_0.pdf](https://www.equalrightstrust.org/ertdocumentbank/Jordan%20report_ENG_0.pdf) ("ERT Shouting Through the Walls"); and the Trust's submission to the Committee on the Rights of Persons with Disabilities on *General Comment No. 6 on equality and non-discrimination*, where we successfully argued that the General Comment should address the phenomenon of discriminatory torture and ill-treatment – see §§ 33-35 of our submission, available at: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/WSPersonsDisabilitiesEqualityResponsibility.aspx>; and Committee on the Right of Persons with Disabilities, *General Comment No. 6 on equality and non-discrimination*, UN Doc. CRPD/C/GC/6 ("CRPD General Comment 6"), § 56

5. 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. This may occur in the sense that a particular group, such as persons with mental disabilities,<sup>2</sup> women,<sup>3</sup> or LGBTI persons,<sup>4</sup> is singled out for particular acts amounting to torture or ill-treatment or is particularly vulnerable to such acts. 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.<sup>5</sup>
6. Secondly, ill-treatment impacts disproportionately and differently upon certain groups including those who have faced historical disadvantage and those with specific vulnerabilities.<sup>6</sup> 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.<sup>7</sup>
7. The distinction between discriminatory torture and other ill-treatment and other forms of torture and ill-treatment also necessitates 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-treatment will be ineffective unless steps are also taken to combat the discrimination which leads to such acts.<sup>8</sup>
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.<sup>9</sup> Tackling discrimination is therefore an essential part of preventing impunity for torture and other ill-treatment.

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<sup>2</sup> CRPD General Comment 6, § 56

<sup>3</sup> See Human Rights Council (HRC), *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57 (“2016 Report of the Special Rapporteur on torture”), § 20.

<sup>4</sup> *Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/56/156. 2001 (“2001 Report of the Special Rapporteur on torture”), § 19.

<sup>5</sup> 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, §§ 14–16.

<sup>6</sup> 2016 Report of the Special Rapporteur on torture, § 9.

<sup>7</sup> ERT Shouting Through the Walls, p. 10.

<sup>8</sup> See, for example, 2016 Report of the Special Rapporteur on torture, § 6: “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.”

<sup>9</sup> 2016 Report of the Special Rapporteur on torture, § 9. See also, 2001 Report of the Special Rapporteur on torture, § 19: “...members of sexual minorities are a particularly vulnerable group with respect to torture in various contexts... their status may also affect the consequences of their ill-treatment in terms of their access to complaint procedures or medical treatment in state hospitals, where they may fear further victimization, as well as in terms of legal consequences regarding the legal sanctions flowing from certain abuses.”

9. 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.<sup>10</sup> 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.<sup>11</sup> Taking into account particular vulnerabilities guards against a tendency to minimise acts.<sup>12</sup>
10. 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.<sup>13</sup> For example, 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.<sup>14</sup>

### **Select patterns of discriminatory torture and ill-treatment**

11. In this section, we provide select examples of instances of discriminatory torture and other ill-treatment against three protected groups: persons with mental disabilities, women and LGBTI persons. The phenomenon of discriminatory torture and ill-treatment and its impact on all groups at risk of discrimination is yet to be fully documented and understood. The recent good practice examples in addressing the phenomenon from regional human rights mechanisms provided in sub-sections (ii) and (iii) below demonstrate, in our submission, the importance of the acknowledgement of this phenomenon by international human rights mechanisms in ensuring that torture and other forms of ill-treatment are adequately addressed and eradicated.

#### **(i) *Involuntary institutionalisation***

12. Persons with disabilities are particularly vulnerable to torture and other ill-treatment.<sup>15</sup> Such vulnerability is strikingly evident in contexts of inappropriate or unnecessary non-consensual institutionalisation, which may amount to torture or ill-treatment.<sup>16</sup>
13. The Trust, in partnership with Mizan for Law, undertook research on the phenomenon of discriminatory torture and other ill-treatment in Jordan between late 2015 and late 2016. Jordanian law allows for involuntary institutionalisation, including where *inter alia* “the patient or addict may harm themselves or others, physically or morally.”<sup>17</sup> 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. Concerningly, the provision can be used to institutionalise those whose conditions are considered upsetting or embarrassing to family members solely on the basis of

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<sup>10</sup> 2016 Report of the Special Rapporteur on torture, § 55.

<sup>11</sup> *Ibid*, § 9.

<sup>12</sup> *Ibid*, § 8.

<sup>13</sup> UN 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, § 45.

<sup>14</sup> *Ibid*, § 83.

<sup>15</sup> HRC, *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 (“2013 Report of the Special Rapporteur”), §§ 37-41.

<sup>16</sup> *Ibid*, § 70.

<sup>17</sup> Article 14 of the Public Health Act.

their disability.<sup>18</sup> 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.<sup>19</sup>

14. For instance, a 17-year-old interviewee (Tamer)<sup>20</sup> was involuntarily taken to an institution by his family following a recommendation from a psychiatrist after he had experienced severe depression and suicidal thoughts. Tamer was unsure what the motivation for this recommendation was and it is unclear whether this was a matter of disability discrimination or discrimination on the ground of sexual orientation. Either way, his 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. 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.” 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.<sup>21</sup>
15. In all cases involving children, the Trust was told that the children had been institutionalised at the request of the parents.<sup>22</sup> Some parents noted that they felt that having their child placed in an institution was the only option available to them.<sup>23</sup> In a 2012 report on Jordan’s compliance with the CRPD prepared by a coalition of civil society organisations, it was noted that there were reports of instances of involuntary detention of longer than twenty years.<sup>24</sup>

## **(ii) Domestic violence**

16. It is widely accepted that domestic violence is a form of discrimination against women.<sup>25</sup> It 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.<sup>26</sup> States are responsible for torture when they fail – by indifference, inaction or prosecutorial or judicial passivity – to exercise due diligence to protect against such violence or

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<sup>18</sup> 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. 105.

<sup>19</sup> ERT Shouting Through the Walls, p. 58.

<sup>20</sup> Tamer is a pseudonym.

<sup>21</sup> ERT Shouting Through the Walls, p. 59.

<sup>22</sup> *Ibid.*, pp. 59-60.

<sup>23</sup> *Ibid.*

<sup>24</sup> Al-Azzeh above, note 19, p. 33.

<sup>25</sup> CEDAW Committee, *General recommendation No. 19: Violence against women*, 1992, §§ 1, 6-7; CEDAW Committee, *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, § 19; CEDAW Committee, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35 (“CEDAW Committee General Recommendation No. 35”), § 1. 2016 Report of the Special Rapporteur on torture, § 55.

<sup>26</sup> 2016 Report of the Special Rapporteur on torture, §55.

when they legitimise domestic violence by, for instance, failing to criminalise marital rape.<sup>27</sup> The relationship between discrimination and torture in the context of domestic violence gives rise to specific obligations of prevention,<sup>28</sup> protection,<sup>29</sup> prosecution,<sup>30</sup> and reparation<sup>31</sup> which require particular recognition, monitoring, and documenting.

17. In the case of *Volodina v Russia*,<sup>32</sup> the applicant had been subjected to patterns of domestic violence for a period of over three years, including assaults – one of which resulted in the termination of her pregnancy, stalking, publication of private photographs, and threats.<sup>33</sup> The Russian state authorities failed to take protective measures and to investigate these acts.<sup>34</sup> In addition, the state had failed to enforce a legislative framework aimed at preventing gender-based violence.<sup>35</sup> The European Court of Human Rights (ECtHR) held that Russia had failed its positive obligations in respect of the prohibition of torture and other ill-treatment.<sup>36</sup>
18. In finding an additional violation of the right to non-discrimination, the ECtHR powerfully identified an institutional state failure to ensure gender equality as being central to the individual facts of the case:

*“[T]he [State’s] continued failure to adopt legislation to combat domestic violence and the absence of any form of restraining or protection orders clearly demonstrate that the authorities’ actions in the present case were not a simple failure or delay in dealing with violence against the applicant, but flowed from their reluctance to acknowledge the seriousness and extent of the problem of domestic violence in Russia and its discriminatory effect on women. By tolerating for many years a climate which was conducive to domestic violence, the Russian authorities failed to create conditions for substantive gender equality that would enable women to live free from fear of ill-treatment or attacks on their physical integrity and to benefit from the equal protection of the law.”<sup>37</sup>*

### **(iii) State violence against LGBTI persons**

19. Members of sexual minorities are disproportionately subjected to torture and other forms of ill-treatment, often because they fail to conform to socially constructed gender expectations.<sup>38</sup>

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<sup>27</sup> *Ibid.*

<sup>28</sup> CEDAW Committee General Recommendation No. 35, §§ 21-26.

<sup>29</sup> *Ibid.*, §31; 2016 Report of the Special Rapporteur on torture, §55.

<sup>30</sup> CEDAW Committee General Recommendation No. 35, § 26(c); Committee against Torture, *General Comment No. 3: Implementation of article 14 by States parties*, UN Doc. CAT/C/GC/3, § 33.

<sup>31</sup> CEDAW Committee General Recommendation No. 35, § 33(a).

<sup>32</sup> *Volodina v Russia* (European Court of Human Rights, No. 41261/17, 9 July 2019). The Trust intervened in this case addressing the importance of acknowledging that discrimination is a fundamental aspect of domestic violence in order to properly understand its causes, consequences, solutions and impacts. Our written submissions are available at:

<https://www.equalrightstrust.org/sites/default/files/ertdocs/Volodina%20v%20Russia%20-%20Written%20submissions%20of%20the%20Equal%20Rights%20Trust%20-%205%20July%202018.pdf>

<sup>33</sup> *Volodina v Russia*, §§ 7-39.

<sup>34</sup> *Ibid.*, § 91.

<sup>35</sup> *Ibid.*, §§ 99 and 131-132.

<sup>36</sup> *Ibid.*, §§ 85, 91 and 101.

<sup>37</sup> *Ibid.*, § 132.

<sup>38</sup> 2001 Report of the Special Rapporteur on torture, §19.

20. In the landmark case of *Azul Rojas Marín v Peru*, the Inter-American Court of Human Rights (IACtHR) found Peru responsible for the torture and sexual violence against an LGBTI person by police officers in 2008.<sup>39</sup> The IACtHR held that Rojas Marín had been arbitrarily detained and subjected to sexual, physical and psychological violence.<sup>40</sup> When she reported these acts, seeking legal remedy, she was denied a proper investigation and was re-victimized through continuous acts of humiliation, psychological abuse, and threats.<sup>41</sup> The IACtHR recognised that these acts of violence had inflicted severe pain and suffering upon Rojas Marín with the intention of “intimidating, degrading, humiliating, punishing or controlling the victim”<sup>42</sup> due to her gender expression and sexual orientation.<sup>43</sup>
21. Importantly, the IACtHR stated that violence based on prejudice aims to prevent the person subject to discrimination from being able to exercise their human rights, regardless of whether the person self-identifies with a certain category or not.<sup>44</sup> In recognising the importance of the relationship between discrimination and torture, the IACtHR set specific due diligence standards to ensure the effective investigation of such cases and ordered reparations addressing both the specific rights violations suffered by Rojas Marín, as well as the wider institutional discrimination that leads to violence against LGBTI persons, including ordering Peru to create and implement a training and sensitization plan for state representatives on violence against LGBTI people and design and implement a system to collect and produce statistics about violence against LGBTI people.<sup>45</sup>

## **Conclusion**

22. This submission has outlined the phenomenon of discriminatory torture and ill-treatment and highlighted select instances of its manifestation to demonstrate that the obligations of the state to combat discrimination and to combat torture and other ill-treatment should be considered mutually reinforcing.
23. The case examples referenced in this submission demonstrate the importance of recognising discriminatory torture and ill-treatment in order to ensure that states are directed to address the wider social discrimination experienced by protected groups and its role as a driver of torture and other ill-treatment.
24. In closing, we would like to once again express our gratitude to the Special Rapporteur for the opportunity to inform his upcoming report. We urge him to make specific reference to the phenomenon of discriminatory torture and ill-treatment, including the role of discrimination in creating an environment which is conducive to torture and other ill treatment, and highlight states’ obligation to combat it.

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<sup>39</sup> *Azul Rojas Marín and Another v. Peru* (Inter-American Court of Human Rights, Serie C No. 402, 12 March 2020). Rojas Marín brought her case before the IACtHR with the legal assistance of the Center for the Promotion and Defense of Sexual and Reproductive Rights (Promsex), the National Coordinator of Human Rights (CNDDHH) and REDRESS, an international organisation that fights against torture.

<sup>40</sup> *Ibid.*, §§ 108, 121, 133, 166.

<sup>41</sup> *Ibid.*, § 205.

<sup>42</sup> *Ibid.*, § 163

<sup>43</sup> *Ibid.*, § 92-93.

<sup>44</sup> *Ibid.*, § 93.

<sup>45</sup> *Ibid.*, §§ 227-229, 248, 252.