



# IMPRISONED WOMEN, STOLEN CHILDREN

POLICING SEX, MARRIAGE AND PREGNANCY IN JORDAN

AMNESTY  
INTERNATIONAL



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First published in October 2019

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: MDE 16/0831/2019

Original language: English

[amnesty.org](http://amnesty.org)



**Cover photo:** *Juweideh prison is the largest prison for women in Jordan, including women held in administrative detention.*

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# GLOSSARY

	DESCRIPTION
<b>“ABSENCE”</b>	Where a woman is absent from home without the permission of a male guardian. This is referred to in short as “absence”.
<b>ADMINISTRATIVE DETENTION</b>	Detention of individuals by the state without charge or trial.
<b>CRIME PREVENTION LAW</b>	The Crime Prevention Law of 1954 gives governors of Jordan’s provinces and administrators of districts broad power to curtail individual’s liberty and is (mis) used to issue administrative detention orders.
<b>DAR AMNEH</b>	Literally “Safety House”. A shelter opened in July 2018 by the Ministry of Social Development to protect women at risk of being killed by family members.
<b>GOVERNOR</b>	Officials of the executive branch—the governors of Jordan’s 12 governorates who, along with administrators of districts (sub-divisions of governorates), have wide coercive powers under the Crime Prevention Law.
<b>MALE GUARDIANSHIP</b>	Jordan’s system of male guardianship provides a male relative (normally father, brother or uncle) certain power, roles and responsibilities over women, including the power to approve a woman’s marriage.
<b>PROTECTIVE CUSTODY</b>	The practice of taking an individual into state custody for their own protection.
<b>SO-CALLED “HONOUR” KILLINGS</b>	Gender-based killings – usually by members of the family or community – motivated by some perceived act of wrongdoing the perpetrator fears will bring dishonour (although such attacks may also have an economic or other motivation).
<b>“VIRGINITY TESTING”</b>	A painful and humiliating physical examination which involves an inspection of the hymen or insertion of fingers into the vagina performed under the belief that this can determine if the woman or girl has had vaginal intercourse.
<b>ZINA</b>	Sex outside of marriage, including pre-marital and extra-marital sex (adultery). <i>Zina</i> is criminalised under the Jordanian Penal Code.



# 1. EXECUTIVE SUMMARY

**“I got pregnant and tried to marry the man. But the marriage wasn’t approved because I have no male guardian. My parents are dead, and I just have younger sisters, no brothers... I went to hospital and gave birth. The hospital asked if I was married and I said no, so then they called the police. That’s how I ended up here. I don’t know how long I will be here for. I also don’t know what’s happened to my child, they took [my child] away from me.”**

“Ola”, detainee aged in her twenties in Juweideh prison, February 2019.<sup>1</sup>

Amnesty International researchers met “Ola” a week after she had been imprisoned. She had not been charged with a crime, had not seen a judge and did not know when she would be released. She was desperately worried about her new-born child who the authorities had taken into state care.

In recent years, Jordan has undertaken a number of reform measures to protect women’s rights, particularly the right to be free from gender-based violence. However, Amnesty International’s investigation found that “Ola” is one of many -- possibly hundreds -- of women arrested or ill-treated annually in Jordan as the state polices women’s sexual and reproductive lives and punishes perceived transgressions. This includes women trying to make their own decisions about who they have intimate relations with or marry, and where and how to live, independently of their families. Women pregnant outside of marriage are at particular risk of imprisonment and face the forcible removal of their child.

Amnesty International’s investigation included 121 individual interviews in Jordan. Forty-nine of these interviews were with victims of human rights violations, including 29 conducted in February 2019 with women in administrative detention in Juweideh prison, the main prison for women in Jordan. Amnesty International also interviewed 58 civil society experts and 14 governmental or judicial officials, and supplemented interviews with analysis of available laws, policies and court rulings.

In August 2019, Amnesty international wrote to the Prime Minister sharing a summary of the human rights concerns identified during the research, asking for comments and additional information. The response received, on 14 October, is published in full in the annex of the report and integrated into the relevant sections of this summary.

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<sup>1</sup> All the names of women in detention have been changed and identifying details removed. See the methodology section for more information.

## SYSTEMS OF CONTROL

Recent positive steps to promote women's rights include the reform of provisions of laws that provided impunity for gender-based violence, and the opening of Dar Amneh shelter for women at risk of being killed by family members. These reforms have been made in response to the tireless efforts of Jordanian women's rights organisations - including the Jordanian National Commission for Women, Mizan for Law, Solidarity is Global Institute-Jordan, and the Jordanian Women's Union. However, while they highlight the political will to address human rights concerns that affect women in the country, numerous laws remain that are discriminatory or can be (mis)used to violate women's rights.

Jordan has a system of male guardianship which provides a male relative (normally father, brother or uncle) certain power, roles and responsibilities over women, including the power to approve or reject a woman's marriage. The state also applies coercive and penal power to reinforce male guardianship, effectively colluding with male guardians to ensure male control over women's lives and bodies.

Provincial governors and district administrators (mis)use an infamous piece of legislation – the Crime Prevention Law of 1954 - to detain individuals without charge or trial, often for long periods of time. This law is being used to administratively detain thousands of both men and women annually, according to official statistics. Human rights organisations have documented how the law has been used by governors to imprison people for perceived offensive, disruptive, or immoral behaviour, and to imprison women at risk of so-called "honour crimes" in protective custody.

Sex outside of marriage (*zina*) is also a criminal offence under Jordanian law, which can be prosecuted if a spouse or male guardian makes a complaint to the police. This provides additional opportunities for male family members to coerce and control their female dependents.

## IMPRISONMENT TO PUNISH WOMEN FOR ELOPING OR SEX OUTSIDE MARRIAGE

When Amnesty International researchers visited Juweideh prison in February 2019, researchers met with 22 women who said that they were administratively detained because their male guardian complained that they had sought to move out of/had left the family home without permission (often referred to as "absence") or connected to accusations of sex outside marriage (*zina*). More than half of these women said they had been imprisoned for over three months, many for over a year.

"Sawsan", aged in her twenties, was one of twelve women who described being arrested for "absence". She said she spent four months living and working in Amman before learning her father had reported her to the police because he (wrongly) believed she had run off with a boyfriend. She said she had been in prison for about a year:

**"I was stopped on the street in Amman and the police asked me for my ID. I didn't have it, so they said I had to come to their station, but when I got there they found a warrant for my arrest because I was 'absent' from home. The two police officers there beat me. One told another to get a hose to beat me with – he said, 'let's educate her.' I was taken to the governor's deputy in [location withheld]. He said I would go to Juweideh prison until my father bails me out... I don't want to be bailed out by him, I want to be on my own."**

Ten other women described being arrested in relation to accusations of *zina*. All of these women were administratively detained when researchers met them. Five had previously been charged or convicted in connection with the crime of *zina* under the penal code but had been transferred to administrative detention on the orders of the governor after they had been granted bail by the criminal court or benefitted from a public amnesty. Several of the ten women had been detained after being reported to the police as being pregnant outside marriage by hospitals. Most said the man co-accused had also been detained, though in some cases he had since been released.

The majority of women researchers met in detention insisted that they were not at risk of being killed by family members, and all wanted to leave. Most told researchers that the governor said he would not release them unless they agreed to go home, and male family members "bailed" them out. This appears to involve a male family member taking responsibility for their female dependent and/or pledging no harm will come to her. It means, in practice, that women have little chance of release from detention until their male family members agree, and they are forced back under the male family members' authority.

In the letter to Amnesty International on 14 October 2019, the Prime Minister's office said there were 149 women currently in administrative detention, and that 85 women had been administratively detained so far over the year for *zina* (along with a similar number of men). However, the response denied that women were arrested for "absence", unless they were also suspected of an offence, and stated that no women had been administratively detained for "absence" alone in 2019. This was not only refuted by women Amnesty International spoke to in prison, but the long-standing practice of the arrest of "absent" women was

consistently confirmed by women's rights activists and lawyers in Jordan over the period of Amnesty International's research.

This position also appeared in contradiction with statements made by several government officials in meetings with Amnesty International in February 2019. Officials in the Public Security said that if family members are motivated enough to complain to the authorities that women are "absent", they are motivated enough to harm them, and that "absent" women were therefore detained for protection. Another official in the Ministry of Interior explained "absent" women may be detained to protect them from "social disgrace". They consistently told Amnesty International that (adult) women are not permitted to live on their own in Jordan, without permission from their families, as they may in other countries.

Many of the women who said they were detained for "absence" or *zina* also told researchers they were taken by Family Protection Department (police) of the Public Security Directorate to hospital for a "virginity test", often on the request of their guardian or other male relatives.

The detention of women for being absent without permission, eloping or for sex or pregnancy outside marriage is a violation of their human rights, including to be free from arbitrary deprivation of liberty, and to non-discrimination. The authorities' subjection of women in state custody to humiliating "virginity tests" is a violation of the prohibition on torture and other cruel, inhumane or degrading treatment.

### **A SIGNIFICANT IMPROVEMENT, BUT ONGOING CONCERNS**

Officials that Amnesty International met with in the Ministry of Interior and Ministry of Social Development in February 2019 told Amnesty International that the recently established Dar Amneh (Literally: Safety House) for women at risk was designed to bring an end to the use of "protective custody" in Jordan, and that women arrested for "absence" or *zina* would be taken to Dar Amneh in the future, not prison.

Dar Amneh was opened by the Ministry of Social Development in July 2018, in partnership with the NGO Mizan for Law, after longstanding advocacy by women's organizations. Amnesty International was permitted to visit the shelter in February 2019 but denied permission to interview the women there. Ministry of Social Development officials informed researchers during the visit that there were 24 women in the facility, and that up to 12 more women would be transferred from Jordan's prisons to the shelter in the following month.

The facility appears to be a significant improvement for the situation of women who face a genuine threat from their families and has been widely praised as reducing the phenomena of women at risk detained in administrative detention. Women are provided with health-care, housing, job training and other services in Dar Amneh, and are given support to find longer-term solutions to enable them to leave the facility. Civil society activists expressed their hope that the existence of the facility will lead to an end to the decades-long practice of "protective custody", and reported a surge in political will from governors, the Family Protection Department (police) and the Ministry of Social Development to protect the rights of women at risk.

According to official statistics, 75 women have now been housed at Dar Amneh since it opened (as of mid-September 2019), including 44 women who have since left. In August 2019, a civil society organisation told Amnesty International that many of (though not all) the women researchers met with in administrative detention in Juweideh prison were transferred to Dar Amneh, after the organisation had intervened to advocate with the authorities on behalf of these women. Some of these women had since left the shelter, mostly to return to their families.

However, as noted above, the presence of Dar Amneh has not stopped governors continuing to administratively detain women for "absence" or *zina*. The Prime Minister's Office stated there were seven women in administrative detention for *zina* as of 14 October 2019, Amnesty International also received information from a confidential source that regularly visits Juweideh there were over 30 women in administrative detention for "protection" or for *zina* in late September 2019. A lawyer that researchers spoke to around the same time also confirmed that while many women at risk are being taken to Dar Amneh, there were at least ten (and likely *tens*) of women in administrative detention in Juweideh for "absence" or *zina*.

Moreover, while the official operating instructions for Dar Amneh are clear that a woman's "residency" ends if she requests to leave the shelter, in practice, and as confirmed by the Prime Minister's Office response to Amnesty International, women need the governor's permission to leave. A leading advocate told researchers in some cases, governors may release the woman based on a personal guarantee from a civil society coalition led by Mizan for Law, and as such some women have been able to leave without their male family members permission. Any impediments imposed by the authorities to prevent women from freely leaving Dar Amneh would constitute a violation of their right to liberty.

## **DETENTION OF UNMARRIED PREGNANT WOMEN UNTIL THEY GIVE BIRTH**

Two women's rights experts told Amnesty International researchers of cases where governors had detained unmarried women for the duration of their pregnancy in order to stop them from being able to access an abortion. Abortion is criminalised in all circumstances in Jordan, except when pregnancy poses a threat to the woman's life or health. One senior woman's rights advocate told researchers:

**"There is a woman being administratively detained in Juweideh, who was raped and became pregnant. The family ... have come to us for our help as they want her to be released and to be able to come home. But the governor of her district does not accept to release her as he is worried she will get an [illegal] abortion if she is released.... The rapist is in prison but has not been tried yet and the governor wants the baby's DNA test when born so it can be used as evidence of the rape."**

The second women's rights expert also said that unmarried pregnant women may be detained or remain for the duration of their pregnancy as it is not culturally acceptable for women to be pregnant and unmarried. She also told researchers that in some cases, where there are questions about paternity in rape or *zina* cases, pregnant women are detained until they give birth, so the authorities can collect DNA.

Two women detained in relation to accusations of *zina* told Amnesty International that governors insisted they would be detained until they delivered their baby and it could be DNA tested. This was because they were arrested alongside men who denied their involvement in *zina* and who wanted to prove their innocence.

## **FORCIBLE REMOVAL OF NEW-BORN BABIES OF UNMARRIED WOMEN**

Unmarried women who give birth in Jordan also face the forcible removal of their new-born child, commonly referred to in interviews with Amnesty International as "illegal babies". Researchers met five women who had delivered children in hospital while being unmarried, all of whom said the Family Protection Department (police) took their child from the hospital to Ministry of Social Development child care institutions without asking them. Four of these women said they had wanted to keep their child.

While the Prime Minister's Office informed Amnesty International that children were only removed from unmarried mothers on a case-by-case basis where there was an identified risk, researchers were told by lawyers, women's rights activists and journalists that the removal of children from unmarried mothers is an institutional practice carried out by the Family Protection Department and Ministry of Social Development, regardless of any assessment of risk to the individual child. Prison officials at Juweideh also confirmed to Amnesty International that while married women who had young children could keep them in the Ministry of Social Development prison kindergarten, "illegal babies" were not allowed in the kindergarten.

"Pia", a migrant domestic worker from Bangladesh, told researchers she had been administratively detained for *zina* for four-and-a-half months and had given birth during that time to a son who was taken away:

**"I am desperate to see my son. I ask to see him every day... I don't even know where he is. I don't know if he is in the prison kindergarten, or if he has been taken somewhere else. I don't know what is going to happen to me or him."**

Amnesty International also met with other women who, out of desperation, gave birth at home in a clandestine manner to avoid the risk of arrest and having their child forcibly taken from them. These women faced an extremely difficult situation; unmarried women struggle to register their child's birth in the Civil Status Department (part of the Ministry of Interior) and face social ostracization.

Civil society organizations that seek to help women who have had children outside of marriage are heavily constrained but may seek to help women "foster" their child back from state care.

Taking children from unmarried mothers and creating barriers to register such children is a violation of women's rights including to non-discrimination and is also a violation of the child's rights to registration and not to be forcibly separated from his or her parents. Taking a woman's child away simply because she is unmarried, when forced upon her, constitutes torture.

Again, there are signs of positive change. The operating instructions for Dar Amneh set out that women may keep their children with them up to age six. As of mid-September 2019, the Ministry of Social Development allowed two unmarried women living in Dar Amneh to reunite with their children, though it is unclear if the women will be permitted to take their children with them when they leave the facility. A change in the Personal Status Law in August 2019 after a successful case brought by Mizan for Law has also made it possible for courts to establish the paternity of a child born outside marriage through scientific means (i.e. DNA test results). The full impact of this amendment is yet to be determined.

The reality remains, however, that the Family Protection Department (police) and the Ministry of Social Development continue to remove the children of unmarried women from hospitals, and that these mothers then struggle to get their child back or obtain birth registration for them. One woman told Amnesty International that she had been trying to foster her child, conceived through rape, ever since her release from protective custody several years earlier, but had been told by Ministry of Social Development officials that she was too poor to do so.

## **CONCLUSION AND PRINCIPAL RECOMMENDATIONS**

Detention and virginity testing are used by the state to punish women who are perceived to have transgressed or “shamed” their families, or who sought to live independently. The biggest punishment of all is saved for women who become pregnant outside of marriage – the state sanctioned theft of their child. These patterns of abuse deny women sexual and reproductive autonomy, the ability to make some of the most important life-decisions, and ensure women remain under control of their male family members. Recent law reform and the establishment of Dar Amneh show, however, that positive change is possible in Jordan, and that, as one official put it, there is potential for “a new language” about a woman’s right to make her own decisions.

**Amnesty International calls on the relevant executive, parliamentary and judicial Jordanian authorities to take the following steps to protect and promote the rights of women:**

1. End male guardianship in law and practice, in particular through reforming the Personal Status Law, and by implementing a public information campaign raising awareness among key stakeholders of this reform and its implications.
2. Reform the Penal Code to remove provisions that criminalise consensual sexual relations and women’s reproductive decisions, including *zina* and abortion. Ensure that all women criminally detained in relation to *zina* or abortion are released, their charges dropped and their criminal records expunged.
3. End the practice of arresting women who have sought to live outside their guardian’s home without permission, and the practice of returning these women to their guardian’s home or detaining them. The Prime Minister should issue a directive to this effect.
4. End the practice of administrative detention under the Crime Prevention Law of 1954 and immediately release all women currently administratively detained for “absence” or *zina*. Women at risk of being harmed by family members should be given the option of transfer to Dar Amneh shelter for women at risk.
5. Expand the size and support available to Dar Amneh for women at risk (and open other shelters and places of safety, as appropriate) and continue collaborations with civil society organisations. Ensure women may leave freely if they wish, with any children they have, and that all reasonable measures are taken to ensure the women’s safety after they leave while also upholding their human rights.
6. End the use of virginity testing and other humiliating forensic exams in all circumstances, including where purportedly used to investigate premarital sex, adultery or sexual violence.
7. End the practice of removing children from the care of women just because they are unmarried and ensure unmarried women can register their children.

**A full list of recommendations is found at the end of this report.**



## 2. METHODOLOGY

Amnesty International investigated the policing and punishment of women for actions and decisions they make (or the situations they are placed in by others) relating to sex, marriage and reproduction in Jordan, including sex outside of marriage.<sup>2</sup> This work forms part of a wider project on the human rights impact of the criminalization of sexuality and reproduction globally.<sup>3</sup>

To carry out this research, Amnesty International delegates visited Jordan three times, for one week in June 2018, for two weeks in October 2018, and for two weeks in February 2019. During these visits, and through additional calls, researchers conducted 121 in-depth individual interviews, including 58 with civil society and members of international NGOs and UN agencies, 49 with individuals who were directly affected by the human rights concerns investigated, 10 with representatives of the Jordanian government, one with the National Centre for Human Rights (the Jordanian national human rights institution), one with the Jordanian National Commission for Women (a semi-governmental body), and two with judges.

The meetings with civil society and international NGOs and UN agencies included legal aid providers, lawyers, medical experts, social workers, community organizers, journalists, academics, and protection specialists.

Amnesty International was given permission to visit Juweideh prison for three days in February 2019. During this time, researchers conducted 29 individual interviews with women in detention. Researchers requested to meet with women who were detained for being absent from home without permission (“absence”), or for sex outside of marriage (*zina*). They also asked to speak to any other women detained because of issues related to sex, marriage or pregnancy.

Twenty-two of the women that researchers met with confirmed that they had been detained in connection to being absent from home without their male guardian’s permission (“absence”) or sex outside of marriage (*zina*). The other women said they were detained for issues including begging, theft or, in the case of migrant domestic workers, for leaving their employers home without permission or for failure to pay visa overstay fines. The prison authorities told Amnesty International there were no women currently imprisoned in connection to sex work or abortion.

Prison officials selected the women that Amnesty International interviewed in Juweideh. All the women were in administrative detention. 26 were Jordanian, three were from Bangladesh. Researchers had also asked to meet with women detained in relation to the crime of *zina* under the Penal Code, but prison officials told delegates that women charged or convicted for *zina* had benefitted from a public amnesty passed days earlier and most had been released. At least five of these women had been transferred to administrative detention, however, instead of being immediately released, and Amnesty International was able to interview these women.

Despite continuous protestations including in writing, researchers were accompanied during these interviews in Juweideh prison by an official from Public Security Directorate's Transparency and Human Rights Unit. During interviews, researchers introduced the official's role within government and sought the specific consent of interviewees to continue the discussion in her presence. Researchers also varied their questions to avoid asking women any questions about their treatment by the police or while in detention to avoid exposing them to any potential risks. Finally, with the consent of the women interviewed, researchers referred several of the cases to women's rights organizations and lawyers in Jordan for follow-up visits, to

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<sup>2</sup> In this report, the term “women” also includes adolescent girls.

<sup>3</sup> For more information, please see Amnesty International, 2018. “Body politics: a primer on criminalization of sexuality and reproduction”, at: <https://www.amnesty.org/en/documents/poi40/7763/2018/en/>

provide women with individual legal advice and support where possible, and to monitor and be ready to address any potential reprisals against women that researchers spoke to.

In addition to the women that researchers interviewed in detention, Amnesty International also met with five migrant domestic workers (three of whom had previously been administratively detained; two of whom were struggling to keep their children outside of marriage), three Jordanian women who had been released from administrative detention, and twelve other victims/survivors of human rights abuses related to sex, marriage and pregnancy.

Amnesty International delegates had 10 meetings with governmental officials. These included the Government Human Rights Coordinator of the Prime Minister's office; Director of the Public Security Directorate's Transparency and Human Rights Unit, Chief of the Judicial Department of the Family Protection Department; Director of Juveniles and Community Security at the Ministry of Social Development, Head of Family Protection at Ministry of Social Development, and several officials in Juweideh women's prison.

Amnesty International spent several weeks trying to arrange meetings with provincial governors. While several governors agreed in principle to meet with Amnesty International researchers, they required formal written permission from the Ministry of Foreign Affairs and the Ministry of Interior. These ministries did not respond to researchers' requests or repeated follow-ups, and instead the Government Human Rights Coordinator in the Prime Minister's office arranged for researchers to meet with the Director of the Human Rights Department of the Ministry of Interior to address questions related to action by administrative governors.

Amnesty International also visited Dar Amneh shelter for women at risk, and Al-Khanza juvenile facility for girls in need of protection. Researchers met with the director and staff at the two facilities and were shown around Dar Amneh. The Ministry of Social Development rejected Amnesty's request to meet with and conduct interviews with women and girls in the two facilities.<sup>4</sup>

Amnesty International also conducted a review of laws and policies reports and other outputs by government and civil society. The Vance Center for International Justice generously organized the review of all relevant court of cassation cases connected to the crimes of *zina*, abortion, sex work, and public indecency available in the Jordanian digital archive.

In a few instances, where informed consent was provided, Amnesty International has cited sources of information. In most cases, however, this was not possible, as many individuals and organizations requested anonymity to protect against possible reprisals or tensions that may otherwise be caused. The name of individuals directly affected by human rights concerns have all been changed, as have other potentially identifying information, such as their age and the gender of any children.

A number of people helped Amnesty International carry out this research or gave input in part of the draft report, for which Amnesty International is very grateful. These include Mizan for Law, Solidarity is Global Institute-Jordan, Eman Bany, Zeina Jallad, Nour Jaljuli, Razan Malkawi, and many others who facilitated our visits and/or gave us their time who preferred not to be referenced.

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<sup>4</sup> The request was first rejected in writing. In a follow-up meeting, the Director of Juveniles and Community Security in the Ministry of Social Development told Amnesty International delegates that they were not allowing a visit as Dar Amneh had just opened, and they didn't want to take any actions that could risk jeopardizing women's wellbeing and process of settling in. Amnesty International interview, 10 February 2019.

# 3. JORDANIAN LAWS TO CONTROL WOMEN'S DECISIONS AROUND SEX, MARRIAGE AND PREGNANCY

The Jordanian authorities have taken important steps in recent years to reform laws to promote and protect women's rights. In July 2017, Parliament abolished Article 98 of the Penal Code which was invoked in so-called "honour" killing cases to allow perpetrators to receive a reduced sentence on the basis they were acting in a "fit of rage". In August of the same year, Parliament repealed Article 308, which allowed perpetrators of sexual violence to escape punishment by marrying their victim.

However, a host of provisions remain in place in Jordan's criminal and civil laws that undermine women's rights. Overlapping laws and practices restrict women's personal autonomy, including their ability to make decisions about sex, marriage and reproduction, and punish those who transgress.

Male guardianship is at the centre of this web of discriminatory provisions. Male guardianship is a system of laws and practices that subjects women to the control of their fathers (or other male family members) and violates women's right to equality. Through the implementation of the Crime Prevention Law of 1954, and several provisions of the Penal Code, the coercive and penal power of the state is also brought to reinforce guardianship, and to police and punish women who are perceived to disobey or challenge the authority of their guardians or other male family members.

## 3.1 MALE GUARDIANSHIP: THE ROOT PROBLEM

Male guardianship ('welaya') is codified in the Jordanian Personal Status Law which applies to all Muslims.<sup>5</sup> The law prohibits an unmarried woman from entering into a valid marriage contract without the approval of her guardian. The law defines a woman's guardian as a blood relative who is normally her father. In the absence of her father, it is her brother, then her father's brother, or someone else in her patriliney.<sup>6</sup>

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<sup>5</sup> Jordanian Personal Status Law no 36 of 2010. Christians are treated under special courts applying Canon Law.

<sup>6</sup> Articles 14.-17 of the Jordanian Personal Status Law No. 36 of 2010. See also A., Jabiri, *Gendered politics and law in Jordan: Guardianship over women*, 2016, pp 15-16. Palgrave Macmillan Press.

According to the law, consent of a guardian is not required if the prospective bride is over thirty,<sup>7</sup> or if she has been previously married and is over 18.<sup>8</sup> If the guardian opposes the marriage without a legitimate reason, the prospective bride may petition the court and a judge may authorize the marriage, provided he determines that the guardian's refusal is unreasonable.<sup>9</sup> However, it is difficult for women to make use of these legal remedies, especially as there is limited free access to legal assistance in Jordan.

Provisions that prohibited women from obtaining a passport without their guardian's permission were reformed in 2013,<sup>10</sup> and in 2017 parliament also amended the Penal Code to grant women permission to give consent for surgeries on their children without consent of the child's father.<sup>11</sup>

### **LIFE UNDER MALE GUARDIANSHIP – REFLECTIONS BY DOCTOR ISRA TAWALBEH, HOSPITAL DIRECTOR**

"I was 26 when I was married. My family were around but my father was out of the country. The sheikh demanded my father's consent. My uncle and grandfather were there, they were both respected judges... But it didn't matter. We had to get my father to fax his consent as an emergency. This happened to my sister also...

I have a close friend, a lawyer, who was 30. Her father had left over twenty years before. They had had no contact for decades. The sheikh insisted on her father's consent. She had documents to prove he had left the country and said that her mother was fully responsible for her. She explained that her father was not in her life, she didn't even know what he looked like. She had to go to the court and get permission to marry...

In another case I know, the woman was 46 and getting married for a second time. She went to court with two witnesses. The sheikh insisted to receive her father's approval. He was applying his own beliefs because according to the law a woman who is over 18 who has previously been married can marry herself [without permission of her guardian]. They always want a woman under the control of a man.

Even though woman now have the right to travel without their guardian's consent, we still have to have our husband's name in our passport. And only in the last year or two can women consent to their child's surgical operation – it used to be only the guardian could do so. I had a woman come to me recently crying because her child needs emergency surgery and the surgeon refused to do it without the guardian's signature. This has happened twice in the last year. I explained to the doctor each time that the law had changed. I had to print the Ministry of Justice notice out and share it with all the doctors."<sup>12</sup>

## **3.2 GOVERNORS' DETENTION POWERS UNDER THE CRIME PREVENTION LAW**

Women in Jordan who challenge their guardian's authority, who transgress social norms around sex, marriage and reproduction, or who are victims of sexual violence, are at risk of being administratively detained under the Crime Prevention Law of 1954, sometimes under the excuse that it is for their own protection.

The Crime Prevention Law provides the all-male governors of Jordan's 12 governorates and the administrators of districts (subdivisions of governorates) wide power to restrict people's liberty.<sup>13</sup> It allows them to take a number of measures against persons who are "about to commit a crime or assist in its

<sup>7</sup> Article 185 of the Personal Status Law. Guardianship extends beyond age 30 if the woman is perceived to pose a risk to herself.

<sup>8</sup> Article 19 of the Personal Status Law.

<sup>9</sup> Article 18 of the Personal Status Law. In Jordan, all the Sharia court judges are men.

<sup>10</sup> The act amending the Passports Act (2013) annulled article 12, which "made the issue of a wife's passport conditional upon the agreement of husband or guardian." See Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Sixth Periodic Report of Jordan", 25 June 2015, part II, para. 12, at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FJOR%2F6&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FJOR%2F6&Lang=en).

<sup>11</sup> Amnesty International interview with Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018. See also USA State Department, March 2019. "2018 Country Reports on State Human Rights Practices, Jordan", at: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/jordan/>.

<sup>12</sup> Amnesty International interview, Dr Isra Tawalbeh, director of Tutanji hospital, February 2019.

<sup>13</sup> For a wider analysis of the use of administrative detention in Jordan (mis)using powers provided in this law, see Human Rights Watch, *Guests of the governor: Administrative detention undermines the rule of law in Jordan* (May 2009), at: <https://www.hrw.org/report/2009/05/26/guests-governor/administrative-detention-undermines-rule-law-jordan#0aa9e9>.

commission,” those who “habitually” steal, shelter thieves, or fence stolen goods, and anyone who, if allowed to remain at liberty, would constitute a “danger to the people.”<sup>14</sup>

In such cases, the governor (or district administrator) may issue an arrest warrant and imprison a person where they fail to meet his demand to appear before him and give an undertaking of good conduct.<sup>15</sup> The law also gives governors (and district administrators) the right to demand a third person monetary “guarantee” of the undertaking of good conduct, and to refuse any persons’ guarantee if he deems that person unsuitable.<sup>16</sup> Governors (mis)use this power to order the administrative detention – that is detention without charge or trial -- of people in a wide range of circumstances, in some cases for weeks, months or years.

The Public Security Directorate of the Ministry of Interior, in October 2018, confirmed to Amnesty International that hundreds of women were administratively detained annually: 2,116 women had been released from administrative detention between 1 January and 27 October 2018, and 2,527 women had been released from administrative detention during 2017.<sup>17</sup> The first day Amnesty International visited Juweideh prison, there were 146 women in administrative detention.<sup>18</sup> Researchers were told that there is a turn-over of approximately 5-10 of women in administrative detention daily.<sup>19</sup>

Amnesty International met with 29 women in administrative detention, and five women who had been released from administrative detention within the last few years. Six of the women said they had faced a real risk of being killed or seriously harmed by family members. The other women reported being detained for reasons including leaving home without permission from their male guardian, accusations of *zina*, theft, debt, begging, or, in the case of migrant domestic workers, leaving their employers home without permission or visa overstay reasons, and said they were not at risk.

International and Jordanian NGOs, including Mizan for Law, have documented a longstanding pattern of women administratively detained in order to protect them from so-called “honour” killings or other forms of gender-based violence by family members, often against the woman’s express wishes and including in cases where they said they were not at risk.<sup>20</sup> Where women are detained “for their protection”, they have almost no legal avenues to appeal the detention order.<sup>21</sup> They are released at the governor’s discretion, often dependent on receiving a guarantee of safety from a male relative or husband.<sup>22</sup>

In a 2009 study, Human Rights Watch documented the use of the Crime Prevention Law by governors administratively detaining people simply for what they consider to be offensive, disruptive, or immoral behaviour. This included women arrested for eloping, or running away from home, or even just out late at night with men they were not related to.<sup>23</sup>

### 3.3 CRIMES UNDER THE PENAL CODE

The Jordanian Penal Code contains a number of provisions that criminalise women’s sexuality and reproductive decision-making or leave women under-protected from violence by family members seeking to punish them for perceived wrongdoing. Several provisions also give male guardians additional rights and responsibilities.

The Penal Code criminalizes *zina* as a misdemeanour relating to “offences against the family”. It states:

- 1. The man or woman who commits *zina* consensually shall be punished by a prison term of one to three years.**
- 2. The sentence will not decrease to below a prison term of two years for the married man or woman who commits *zina*.**

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<sup>14</sup> Article 3 of the Crime Prevention Law 7 of 1954.

<sup>15</sup> Articles 4 and 8 of the Crime Prevention Law.

<sup>16</sup> Article 7 of the Crime Prevention Law.

<sup>17</sup> Communication from the Public Security Directorate, 28 October 2018.

<sup>18</sup> Amnesty International communication with Juweideh prison authorities, 11 February 2019.

<sup>19</sup> Amnesty International interview with civil society activist working in Juweideh prison (name withheld), October 2018.

<sup>20</sup> Human Rights Watch, *Honoring the killer, justice denied for “honor” crimes in Jordan*, 2004, at: <https://www.hrw.org/report/2004/04/19/honoring-killers/justice-denied-honor-crimes-jordan>, and Equal Rights Trust and Mizan for Law, *Shouting through the walls: Discriminatory torture and ill-treatment in Jordan*, 2017 pp.93-95 at: [https://www.equalrightstrust.org/ertdocumentbank/Jordan%20report\\_ENG\\_0.pdf](https://www.equalrightstrust.org/ertdocumentbank/Jordan%20report_ENG_0.pdf).

<sup>21</sup> Meeting with Director of the Public Security Directorate’s Transparency and Human Rights Unit and Chief of the Judicial Department of the Family Protection Department, 21 February 2019.

<sup>22</sup> Equal Rights Trust and Mizan for Law, *Shouting through the walls: Discriminatory torture and ill-treatment in Jordan*, 2017, p. 89.

<sup>23</sup> HRW, “Guests of the governor”, 2009

**3. The penalty for the man or woman who commits *zina* shall be a prison sentence of three years if *zina* was committed in the marital home of either of them.<sup>24</sup>**

*Zina* is sex outside of marriage by individuals age 18 or over.<sup>25</sup> It includes extra-marital, pre-marital<sup>26</sup> and, in the case of divorce, post-marital sex.<sup>27</sup> Until 2011, the provision only criminalised sex outside of marriage committed by a woman and her partner.<sup>28</sup>

The crime of *zina* cannot be pursued independently by the state, but only according to a complaint made by specific relatives:

**The man or woman who commits *zina* may only be prosecuted following a complaint by the husband or wife as long as there is still a marital relation between them, as well as a complaint by the guardian of the woman who commits *zina* (emphasis added).<sup>29</sup>**

The evidence requires catching the man or woman while committing the act, a confession or the existence of conclusive documents.<sup>30</sup> The law also recognises forensic medical evidence as admissible as a form of documentation.<sup>31</sup>

Despite the reform of Article 98 (the so-called “fit of rage excuse”), the Penal Code still includes a partial excuse for the killing or assault of a spouse or a female family member or their partner caught in the act of committing *zina* or in an “illicit bed” (in a woman’s case, this excuse only applies if the husband was caught in an “illicit bed” in the marital home).<sup>32</sup>

Abortion is also criminalised under the Penal Code. A woman who has an abortion and the individual who performs the abortion can be punished with imprisonment of up to three years (in the case of a medical professional, the sentence may be increased by a third).<sup>33</sup> The Public Health Act permits abortion only when it is necessary to save the pregnant woman’s life or prevent a significant risk to her health.<sup>34</sup>

The medical constitution requires that a report, setting out the urgent need for an abortion, be prepared in advance of the procedure. The report must be signed by two doctors. It must also be signed by the patient and her husband or guardian, again giving male family members authority to make life or death decisions over women and control their reproductive decision-making.<sup>35</sup>

No other exceptions are made to the criminal prohibition on abortion – despite advocacy by a women’s rights organization in Jordan calling for abortion to be available at least in cases of rape and incest.<sup>36</sup> A mitigating factor is provided when the woman “carries out an abortion on herself to protect her honour”.<sup>37</sup> Family members who force a woman to have an abortion for so-called “honour” reasons may also seek to rely on this provision for a reduced sentence.<sup>38</sup>

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<sup>24</sup> Article 282 of the Penal Code (Amnesty International unofficial translation).

<sup>25</sup> Amnesty International interview with Attorney General of the High Criminal Court, 21 February 2019.

<sup>26</sup> Amnesty International interview with Attorney General of the High Criminal Court, 21 February 2019.

<sup>27</sup> Jordanian Court of Cassation (Al Tamyiz - Panel of Five), Hearing dated 8 March 2005. Case. No. 225 of JY 2005.

<sup>28</sup> Article 282 of the Penal Code (Amnesty International unofficial translation).

<sup>29</sup> Article 284 of the Penal Code (Amnesty International unofficial translation).

<sup>30</sup> Article 283 of the Penal Code, and also note that Article 284 sets out time limits for when a complaint may trigger a criminal prosecution.

<sup>31</sup> Amnesty International interview with Attorney General of the High Criminal Court, 21 February 2019.

<sup>32</sup> Article 340 of the Penal Code provides that “1. A person shall benefit from mitigating circumstances if he comes upon his wife or one of his antecedents, descendants or sisters in the act of committing *zina* or in an illicit bed and kills her immediately, kills the person who is committing *zina* with her, kills them both together, or attacks one or both of them, leading to injury, harm, permanent disability or death. 2. The wife who comes upon her husband in the act of committing *zina* or in an illicit bed in the marital home and kills him immediately, kills the person who is committing *zina* with him, kills them both together, or attacks one or both of them, leading to injury, harm, permanent disability or death benefits from the same attenuating circumstances. (Amnesty International unofficial translation). This text was introduced in 2011. Previous to this, the law only gave an excuse to family members and husbands who killed or harmed women/wives.

<sup>33</sup> Article 321 of the Penal Code states that “Any woman who carries out an abortion on herself, by the use of any means, or consented to another person using these means on her, shall be sentenced to a prison term of six months to three years.” Article 322 (1) states that “Any person who by any means carries out an abortion on a woman with her consent shall be sentenced to a prison term of one to three years.” (Amnesty International unofficial translations). Article 325 states that if the perpetrator of the offences stipulated in this section is a physician, surgeon, pharmacist or midwife, the specified penalty shall be increased by a third thereof.

<sup>34</sup> Article 12 of the Public Health Act, Law 47 of 2008 states that no physician is permitted to prescribe a woman medication for the purpose of aborting a child, nor may any physician conduct an abortion on a pregnant woman, except in those cases where the pregnancy endangers the woman’s health or her life. The Public Health Act is available at: [https://www.who.int/ctc/reporting/party\\_reports/Jordan\\_annex4\\_public\\_health\\_law\\_2008\\_En.pdf](https://www.who.int/ctc/reporting/party_reports/Jordan_annex4_public_health_law_2008_En.pdf).

<sup>35</sup> Article 21 of the Jordanian medical constitution, at: <https://www.refworld.org/pdfid/3ae6b53310.pdf>

<sup>36</sup> Rana Hussein, ‘Govt urged to draft laws allowing abortion in cases of rape, incest’, *Jordan Times*, 4 June 2017 at: <http://jordantimes.com/news/local/gov%E2%80%99t-urged-draft-laws-allowing-abortion-cases-rape-incest>

<sup>37</sup> Article 324 of the Penal Code states that “The woman who carries out an abortion on herself to protect her honour shall benefit from mitigating circumstances. Any person who commits an offence stipulated in Article 322 and 323 to protect the honour of one of his descendants or relatives to the third degree shall also benefit from the same mitigating circumstances.” Article 323 refers to intentionally causing abortion without the pregnant woman’s consent.

<sup>38</sup> Article 324 of the Penal Code.

# 4. WOMEN IMPRISONED FOR LEAVING HOME WITHOUT PERMISSION

According to consistent reports from lawyers and civil society activists that Amnesty International interviewed, and twelve affected women that researchers met with, where (adult) women move out of their family homes without permission of their male guardian in Jordan, the male guardian may complain to the authorities, and the police will issue an “absence” warrant for her arrest.<sup>39</sup> When the police find the woman, she is then taken to the administrative governor, who may administratively detain her (mis)using his powers under the Crime Prevention Law. Women may also be detained after approaching the police for assistance from domestic violence and abuse.

## 4.1 ARREST AND DETENTION FOR “ABSENCE”

Twelve of the women researchers spoke to in administrative detention in Juweideh prison said they had been detained after they left their homes and their guardians had complained to the police that they were “absent from home” without permission.

Ten of the twelve women said they had been in administrative detention over three months, including four women who said they had been detained for more than six months and one woman who said she had been detained for four years.<sup>40</sup>

Most of these women said they had been told by the governor that they could leave if family members “bailed them out” (i.e. provide a financial “guarantee” for them in line with the Crime Prevention Law and/or pledge no harm will come to them), but they had no-one able or willing to do so on their behalf. A number of women said they had a willing female relative, but the governor had demanded a male relative provide the guarantee. In this way, the governors create a system which reinforces male guardianship and denies the right for women to leave under their own authority.

Lawyers told Amnesty International that many women detained in connection to “absence” are sent back to their families after a few days in detention and that there is a large turn-over of women passing through Juweideh prison after being found absent.<sup>41</sup> However, where women refuse to go back to their families, or where their families refuse to accept them back, or where the governor perceives the family may be a threat to the woman, they may be incarcerated for longer.

Amnesty International delegates met with “Arwa”, an adult aged in her late teens, who told researchers how she was detained for being absent from her uncle’s home without permission, had spent six months in

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<sup>39</sup> For example, Amnesty International Interviews with Asma Khader, CEO of Solidarity is Global Institute (SIGI)- Jordan, 24 June 2018; Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018; leader of a longstanding women’s NGO (name withheld), 16 October 2018; with two advocates (names withheld), 24 June 2018 and 15 October 2018; interviews with women detainees in Juweideh prison, February 2019. The government’s position is discussed in chapter six.

<sup>40</sup> The other two women had been detained for less than a month.

<sup>41</sup> For example, Amnesty International interviews with advocate (name withheld), 15 October 2018, and advocate Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018.

administrative detention, and was now faced with a stark choice. Either return to his abuse or stay in detention. She explained:

**“My father died in a car accident while I was young, and I was being looked after by my uncles on my father’s side. But since I was 16 years old, I started living on my own. I’ve always had problems with my uncle, ever since my father died.**

**One of my uncles went to the police to put a warrant out for my arrest. I was working in a hair salon for the previous five months, I didn’t even know there was a warrant out... There was a fight at the salon. The police came and when they checked who I was they found out there was an “absence” warrant for me, and that’s when I was arrested.**

**They took me to the governor, and he asked me why I left [my home]. I said I had problems with my uncle. He said I would be detained unless my uncle chose to bail me out and I went home with him. Yesterday, the governor came to tell me my uncle would bail me out, but I said it would be better to stay here than go with my uncle and face his violence and abuse... I hope to be able to live on my own. I want a life without my uncles having power over me.”<sup>42</sup>**

Many of the women Amnesty International spoke to in administrative detention had spent months or more living on their own before they were arrested under “absence” warrants. Several were divorced and did not want to return to their family’s home. Most told researchers that they wanted to bail themselves out of detention and live alone (with any children they had), or with other female relatives or extended family members.

“Eman,” who is aged in her twenties and divorced, told researchers how she was also administratively detained after being absent from home without her father’s permission. She said she had been in Juweideh prison for five months.

**“I was arrested after I ran away from my father’s home to get a lawyer to try and get custody of my son. I left for a week. I went to an apartment, but someone told on me. The police came to the apartment and got me from there. After that, the governor said I would be detained. He wouldn’t let me go unless I agreed to go back to my family’s house. Those were the two options I was given. I explained to the governor there were many problems with my family and I don’t want to go back... He sent me to Juweideh.**

**I want to be with my son alone somewhere. He is five years old. We can live our own life... I want to support us both financially. I asked the governor if I could bail myself out. He said according to the law, if I don’t live with my family, I must be detained. Only my parents can bail me out.”<sup>43</sup>**

Jordanian NGOs have previously documented concerns about women being detained in Jordan for being absent from their home without their guardian’s permission, and the use of the guarantee system to force women to return back to male family members.<sup>44</sup> Amnesty also heard about cases of women administratively detained after being absent from home without permission from Mizan for Law, Solidarity is Global Institute - Jordan, the Jordanian Women’s Union, and several advocates.<sup>45</sup> SIGI-Jordan said it intervened in 32 “absence” cases in 2017.<sup>46</sup>

Advocate Eva Abu Halaweh, Executive Director of Mizan for Law, told researchers in February 2019 about several of her previous cases where her clients were arrested and administratively detained because they had tried to move to Amman or other cities to gain employment without their guardian’s permission. She also noted a growing phenomenon of women who were divorced and wanted to be able to live independently but were being denied autonomy and, in some cases, administratively detained when they tried to live outside their male family members’ authority.<sup>47</sup>

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<sup>42</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>43</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>44</sup> Equal Rights Trust and Mizan for Law, *Shouting through the walls: Discriminatory torture and ill-treatment in Jordan*, 2017, pp. 93 and 96.

<sup>45</sup> Amnesty International Interviews with advocate (name withheld), 24 June 2018; with Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018; with advocate (name withheld), 15 October 2018.

<sup>46</sup> Amnesty International interview with SIGI-Jordan staff person (name withheld), 15 October 2018.

<sup>47</sup> Amnesty international interview with Eva Abu Halaweh, Executive Director of Mizan for Law, 18 February 2019.

## 4.2 ADMINISTRATIVE DETENTION FOR SEEKING TO ELOPE

Several of the women that researchers spoke to (three in Juweideh prison and one who had been released) said they had been arrested for “absence” because they had or were believed to have run away with a man they were not married to or did not have a guardian’s approval to marry.

“Layla”, aged in her late teens, told Amnesty she was married to a man who lived in Saudi Arabia, but was arrested after she had left her home in Jordan with another man, and her father complained about her “absence” to the police:

**“My father forced me to marry a Saudi guy... they did it to get the money. I went to live in Saudi with my new husband, and I wasn’t happy. He told me I am just a maid to him and that is how he treated me. I tried to get a divorce, but he refused. After six months I was able to convince him to let me come home to Jordan for a while to look after my mother who was sick. While I was back living with my parents, I fell in love with a guy here in Jordan and I ran away with him. My parents put out a warrant for me... The charge was leaving home and after I was caught I was taken to the governor. The governor is demanding that a guarantee is paid before I am released, but the amount is high and there is no-one to pay it. My father says he doesn’t have the money and I can’t tell my husband what has happened – he doesn’t even know I am here [in detention].”<sup>48</sup>**

“Layla” said she had been in detention for four months, and that the bail had been set at 150 JD (approximately 210 USD), plus a guarantee which amounted to more than 10,000 USD “in case I am detained again.”

“Sawsan”, aged in her twenties, likewise described an “absence” warrant being issued after she ran away from home and was believed by her father to have been with a man. She said she had been in administrative detention for a year.

**“I was stopped on the street in Amman and the police asked me for my ID. I didn’t have it, so they said I had to come to their station, but when I got there they found a warrant for my arrest because I was ‘absent’. The two police officers there beat me. One told another to get a hose to beat me – he said, ‘let’s educate her’. I was taken to the governor’s deputy in [location withheld]. He said I would go to Juweideh prison until my father bails me out... I don’t want to be bailed out by him, I want to be on my own.”<sup>49</sup>**

Lawyers and civil society activists also told Amnesty of other cases they were familiar with where women had been administratively detained for absence when their male family members thought they had eloped.<sup>50</sup>

## 4.3 ADMINISTRATIVE DETENTION AFTER FLEEING ABUSE

Many of the women detained in relation to “absence” that researchers spoke to, explained they had run away from abusive and violent family environments. Lawyers and women’s rights advocates likewise highlighted that many women detained for being absent had fled violence at home. Three of the women researchers spoke to in Juweideh prison had also been seeking help from the Family Protection Department (police) when they were administratively detained.

A staff member with Solidarity is Global Institute-Jordan told researchers about one case she had intervened in to support a woman who was sleeping at the steps of Bashir hospital when the police arrested her. **“She was administratively detained for three years. Her father kept refusing to bail her because she kept running away. She was trying to escape abuse in the family, which is why she kept running away.”<sup>51</sup>**

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<sup>48</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>49</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>50</sup> E.g. Amnesty International interview with Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018; Amnesty International interview with advocate (name withheld), 15 October 2018.

<sup>51</sup> Amnesty International interview with SIGI-Jordan staff person (name withheld), 15 October 2018.

## HUNDREDS OF WOMEN ADMINISTRATIVELY DETAINED ANNUALLY FOR “ABSENCE” OR *ZINA*

Information shared with Amnesty International by the Public Security Directorate of the Ministry of Interior in response to a request for information in October 2018 confirmed that hundreds of women were administratively detained annually: 2,116 women had been released from administrative detention between 1 January and 27 October 2018, and 2,527 women had been released from administrative detention during 2017.

While there is a variety of reasons that women are administratively detained, Amnesty International believes scores – possibly hundreds of women – are imprisoned under the Crime Prevention Law for “absence” or *zina* annually.

In February 2019, when researchers visited Juweideh prison, approximately 15 per cent of the women detained in administrative detention (at least 22 women, out of a total of 146 women in administrative detention) were detained for “absence” or *zina*.<sup>52</sup> Amnesty International does not know if this was all of the women detained in connection to “absence” or *zina* in Juweideh prison (or in Jordan) during that period, and it is possible there were others.<sup>53</sup> However, if 15 per cent of the total number of women released from administrative detention between January and October 2018 were detained in connection to “absence” or *zina*, then the number of affected women would be over 315 women (0.15 x 2,116) in ten months.

Several civil society activists indicated that there is a high “turnover” of women in administrative detention for “absence” especially, as many are returned to their families in a matter of days and agreed that scores, and possibly hundreds, of women are detained annually in relation to absence or *zina*.

Another lawyer told researchers of a woman who came to her for help – she had fled abuse from her uncle but was terrified she would be arrested for being absent and be either sent back to him or imprisoned. The lawyer said she advised the woman to report her uncle’s abuse, but she was too afraid to do so.<sup>54</sup>

Several women reported that after telling the governor about the abuse they faced at home, they were told to return, even when they said they wanted to live “independently”, outside of the authority of their male family members. They said they were detained when they continued to insist they wanted to live alone. One woman who researchers met in Juweideh prison said, for example:

**“I told the governor about the beatings and the abuse. He said, ‘this is still your father’... He didn’t want to deal with the abuse I faced. The person who works for the governor was in the room – he was encouraging me to go back to my father. He said it was the best thing for me to do.”<sup>55</sup>**

A senior staff member working at an NGO-run shelter told Amnesty International that the shelter managers generally inform male guardians that their daughters are in their shelter: **“Otherwise in practice what will happen is that the guardian may alert the police that the woman is ‘absent from home’ and she will find herself on a wanted list.”<sup>56</sup>** The staff member told researchers that in most instances, when male family members were reassured their female dependent had not run off with a man, they refrained from calling the police. In one instance, however, she recalled that the authorities did arrest a woman from the shelter – the woman spent the night in Juweideh prison until the NGO could intervene with the governor the next day.

<sup>52</sup> These women were among 29 cases identified by prison officials to be detained for “absence” or *zina*, and who also described to Amnesty International that they were being detained in connection to “absence” or *zina*.

<sup>53</sup> Prison officials declined to provide data or details to researchers on the numbers of women administratively detained in connection to “absence” or *zina* (or alternatively, women detained “for their protection”), stating that they are not privy to the reasons that governors administratively detain individuals. The Director of the Public Security Directorate’s Transparency and Human Rights unit also told Amnesty that they did not have desegregated data based on the categories or reasons in which women are held in administrative detention.

<sup>54</sup> Amnesty International interview, advocate (name withheld), June 2018.

<sup>55</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>56</sup> Amnesty International interview, 16 October 2018.

## 4.4 “VIRGINITY TESTING”

**“Even in cases when the woman or girl runs away from her father’s home because of abuse and goes to another family member’s home, she might be required to do a virginity test. The aim is to humiliate and punish her.”**

Dr Isra Tawalbeh, hospital director and previously forensic doctor.<sup>57</sup>

Unmarried women administratively detained for being absent from home without their guardian’s permission (“absence”) told researchers that they were taken by government officials to do a “virginity test”.<sup>58</sup>

The test involves an inspection of the hymen or insertion of fingers into the vagina performed under the belief that this can determine if the woman or girl has had vaginal intercourse.<sup>59</sup> “Virginity tests” are painful and humiliating; they constitute cruel, inhuman and degrading treatment and are also a violation of women’s rights to physical integrity, sexual autonomy, and privacy. In addition, according to the UN World Health Organization and others, there is no scientific evidence to support a belief that the appearance of the hymen is a reliable indicator of vaginal intercourse, nor does the practice have any clinical utility, including in cases of rape.<sup>60</sup>

A representative of the Family Protection Department of the Public Security Directorate confirmed that women and girls were offered a “virginity test” if they were arrested in relation to “absence”, but denied they were coerced. He said that, “virginity testing” is carried out within the Family Protection Department’s own premises so that women and girls do not need to be taken to public hospitals.<sup>61</sup>

Three UN agencies including the WHO, UN WOMEN and OHCHR have issued an interagency statement on “virginity testing” in which they recommend that “virginity tests” be banned.<sup>62</sup> The provision of “virginity testing” by the state normalizes a humiliating invasive procedure and enables family members to pressure women to undergo the examination, in violation of their rights. It also reinforces a discriminatory norm that male family members have a right to monitor and control women’s sexuality, and a harmful gender stereotype that women should remain virgins until marriage. As these women and girls are in state custody, which is an inherently coercive context, any apparent consent they give to undertaking a “virginity test” should not be taken at face value.

Moreover, some women reported being actively pressured or forced to undergo “virginity tests” by state officials. “Hanan”, in her late teens, who said she had been in detention five months, told researchers she had fled an abusive home on three occasions with her sister. Each time, they were detained and taken for a “virginity test”:

**“Every time we ran away, when we were arrested the police would take us to the hospital and my father would insist that they do the virginity tests on [us]. We agreed to it each time, as we knew we had to show our father that we were virgins. Family Protection made it very clear anyway, if our father asks us to do the test, we have to do it. It is his right.”<sup>63</sup>**

“Basma”, aged in her twenties, said she was taken to do a “virginity test” at Princess Basma Hospital even though she had only been out of her house a few hours when she was detained. She said she agreed to do

<sup>57</sup> Amnesty International interview with Dr Isra Tawalbeh, Hospital director, 14 October 2018.

<sup>58</sup> Only one woman that researchers asked said she was not asked to a virginity test. However, she told researchers that her father had previously taken her to a hospital to see a psychiatrist and to undergo a forensic test which confirmed she was a virgin. One woman said she was allowed to refuse the test. For more on the practice of virginity testing women who have left home without permission, see A. Jabiri, *Gendered politics and law in Jordan: Guardianship over women*, 2016

<sup>59</sup> World Health Organization, *Eliminating virginity testing: an interagency statement*, 2018, at: <https://apps.who.int/iris/bitstream/handle/10665/275451/WHO-RHR-18.15-eng.pdf?ua=1>

<sup>60</sup> World Health Organization, *Eliminating virginity testing: an interagency statement*, 2018. See also for example: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5437416>

<sup>61</sup> Meeting with Director of the Public Security Directorate’s Transparency and Human Rights Unit, and Chief of the Judicial Department of the Family Protection Department, 21 February 2019.

<sup>62</sup> World Health Organization, *Eliminating virginity testing: an interagency statement*, 2018.

<sup>63</sup> Amnesty International interview in Juweideh prison, February 2019.

the “virginity test” because she had to prove to her father and uncle that she was a virgin. She added, however: **“In any case, we do not get the choice. If we say no, they force us to do it.”**<sup>64</sup>

“Ruba”, also aged in her twenties, said she had been in detention for 16 days, and told researchers she was detained after running away to escape abuse she was facing at home. During these four months, she had been living with friends and worked at a bar. She said: **“I was told to do a virginity test because my brother asked for it to be done. I was terrified of what would happen, so I confessed to my brother I am not a virgin.”**<sup>65</sup>

Several experts also confirmed to Amnesty International the state practice of subjecting women in custody to “virginity testing”. A lawyer who regularly visits women in detention and asked not to be named, told researchers:

**“In general, they do it to check if she has been raped. And if someone is a virgin and lost their virginity, then the punishment is different for the man, so that’s one reason they test. But even for the women who leave home they do it, because they think they are hiding something. They will check with the family, and often the woman will have no choice.”**<sup>66</sup>

Dr Isra Tawalbeh told researchers that the Jordanian medical constitution prohibits doctors from carrying out any medical procedures on adults without their consent.<sup>67</sup> However, Amnesty International was informed by two experts that women are sometimes pressured by family members or police to say they consented.

One, a representative from an international organization, told researchers it was a difficult practice to stop entirely as families often insist on it. She said families are sometimes able to apply pressure on women and girls by waiting in the hallways of the Family Protection Department building, or in the corridors of public hospitals.<sup>68</sup>

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<sup>64</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>65</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>66</sup> Amnesty International interview with advocate (name withheld), 15 October 2018. See also: A. Jabiri, *Gendered politics and law in Jordan: Guardianship over women*, 2016 and Human Rights Watch *Honoring the killer, justice denied for “honor” crimes in Jordan*, 2004

<sup>67</sup> Amnesty International interview with Dr Isra Tawalbeh, Hospital director, 14 October 2018. The Jordanian medical constitution states in Article 2 that any type of testing or treatment should be justifiable and approved by the patient, or a guardian if they are a minor or unconscious. See: [http://www.ima.org.jo/Contents/Association\\_lawar.aspx](http://www.ima.org.jo/Contents/Association_lawar.aspx)

<sup>68</sup> Amnesty International interview with senior protection officer at an international organization (name withheld), 21 February 2019.

# 5. WOMEN IMPRISONED FOR SEX OUTSIDE MARRIAGE

Women accused of premarital and extramarital sex (sex outside marriage) are at risk of being prosecuted and detained for the “crime” of *zina* under the Jordanian Penal Code or placed in administrative detention on the orders of a governor or district administrator.

## 5.1 IMPRISONED FOR THE “CRIME” OF ZINA UNDER THE PENAL CODE

According to the Public Security Directorate, there were seven women in detention in October 2018 in connection to the “crime” of *zina* under the Penal Code. Four were pre-trial detainees, and three had been convicted of *zina*.<sup>69</sup> In February 2019, women detained for the crime of *zina* were among thousands of Jordanians who benefitted from a public amnesty.<sup>70</sup>

Amnesty International met five women in Juweideh prison who said they had been imprisoned for the crime of *zina* under the Penal Code. While they had all benefitted from the public amnesty, the governors had determined that these women were not allowed to leave and would remain in administrative detention until a family member provided a guarantee for them. None of these women had ever had a lawyer, although in one case a social worker had been trying to support the woman by engaging with her husband to encourage him to drop the case.

“Rana”, aged in her twenties, had been in detention for six months when Amnesty delegates met with her. She was arrested while pregnant and had given birth a few days earlier. Her case illustrates how the crime of *zina* under the Penal Code allows guardians to control their female dependents’ decisions about who they want to marry and punish those who try to elope with men without their family’s agreement.

“I was in a relationship... [name withheld] asked for my hand in marriage more than once and I wanted to marry him. However, my parents didn’t approve of the marriage, so I ran off with him last January. We couldn’t get a marriage license without my father’s permission and the police caught us. We were walking together, and they stopped us for an ID check. The police asked for ID and then they found a *zina* warrant for us both. I was arrested last September. We were taken to the police, then to the DA [prosecutor], then to court, and then detained in Juweideh. My father refused to give up the case against us.”<sup>71</sup>

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<sup>69</sup> Communication from the Public Security Directorate, 28 October 2018.

<sup>70</sup> Interview with prison officials in Juweideh prison, 11 February 2019. For information on the public amnesty, see for example, Media report, The National, 4 February 2019, “King of Jordan issues decree approving royal pardon”, at: <https://www.thenational.ae/world/mena/king-of-jordan-issues-decree-approving-royal-pardon-1.821819>.

<sup>71</sup> Amnesty International interview in Juweideh prison, February 2019.

While “Rana” and “Said” both benefitted from the public amnesty, instead of being released like “Said”, “Rana” was transferred into administrative detention because her father was not willing to pay a guarantee for her release. “Rana” said her mother and aunt are willing to provide a guarantee for her but the governor would not accept it.

“Karama”, aged in her thirties, said she was originally charged and convicted of *zina*, and was arrested when her sister-in-law caught her having an extra-marital relationship. She said she had been in detention for five months.

**“I am married with two kids, the accusation is *zina*. My husband had made the complaint. Neither my husband or father will bail me out... My husband’s sister caught us in the house together. She started beating me. My mother came and tried to protect me... The police came to arrest me. They took me to Juweideh. But when I was released in the amnesty no-one came to get me. I don’t know where I will go next. I could live with my father, but my stepmother won’t accept it. I’d like to live alone. When I was married my father and husband would always try to control me, so I don’t think my father will accept for me to live alone.”<sup>72</sup>**

Women’s rights activists have also reported to Amnesty International that *zina* is used by guardians and husbands who want to punish women or gain higher leverage in a divorce or child custody case. They have also consistently reported that women are prosecuted for *zina* more often than men.<sup>73</sup> The fact that women often live with their husbands’ families also appear to leave women at higher risk of being “caught” having extra-marital relationships. As women have less access to financial resources, they may also be less able to afford legal representation.

In cases where women are being investigated in regard to the crime of *zina*, the prosecutor can demand a forensic test be carried out. This can be accepted as evidence by the courts.<sup>74</sup> Dr Isra Tawalbeh, hospital director and previously a forensic doctor, described conducting such tests on married women accused of adultery, explaining it involved an examination of the whole body for signs of love-bites, taking of a number of swabs and collecting DNA evidence”.<sup>75</sup>

## 5.2 ADMINISTRATIVE DETENTION FOR SEX OUTSIDE MARRIAGE

In addition to the women who had previously been held in pre-trial detention or convicted of the crime of *zina*, researchers met five other women in administrative detention in Juweideh prison who said they were detained in relation to alleged sex or pregnancy outside of marriage.

In some cases, women appeared to be administratively detained while their male guardian decided if they wanted to submit the complaint required for the authorities to pursue a criminal prosecution. Like women administratively detained in relation to “absence”, in other cases women appeared to simply by waiting for a male family member to accept to “bail them out”.

“Mona”, recently divorced and aged in her mid-twenties, told researchers she was arrested on a “*zina*” warrant. She was in administrative detention, hoping to gain permission to marry the man she was accused with and to be released, but also very afraid. As she explained:

**“My father put out a *zina* warrant for my arrest. He was impossible – he didn’t like me living alone. He would call me up and order me home, but I wouldn’t listen to him as I was successfully providing for myself and my children.**

**My father told the police that I was in a relationship with the son of my landlady, Said [name changed]. The police came to the house, knocked at the door and took me. Said is also in prison now – like me he is in administrative detention. He wants to marry me, but my father is not agreeing at the moment.**

<sup>72</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>73</sup> E.g. Amnesty International interviews with Asma Khader, CEO of SIGI-Jordan, 24 June 2018; Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018; senior member of women’s rights organisation, 26 June 2018; advocate (name withheld), 10 February 2019; senior member of legal aid organization (name withheld), 27 June 2018.

<sup>74</sup> Amnesty International interview with Attorney General of the High Criminal Court, 21 February 2019.

<sup>75</sup> Amnesty International interview with Dr Isra Tawalbeh, Hospital Director, 14 October 2018.

**I also want to marry Said... But I am worried as I have been told that my father won't agree to the marriage, and that he might bring a case against me in the courts.”<sup>76</sup>**

“Mona” said she had been in detention for a couple months when Amnesty International delegates met her. She also told researchers that there was a financial basis for her father's behaviour; that her father had demanded a high dowry price for the marriage and was using the threat of a criminal case against the two of them to obtain it.

Migrant domestic workers are also at risk of administrative detention for *zina*. Pia, a migrant domestic worker from Bangladesh, told Amnesty that she had been administratively detained in Juweideh prison for four and a half months and had given birth during that period. It was prison officials who told Amnesty that Pia was administratively detained for *zina*; Pia did not know why she had been detained. She told researchers that she had fallen in love with a man named Mohammed (name changed) while working in a home in the south of the country, and he is the father of her child. She said she was told by the governor that she would only be released if Mohammed married her, but she wanted to return to Bangladesh with her child.<sup>77</sup>

Two migrant domestic worker activists told researchers that although most migrant women who were in administrative detention were imprisoned because they left their employers home without permission or had failed to pay visa overstay fees, they were aware of cases in which migrant workers had detained for *zina*.<sup>78</sup>

## 5.3 HOSPITALS REPORTING ON UNMARRIED PREGNANT WOMEN

Three women that researchers met in Juweideh (and one who researchers met after she had been released) told Amnesty International that they were detained after they went to hospital, and medical or administrative staff identified that they were pregnant outside of marriage and alerted the police. Three of these women were administratively detained, while one was prosecuted for the crime of *zina*.

“Lina”, aged in her late teens, told Amnesty International she had been administratively detained for over a year after medical staff discovered she was pregnant. The pregnancy was a result of rape by her uncle, who had become her guardian while her father was in prison and she lived with her grandmother.

**“I have no-one to bail me out. The governor asked me if I was at risk or if there was any threat to my life if I returned home to my grandmother. I said there wasn't – the man who was hurting me is now in prison. But he still told me that I was being sent to Juweideh.”<sup>79</sup>**

“Lina” told researchers that the governor had returned to meet her again, a year after she had first been imprisoned. According to “Lina's” account, he said he was ready to release her as long as there was someone to bail her. He refused, however, to accept a bail from her grandmother, who she said she wanted to return to.

A lawyer who had met with “Lina” in detention added that “Lina” did in fact have two other uncles who could provide a guarantee for her, but that these uncles had refused to do so unless she dropped her personal rights against the uncle imprisoned for raping her (which would reduce his sentence for the crime).<sup>80</sup>

When Amnesty International met “Ola”, aged in her twenties, in Juweideh, she had given birth nine days earlier, and had then been taken from the hospital to her local governor who had sent her into administrative detention. She told researchers:

**“I got pregnant and tried to marry the man. But the marriage wasn't approved because I have no guardian. My parents are dead, and I just have younger sisters, no brothers... I went to hospital and gave birth. The hospital asked if I was married and I said no, so then they called the police. That's how I ended up here. I don't know how long I will be here for. I also don't know what's happened to my child, they took [my child] away from me.”<sup>81</sup>**

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<sup>76</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>77</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>78</sup> Amnesty International interviews with two migrant domestic worker activists, (names withheld), June 2018 and October 2018.

<sup>79</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>80</sup> Amnesty International interview with advocate (name withheld), 6 March 2019.

<sup>81</sup> Amnesty International interview in Juweideh prison, February 2019.

According to a lawyer who went to Juweideh prison several weeks later, the governor agreed “Ola” could marry the father of her child and therefore leave Juweideh, and she was released after spending two weeks in prison.<sup>82</sup> The lawyer did not have information on her child.

Amnesty researchers were told by three experts that women who were pregnant outside marriage were at risk of being detained, unless they had full family support, and even then, they faced a risk of being reported to the police and imprisoned.<sup>83</sup> One advocate explained to researchers, for example:

**“For a woman with an open, liberal-minded family who is pregnant, if their family supports them, they can try and hide the pregnancy. They can go to a private hospital and make an agreement with the hospital not to report them. If no-one in her family complains and the doctors don’t complain, no-one would inform the police officer based at each public or private hospital in Jordan. But it would be a massive risk. The doctor might ask for the husband. Her parents could try to say he is not in Jordan. They may ask for another man from the family to confirm this. They may even ask for a marriage contract.”<sup>84</sup>**

Migrant domestic workers appear to be particularly at risk of being detained and deported if they give birth in Jordanian hospitals. A domestic worker activist told researchers she knew of two cases in which women were administratively detained just after giving birth, and a third case in which the detention was narrowly avoided by the woman’s Jordanian partner promising marriage.<sup>85</sup>

Dr Tawalbeh, hospital director, told researchers that medical staff are under no obligation to report cases of women pregnant outside marriage if the woman is aged over 18 and there is no suggestion of rape.<sup>86</sup> She said however that:

**“We had a case of an ‘illegal baby’ here. The woman had a stomach cramp and hadn’t realized she was pregnant. The doctors told me I have to tell a police officer. This is from the culture, not from the law.... In another hospital, if there was a more traditional attitude, the doctor or head of the hospital may tell the police.”<sup>87</sup>**

## 5.4 IMPRISONMENT OF UNMARRIED PREGNANT WOMEN TO DNA TEST THEIR BABIES

Several lawyers and women’s rights activists told researchers that unmarried pregnant women are often detained for the duration of their pregnancy.

One NGO official explained it as such:

**“A single woman cannot be released from administrative detention until she has given birth. There are two reasons for this. In the first place, it is not in the traditions of the country for a woman to be pregnant and live with their own family unmarried. And then on top of that, the governors worry she will get an abortion. If it is a rape case or if there is a complaint against a partner who refuses to acknowledge the child as his, then they will also hold her for purposes of doing a DNA test.”<sup>88</sup>**

Amnesty International has not been able to independently verify whether cases of unmarried pregnant women are being detained in order to prevent them from having an abortion. A Ministry of Interior official denied that this could be the case, arguing that abortion is illegal, so there would be no need to detain women to prevent them gaining an abortion.<sup>89</sup>

However, a second expert, a leading woman’s rights advocate, told Amnesty International in October 2018 of the following case:

**“There is a woman being administratively detained in Juweideh, who was raped and became pregnant. The family ... have come to us for our help as they want her to be released and to be able to come home. But the governor of her district does not accept to release her as he is worried she will get an abortion if she is released.... Her parents are visiting her every week. The rapist is in**

<sup>82</sup> Amnesty International interview with advocate (name withheld), 6 March 2019.

<sup>83</sup> For example, Amnesty International interviews with Asma Khader, CEO of SIGI-Jordan 24 June 2018; Eva Abu Halaweh, Executive Director Mizan for Law, 25 June 2018; senior staff member of women’s NGO (name withheld), 16 October 2018; advocate (name withheld), 10 February 2019.

<sup>84</sup> Amnesty International interview with advocate (name withheld), 10 February 2019.

<sup>85</sup> Amnesty International interview with domestic worker activist (name withheld), October 2018.

<sup>86</sup> Amnesty International interview with Dr Isra Tawalbeh, Hospital director, 17 February 2019.

<sup>87</sup> Amnesty International interview with Dr Isra Tawalbeh, Hospital director, 17 February 2019.

<sup>88</sup> Amnesty International interview with NGO official (name withheld), February 2019.

<sup>89</sup> Amnesty International interview with the Director of the Human Rights Institute of the Ministry of Interior, 20 February 2019.

prison but has not been tried yet and the governor wants the baby's DNA test when born so it can be used as evidence of the rape."<sup>90</sup>

Moreover, researchers spoke to two unmarried pregnant women administratively detained in Juweideh, who both told researchers that they were being detained until they gave birth, on the orders of the governor, so a DNA test could be carried out on their child after they deliver.<sup>91</sup>

Both women said they had been in consensual relationships, but the man implicated in the *zina* had demanded the DNA test to prove his "innocence" of the *zina* allegations. "Razan", aged in her thirties explained:

**"The governor said I need to give birth in Juweideh [prison] so they can do a DNA test... I have to stay until the birth. It is because the man [I was involved with] says it is not his. He is no longer imprisoned, he benefitted from the public amnesty, but if it's not his he will sue me for a 'retrieval of honour' [compensation]."**<sup>92</sup>

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<sup>90</sup> Amnesty International interview with senior advocate on women's rights (name withheld) 8 October 2018. In February 2019, researchers were informed the woman had been transferred from Juweideh prison to Dar Amneh.

<sup>91</sup> Amnesty International interviews in Juweideh prison, February 2019. Another advocate clarified to researchers that medical officials do not do DNA tests of fetuses in utero.

<sup>92</sup> Amnesty International interview in Juweideh prison, February 2019.



# 6. PUNISHMENT IN THE NAME OF PROTECTION

**“No woman is detained without a reason, so it could be [that she is detained] to protect her social life in the future, to protect from social disgrace.”**

Director of the Human Rights Department in the Ministry of Interior, 20 February 2019.

The Jordanian authorities told Amnesty International that governors order the administrative detention of women in prison for “absence” and *zina* for the woman’s own protection. They have pointed to the recent establishment of a new facility, Dar Amneh [literally “Safety House”], to protect women at risk of being killed by family members and suggested that this will address many of the concerns raised.

Amnesty International welcomes the establishment of Dar Amneh which has benefitted scores of women at risk of being harmed by their families. It will not, alone, however address the situation of women who are being administratively detained in prisons and who are not at risk, or who demand to be released, not placed in a shelter.

## 6.1 IMPRISONING WOMEN TO PROTECT THEM – THE AUTHORITIES ARGUMENT

The authorities told Amnesty International that many of the women they met in detention were there for their own protection. The Director of the Public Security Directorate’s Transparency and Human Rights Unit told researchers that the arrest and detention of women for leaving home without permission after their guardian made a complaint is to protect the woman from being killed. He explained: “If someone is motivated enough to get a warrant put out on her, it means her life is under threat.”<sup>93</sup>

The Director of the Human Rights Department of the Ministry of Interior likewise explained that if a woman was pregnant outside marriage, she would be detained for her own protection: **“If she consented [to sex outside marriage], her parents would be upset so she would be in danger. We would detain the women in these cases and try to arrange a marriage. We wouldn’t let the woman out until the guardian has signed a**

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<sup>93</sup> Meeting with Director of the Public Security Directorate’s Transparency and Human Rights Unit, and Chief of the Judicial Department of the Family Protection Department, 21 February 2019.

paper, so we know she would be safe.”<sup>94</sup> He also told researchers that a woman who was raped might likewise be at risk from her family.

Both these officials argued that in such cases, protecting women’s right to life is more important than protecting their other rights. They also said that some of the women may be transferred to Dar Amneh as space becomes available.

The concerns are serious. Gender-based killings of women by their family members, including so-called “honour” killings, is an ongoing problem in Jordan, with 7 such cases reported in the first ten months of 2018, for example.<sup>95</sup> Several of the women that researchers spoke to in Juweideh prison (and several who had been released) said they had been detained for their own protection and described being at serious risk. One woman told researchers that her sister had previously been killed in a so-called “honour” killing, another explained that medical staff who alerted the police to her status as pregnant outside marriage did so after witnessing her father starting to beat her after the results of the pregnancy test were communicated.<sup>96</sup>

There is no doubt that governors are often faced with difficult decisions about how to protect women whose families want to harm them.<sup>97</sup> A woman’s rights activist told researchers:

**There was one case where a family shot a woman, she was admitted into hospital, and when she was being transferred from surgery to the intensive care unit, they came back and shot her again. The woman had said she wanted to live on her own. She said she’d wear a veil when she went outside....”<sup>98</sup>**

However, while the authorities have a duty to protect women from gender-based killings, this does not mean women at risk should (or can lawfully be) imprisoned.

## 6.2 CLAIMS OF “PROTECTION” OVERUSED

All the women Amnesty International researchers met with in Juweideh prison said they wanted to leave. Moreover, the clear majority of women were emphatic that they were not at risk of being killed by family members or had not been when they were arrested.

It is of course possible that some of these women were underplaying the extent of the risk they faced or did not know the severity of such a risk. However, Amnesty International researchers also came across many cases of women who were detained for “absence” or *zina*, – sometimes for months or longer – although they did not appear to be at risk, including women in each of the following types of cases:

- Women who said they had no male family members who were alive/ not in prison, and so had no one that they needed to be “protected” from (three cases). These women said they could not leave simply because there was no male family member to guarantee their release.
- Women who had lived for months or years independently in other parts of the country before being arrested (four cases).
- Cases where family members themselves approached women’s rights NGOs to request help to try and get the woman out of administrative detention out of apparent concern for her wellbeing (in these cases, the very experienced NGOs felt assured that the family members posed no risks to the women in detention and the detention was being used for another reason).
- Women who said they were told by the governors that they would remain in detention until they gave birth and their child could be DNA tested (two cases).

Furthermore, the fact that the same policies of administrative detention are applied to migrant domestic workers accused of *zina*, who cannot be argued to be at risk of so-called “honour” killings from family members, further undermines the authority’s argument.

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<sup>94</sup> Amnesty International interview with Director of the Human Rights Institute of the Ministry of Interior, 20 February 2019.

<sup>95</sup> See SIGI-Jordan, Press Statement, 17 June 2019, *Women account for 6% of perpetrators and 27% of victims of homicide complaints during 2018*.

<sup>96</sup> Amnesty International interviews in Amman, October 2018, and in Juweideh prison, February 2019.

<sup>97</sup> E.g. Amnesty International Interview with Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018

<sup>98</sup> Amnesty International interview with women’s rights activist (name withheld), 17 February 2019.

## 6.3 PUNISHMENT AND SOCIAL CONTROL

**“Jordan is a tribal society and has its own traditions. We have a system of guardianship over women, we are not like other countries where women are able at a certain age to leave their families and live alone.”**

Representative from the Family Protection Department, 20 February 2019

At the very least, the practice of detaining women who are reported “absent” or accused of *zina* indicates the use of a highly problematic method to address threats of violence women face from their families, including without the woman’s consent or agreement. Amnesty International is also concerned that, at least in some cases, administrative detention is being applied as a mechanism of punishment and social control of women.

Several lawyers and civil society activists expressed such an opinion. As one lawyer put it, **“The governors are detaining women because they think they are bad women. They detain them because they think the women are whores, or something like that.”**<sup>99</sup> This accords with concerns previously raised by Human Rights Watch that governors use administrative detention to police public morals.<sup>100</sup>

The consistent accounts of women who were or had been in detention indicates the authorities’ concern that women should not make decisions around where to live or who to marry not sanctioned by their male family members. For example, many women in detention for “absence” told researchers that the discussions they had with governors were centred not around the risk that they faced from family members, but about their willingness to return home. Governors would only release women if they returned to their families (and were accepted back), and were not willing to entertain a discussion as to whether women could safely live apart from their male relatives.<sup>101</sup>

Some comments made by government officials to Amnesty International likewise suggested arrests and administrative detention were designed to bring women back under their guardian’s control. The Director of the Human Rights Department at the Ministry of Interior explained to Amnesty International that male guardians are required to “guarantee” women’s release from detention not to protect them but because:

**“It is the father’s role to take care of his daughter and know what she is doing at all times. He will be legally responsible for her. If a woman commits a crime, her father will be the one who pays the compensation. If she does something wrong, people will blame him. And there are specific laws and norms that no woman can cross in our society.”**<sup>102</sup>

Likewise, a representative from the Family Protection Department told researchers: **“Jordan is a tribal society and has its own traditions. We have a system of guardianship over women, we are not like other countries where women are able at a certain age to leave their families and live alone.”**<sup>103</sup>

Furthermore, officials appear to hold an expansive understanding of what they were protecting women from, far beyond the risk of being killed or physically harmed. The Director of the Human Rights Department in the Ministry of Interior told us: **“No woman is detained without a reason, so it could be [that she is detained] to protect her social life in the future, to protect from social disgrace.”**<sup>104</sup>

While officials generally did not differentiate reasons for administratively detaining women for “absence” or for *zina* in their meetings with Amnesty International, the Director of the Human Rights Department at the Ministry of Interior did differentiate between cases where women were victims of sexual violence and ones where they engaged in consensual acts, indicating there may be a punishment element to administrative

<sup>99</sup> Amnesty International interview with advocate (name withheld), February 2019.

<sup>100</sup> See e.g. HRW, *Guests of the governor*, 2009.

<sup>101</sup> Amnesty International interviews in Juweideh prison, February 2019.

<sup>102</sup> Amnesty International interview with Director of the Human Rights Institute of the Ministry of Interior, 20 February 2019.

<sup>103</sup> Amnesty International interview with Director of the Public Security Directorate’s Transparency and Human Rights Unit, and Chief of the Judicial Branch of the Family Protection Department, 21 February 2019.

<sup>104</sup> Amnesty International interview with Director of the Human Rights Institute of the Ministry of Interior, 20 February 2019.

detention for *zina*: “If it’s a rape case, we would need to protect her. But we are not like the West: If it is a *zina* case, it is her fault.”<sup>105</sup>

## 6.4 FAILURE TO ADDRESS THREATS TO WOMEN

Civil society activists were able to point to a number of developments in recent years, taken by the authorities in both law and practice, to address gender-based killings in Jordan. These were considered to be effective. In the last three years, the number of recorded killings of women by family members has decreased. According to crime statistics issued by the Public Security Directorate, seven women were killed by family members in the first 10 months of 2018, compared to 16 killings in the same period in 2017 and 26 in 2016.<sup>106</sup> Eva Abu Halaweh, Executive Director of Mizan for Law, told researchers that she believed that legal reforms and the opening of Dar Amneh were likely key factors in reduction of such crimes.<sup>107</sup>

However, noting that such killings are still occurring, organizations like SIGI-Jordan have also highlighted the need for additional and comprehensive efforts to address gender-based killings, that also address the root causes.<sup>108</sup> Mizan for Law and the Equal Rights Trust have also previously highlighted a number of other gaps in law and practice to protect women from gender-based violence in Jordan, including the focus on reconciliation over the use of protective orders in the Protection Against Family Violence Act of 2008.<sup>109</sup>

Accounts of women in administrative detention highlight additional shortcomings of the authorities to adequately address gender-based killings. Many women in detention told Amnesty researchers that they asked governors why they were being detained while those who had threatened them went free, but the governors dismissed these questions. A staff member of Solidarity is Global Institute-Jordan, who has supported women in and after their release from administrative detention, told researchers that while women often reported threats to governors, she had never seen someone arrested as a result.<sup>110</sup>

The director of the Human Rights Department of the Ministry of Interior told researchers that if the authorities sought to arrest all men who threaten to kill women in their family for perceived wrongdoings, **“then we’d have to go after all the men in Jordan, we’d have to go after all the Arabs, and put all the men in prison!”**<sup>111</sup> This logic - that if the authorities detained one person making a threat, a second or third family member would rise to take their place, appears to be used to justify almost complete inaction to address threats beyond detaining the woman at risk. It also indicates that authorities are failing to meet their obligation under international law to address “attitudes by which women are regarded as subordinate to men or as having stereotyped roles [which] perpetuate widespread practices involving violence or coercion”.<sup>112</sup>

## 6.5 A POSSIBLE TURNING POINT: DAR AMNEH SHELTER FOR WOMEN AT RISK

Dar Amneh [literally Safety House], for women at risk of being killed by family members, was opened by the Ministry of Social Development in July 2018, in collaboration with Mizan for Law NGO, and with the support of international donors.<sup>113</sup> The shelter is meant to address the problem of women at risk being detained in Jordan’s prison.

The director of the facility (until September 2019), who is highly regarded by women’s rights activists in Jordan, told Amnesty International during a February 2019 visit, “I hope we can take them all in the next month and any new women at risk. It’s not fair to leave them in jail because nobody will take them.”<sup>114</sup> She told researchers that while the Dar Amneh was still in a pilot phase and being scaled up, that she hoped women at risk in Jordan were being given new opportunities to start over their lives, to be trusted to make their own choices, and given that responsibility.

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<sup>105</sup> Amnesty International interview with Director of the Human Rights Institute of the Ministry of Interior, 20 February 2019.

<sup>106</sup> For more information, see an analysis by SIGI-Jordan, Press Statement, 17 June 2019, *Women account for 6% of perpetrators and 27% of victims of homicide complaints during 2018*.

<sup>107</sup> Amnesty International correspondence with Eva Abu Halaweh, Executive Director of Mizan for Law, 19 June 2019.

<sup>108</sup> See e.g. SIGI-Jordan, Press Statement, 17 June 2019, *Women account for 6% of perpetrators and 27% of victims of homicide complaints during 2018*.

<sup>109</sup> Equal Rights Trust and Mizan for Law, *Shouting through the walls: Discriminatory torture and ill-treatment in Jordan*, 2017 P. 90.

<sup>110</sup> Amnesty International interview with SIGI-Jordan staff member, 15 October 2018.

<sup>111</sup> Amnesty International interview with Director of the Human Rights Institute of the Ministry of Interior, 20 February 2019.

<sup>112</sup> CEDAW General recommendation 19, para 11, at: <https://www.refworld.org/docid/52d920c54.html>. See also Article 5 of CEDAW.

<sup>113</sup> According to Article 3 of the “Instructions for Shelters for Women at Risk 2018”, published in Jordan’s Official Gazette on 31 May 2018, a woman is defined to be at risk if a member of her family has threatened to kill her and there is no person able to protect her.

<sup>114</sup> Amnesty International interview, Director of Dar Amneh, 18 February 2019.

At the time of Amnesty International's visit, Dar Amneh had received 24 cases; 18 women transferred from prison and six directly from the Family Protection Department. Six additional women had already left Dar Amneh to return to their families, and 12 more cases were expected to be transferred from Juweideh in the coming months.<sup>115</sup> The full capacity of the shelter is 40.<sup>116</sup> As of mid-September 2019, Dar Amneh had received a total of 75 women since it opened, 44 of whom had been able to leave. While some of the women arriving in Dar Amneh had been transferred from prison, the majority had been directly referred to the shelter by the Family Protection Department of the police, meaning the women had been able to avoid prison.<sup>117</sup>

In August 2019, a civil society organisation told Amnesty International that many (though not all) the women researchers met with in detention had been transferred to Dar Amneh, after the organisation had intervened to advocate with the authorities on behalf of these women. Some of the women had since left the shelter, mostly to return to their families.

At Dar Amneh, women are provided with health care, housing, job training and other services.<sup>118</sup> The director of the facility told researchers: "If they need a social worker, a lawyer, I give her all the possibilities, the bad and the good. I give her a chance to think and remove pressure."<sup>119</sup> While Amnesty International was not permitted to talk to women staying in Dar Amneh, researchers were allowed to visit the premises and saw accommodation of a high standard.

Civil society activists also had very positive reports of Dar Amneh. Eva Abu Halaweh, Executive Director of Mizan for Law, told researchers:

**"I am really happy with Dar Amneh. As soon as you walk in you will see... The staff are not in uniforms, there is excellent staff training to respect and support the women, better food, better accommodation... we are really happy with the guidelines published on Amneh, they fully respect human rights of the women. We had workshops and learnt from the French and Swedes about their experiences."**<sup>120</sup>

From the available information, Amnesty International recognises that Dar Amneh has likely made a substantial improvement to the lives of scores of women who spent time in the facility which would otherwise have been spent in prison, and who have been given support to return to their families.

Dar Amneh has been widely praised as reducing the phenomena of "protective custody" in Jordan. Civil society activists reported their hope that the existence of the facility will bring the decades long practice to an end and reported a surge in political will to protect the rights of women at risk.

However, there has been no change in the law to restrict or curtail governors' wide powers to administratively detain women for absence, eloping, sex or pregnancy outside of marriage, and governors continue to imprison women in administrative detention for these reasons/under the guise of protection, albeit in lesser numbers.

One women's rights activist said she believed these cases were likely to be exceptional as governors accustomed themselves to directing such cases to Dar Amneh. However, two lawyers separately told Amnesty International in September 2019 that high numbers of women continue to be administratively detained in Juweideh prison for "absence" or for "zina", one saying there were still tens of such cases of women in prison at any one time, the other saying there were at least ten and possibly scores. At the end of September 2019, Amnesty International received information from a reliable source that there were over 30 women imprisoned in administrative detention for "protection" or for "zina".

It is also unclear whether there are barriers preventing women from leaving Dar Amneh where they wish to do so. The rules governing Dar Amneh, published in the Official Gazette on 31 May 2018, set out that a woman may not be admitted in to the shelter if she "insists that she does not wish to enter" and provides that her residence will end at the shelter if she so wishes.<sup>121</sup> Researchers were told that when a woman is ready to leave Dar Amneh, a case conference is held, bringing together the relevant governor, representatives of government departments including a member of the family protection department, civil society actors, and the woman herself to discuss whether it would be safe for her to return home. According to the director of the facility, women are not forced to stay at the shelter and are there voluntarily. "Even if it is determined she is still at risk, we have to let her go. In the end it's her choice. Our duty is to explain the

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<sup>115</sup> Information from Ministry of Social Development official, 18 February 2019.

<sup>116</sup> Amnesty International interview, Director of Dar Amneh, 18 February 2019.

<sup>117</sup> Amnesty international correspondence with Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2019.

<sup>118</sup> Amnesty International interview, Director of Dar Amneh, 18 February 2019.

<sup>119</sup> Amnesty International interview, Director of Dar Amneh, 18 February 2019.

<sup>120</sup> Amnesty international interview with Eva Abu Halaweh, Executive Director of Mizan for Law, 18 February 2019.

<sup>121</sup> Articles 6 and 11 of the "Instructions for Shelters for Women at Risk 2018".

risks and provide her with the services she needs outside in cooperation with family protection department and NGOs. The governor must then accept this decision because its set out in the Instructions for Shelter for Women at Risk.”<sup>122</sup>

However, Amnesty International was given contradictory accounts of what happened in practice. Officials and civil society activists told Amnesty International that a governor’s permission is still required for a woman to leave, despite the lack of legal basis to prevent her exit. A senior official at the Ministry of Social Development told researchers that where there were still concerns that women would be at risk if they were released, the governor may not allow her to go.<sup>123</sup> Likewise, an official in the Family Protection Department of the Public Security Directorate indicated to researchers that women’s ability to leave in order to live independently would still be subject to their family members’ approval:

**“Where there are cases of women who want to live alone, we have sometimes been able to help them, but we need to first make an agreement with their family and get their guardians’ agreement. We need this for the women’s safety. If the families agree, maybe the women can live in other governorates. These cases are very sensitive. Each step needs much care.”<sup>124</sup>**

Eva Abu Halaweh, Executive Director of Mizan for Law, told researchers that where a woman’s family members refused to provide a guarantee for her to leave, governors would often accept a personal guarantee from a longstanding Mizan-led civil society coalition focused on women in administrative detention.

Finally, a comprehensive solution to addressing the killing of women by their families must also address guardianship laws and practices severely limiting women’s autonomy and ability to leave abusive families and keep themselves safe. It must also include pro-active and systematic efforts to protect women being threatened, including by investigating such threats and the pursuit of necessary prosecutions while ensuring women at risk can urgently access protective orders. It must also include significant steps to change cultural norms and stereotypes in which such violence persists.

## 6.6 THE SITUATION FOR GIRLS: AL-KHANZA JUVENILE FACILITY

Girls aged 12 to 18 who have run away from home or who are accused of eloping or having had sex outside marriage are at risk of being deprived of their liberty in the Al-Khanza juvenile facility for girls in need of protection. Through the Ministry of Social Development, Amnesty International researchers were granted permission to visit Al-Khanza in February 2019 but were not granted access to interview any of the girls there. At the time, researchers were told that 24 girls were present in the facility. Of the 24, six were pregnant.<sup>125</sup> According to UNICEF, 138 girls were in the shelter at one point in 2018, and the number dropped to 55-60 girls in the first half of 2019 due to improved quality and follow up on GBV case management services within the Ministry of Social Development. Three of the women that Amnesty International researchers met with in Juweidah prison had previously been in Al-Khanza.

The head of the facility told Amnesty International that most of the girls at the facility are victims of violence or sexual abuse.<sup>126</sup> Two lawyers told researchers that while some of the girls had survived rape, incest, or domestic violence, most of girls were sent to the facility because they had relationships with boys or men outside of marriage; the two lawyers added that what many girls in Al-Khanza want be able to leave the facility with their partner.<sup>127</sup> This option is often not available because the men or boys are also imprisoned. Such relationships, where sexual, are criminalised in the Penal Code, which sets the age of consent at age 18.<sup>128</sup>

Several lawyers and women’s activists told Amnesty International that the situation for adolescent girls in Al-Khanza had actually become worse after the repeal of infamous Article 308 of the Penal Code, which allowed for perpetrators of rape to escape punishment if they married their victim.<sup>129</sup> While the repeal of Article 308 is a welcome development in providing women legal protection from sexual violence, these lawyers and activists raised concerns that previously this legal provision had given girls deprived of liberty in

<sup>122</sup> Amnesty International Interview, Director of Dar Amneh, 18 February 2019.

<sup>123</sup> Amnesty International interview with Director of Juveniles and Community Security in the Ministry of Social Development, 10 February 2019.

<sup>124</sup> Meeting with Director of the Public Security Directorate’s Transparency and Human Rights Unit, and Chief of the Judicial Department of the Family Protection Department, 21 February 2019.

<sup>125</sup> Amnesty International Interview, Director of Al-Khanza facility, 17 February 2019.

<sup>126</sup> Amnesty International Interview, Director of Al-Khanza facility, 17 February 2019.

<sup>127</sup> Amnesty International interviews with two advocates (names withheld), February 2019.

<sup>128</sup> Articles 292 (II) and 294 of the Penal Code.

<sup>129</sup> Amnesty International interviews with four lawyers and women’s rights activists, June 2018, October 2019 and February 2019.

Al-Khanza or at risk of being killed by their families a “way out”, by enabling her to marry their partner (with the male guardian’s permission). This option was no longer available to them if the man or boy was in prison.<sup>130</sup> They stated that the reform of Article 308 should have been part of a more comprehensive set of law reforms to promote women and girls’ rights, for example by recognising adolescent girls’ evolving capacities to consent to sex.

Lawyers and the three women that Amnesty spoke to who had previously been in Al-Khanza explained a similar process for being sent to Al-Khanza as for Juweideh prison: Girls are sent by the governor to the facility. They may leave only to return to their families, and only if their male family members guaranteed their safety.

The director of Al Khanza told researchers that decisions to send girls to the facility are overseen by a juvenile judge, who acts with authority provided under the Juveniles Act.<sup>131</sup> The Director of Juveniles and Community Security at the Ministry of Social Development told researchers that for girls to be admitted to Al-Khanza, there also needs to be an official report that shows that they are at risk and a medical report. The head of the Family Protection Department of the Ministry of Social Development explained that the goal is for the girl to be reunited with her family, and there is a multi-step process in which the Ministry, Family Protection, a civil society organization representative and a person from the girl’s family must agree there is no danger to her life if she leaves the facility. Once an agreement between these parties is reached, the details of the case are presented to a juvenile judge, and an administrative governor has the girl’s family or other parties sign papers guaranteeing her safety.<sup>132</sup> There does not appear to be any other option for the girl except to remain in the facility or to return to her family.

“Eman,” aged in her twenties, who was interviewed in Juweideh prison, explained that she had been in Al-Khanza juvenile facility four years earlier after she was caught trying to flee abuse. She told researchers:

**“I spent a year in Al-Khanza before this. I was 16. I was married. I had tried to run away. I never saw any judge... My parents made me stay in Khanza for a year, in 2016, before they got me out.”<sup>133</sup>**

“Hanan”, aged in her late teens, said she had likewise been “in and out” of Al-Khanza and Juweideh over the last three years. She said she was arrested for running away from home by the police, taken to family protection department, and finally to the governor. She said she spent nine months in Al-Khanza and never saw a judge.<sup>134</sup>

Both women also said that as girls, they were taken to do a virginity test before being taken to Al Khanza. An official working in the facility told researchers that virginity tests would be performed on girls who had run away from home where girls *or their guardians* asked for it.<sup>135</sup>

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<sup>130</sup> Amnesty International interviews with four lawyers and women’s rights activists, June 2018, October 2019 and February 2019.

<sup>131</sup> Amnesty International Interview with Director of Al-Khanza facility, 17 February 2019. Article 8 of the Juveniles Act No. 34 of 2014 states that a juvenile may not be arrested or placed in any of the juvenile education centers, juvenile rehabilitation or juvenile care except by a decision of the competent judicial authority. The law is available: [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=100351&p\\_classification=04](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100351&p_classification=04)

<sup>132</sup> Amnesty International interview with Head of Family Protection Department of the Ministry of Social Development, 17 February 2019.

<sup>133</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>134</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>135</sup> Amnesty International interview with Official in Al-Khanza Facility, 17 February 2019.



# 7. “ILLEGAL BABIES”: UNMARRIED WOMEN DENIED THEIR CHILDREN AND REPRODUCTIVE CHOICES

Unmarried women are denied access to contraception through the public health system and to safe and legal abortion. For women who are pregnant outside marriage, not only do they risk imprisonment, but they face an institutionalized state practice of removing children from the care of unmarried mothers into state welfare institutions.

## 7.1 DENIAL OF CONTRACEPTION AND SAFE ABORTION

Access to contraception is limited in Jordan and is unavailable in the public health system to unmarried women. Experts consistently told Amnesty International that Ministry of Health services ask women for their “family book” and deny family planning services to women who are not married.<sup>136</sup>

An academic activist told researchers that when she gave trainings to providers of sexual and reproductive health services in Jordan, they often wrongfully believed that it would be illegal to provide contraception to unmarried women: “We try to explain that even though sex outside marriage might be criminalized, using condoms to do it is not, but there is a lot of discrimination against unmarried women”.<sup>137</sup>

Access to emergency contraception and safe abortion are difficult for all women in Jordan, even in cases of rape. Emergency contraception is not available in public hospitals and cannot be purchased in pharmacies.<sup>138</sup> There are some exceptions in which the UN and NGOs provide emergency contraceptives to

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<sup>136</sup> Amnesty International interview with academic, 5 October 2018; senior management of a Jordanian health NGO, 17 October 2018; health practitioner, 17 October 2018. See also Musawah, *Musawah Overview Table on Muslim Family Laws and Practices: Jordan*, February 2017, p. 18, at, [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/JOR/INT\\_CEDAW\\_NGO\\_JOR\\_26632\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/JOR/INT_CEDAW_NGO_JOR_26632_E.pdf)

<sup>137</sup> Amnesty International interview, academic (name withheld), 5 October 2018.

<sup>138</sup> Amnesty International interview with Asma Khader, CEO of SIGI-Jordan, 8 October 2018, senior official in a health-focused NGO (name withheld), 18 October 2018, and, journalist, 9 October 2018. See also: <https://www.7iber.com/society/will-survivors-of-rape-be-given-the-right-to-abortion/>.

rape survivors, but these are mostly limited to refugee communities. Likewise, as described above, abortion is criminalized in almost all circumstances and it is extremely difficult for women in Jordan to obtain clandestine abortions through private doctors, which may entail great financial costs and risks as well as serious health risks.<sup>139</sup>

Abortion in Jordan is only legal where there is a threat to life or health of the pregnant woman. In all other circumstances, it is criminalized. Amnesty International was told that there were no women in detention for abortion-related charges in communications from the Public Security Directorate in October 2018,<sup>140</sup> and again during their visit to Juweideh prison in February 2019. However, using Ministry of Justice figures, the Jordanian NGO Solidarity is Global Institute – Jordan, reported that 49 women were detained for abortion related offences between 2009 and 2016.<sup>141</sup> Two advocates also told Amnesty International they had been involved in cases in which women had been prosecuted for an abortion in the last ten years.<sup>142</sup>

Unmarried women may face additional barriers accessing clandestine abortions through private doctors. Several lawyers and activists told researchers that doctors may be more hesitant to perform illegal abortions in rape and *zina* cases because the cases might gain police attention and increase their risk of being caught. Activists also suggested that married women may be able to access an illegal abortion through their family doctor, but that men could use the criminalization of abortion to threaten and punish women, especially if the pregnancy was from sex outside marriage or the marriage had ended. As one explained: “The problem happens if [women] have a bad relationship with their husband, because then they worry that he might make a complaint against her.”<sup>143</sup>

Girls who are pregnant in the Al-Khanza juvenile facility are likewise denied access to abortion. A girls’ rights activist told researchers:

**“Last year, I met a girl who was a victim of rape [in Al-Khanza]. She didn’t want the pregnancy. She was begging the director for an abortion. I talked to the director, and to a director in the Ministry [of Social Development]. She was just 16. She had been raped. None of them would do anything. They just said there was nothing they could do. The pregnancy didn’t go smoothly, the girl was sick, the baby was at risk – you could see the girl was very weak and suffering from trauma. It just didn’t make sense, especially as the baby would have to go to an orphanage. They gave her medication to protect against miscarriage though – vitamins, iron etc, and duphaston, that she was required to take.”<sup>144</sup>**

## 7.2 FORCED REMOVAL OF NEWBORN CHILDREN OF UNMARRIED WOMEN

In Jordan, there is a systematic practice whereby the Family Protection Department removes new-born babies from the care of unmarried women and takes them to Ministry of Social Development child-care facilities. This was confirmed to Amnesty by more than ten experts, including lawyers, civil society activists, and staff at international organizations.<sup>145</sup>

While some said that there were a few exceptional cases where unmarried women had been able to keep their children, they all told researchers that where unmarried women give birth in hospitals, these children are regularly removed from their mothers’ care.

A journalist focused in child rights, told researchers:

**“For women or girls who give birth in a hospital, they are asked on arrival for their “family book”. If a pregnant woman or girl comes into the hospital without a family book, the hospital administration**

<sup>139</sup> Misoprostol, one of the key medicines women rely on to self-induce abortion, was de-shelved from pharmacies several years ago, removing a key option for women. Several lawyers told researchers that women can access abortions through private doctors, but it may cost the equivalent of thousands of US dollars.

<sup>140</sup> Communication from the Public Security Directorate, 28 October 2018.

<sup>141</sup> See e.g. Rana Hussein, ‘Gov’t urged to draft laws allowing abortion in cases of rape, incest’, Jordan Times, 4 June 2017, at: <http://jordantimes.com/news/local/gov-t-urged-draft-laws-allowing-abortion-cases-rape-incest>.

<sup>142</sup> Amnesty International interview with legal aid provider (name withheld), 27 June 2018, and with advocate (name withheld), 28 June 2018.

<sup>143</sup> Amnesty International interview with Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018.

<sup>144</sup> Amnesty International interview with girls’ rights activist (name withheld), February 2019.

<sup>145</sup> Amnesty International interviews with Eva Abu Halaweh, Executive-Director of Mizan for Law, 25 June 2018; Asma Khader, CEO of SIGI-Jordan, 24 June 2018; Secretary-General of the Jordanian National Commission for women, 26 June 2018; advocate (name withheld), 10 February 2019; journalist, 9 October 2018; director of a legal aid organization (name withheld), 27 June 2018; senior staff person at women’s rights NGO (name withheld), October 2018; women’s rights journalist (name withheld), 10 October 2019, academic (name withheld), 17 October 2018, senior protection officer at an international organization (name withheld), 21 February 2019. See also US State Department, “2018 Country Reports on State Human Rights Practices, Jordan”, March 2019, at: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/jordan/>.

**will call the police. The mother may be jailed. Whether she is jailed or not, the baby is taken to an institution. There, it will be given a birth certificate with a fake name, and its own troubles will begin.”<sup>146</sup>**

The journalist Nadine Nimri has previously reported that there are about 70 children taken to state care annually after being born to unmarried mothers.<sup>147</sup>

Amnesty International spoke to five women who gave birth while unmarried who said that their children were taken into state care from the hospital. Four of these women (three Jordanian women and one migrant domestic worker) said that they had wanted to keep their child, and still want their child back.

In addition, researchers also spoke to two (Jordanian) women who were pregnant in detention and were desperate to leave detention so they could give birth at home and avoid having their child taken away, and two women (migrant domestic workers) who did give birth at home in order to avoid both the risk of being detained and the risk of their child being taken from them into care.

“Rana”, in her twenties, was in administrative detention in Juweideh prison when Amnesty researchers met her. She had been detained several days earlier after giving birth to a child in a public hospital. Her child was conceived in a consensual relationship with a man she wanted to marry but had not been able to for lack of her father’s approval. “Rana” told researchers that she wanted to keep their son but was not given that option. Instead she was told her son would be taken to a state children’s institution. She also told Amnesty International that her son had been sick when he was born, and she understood he had been taken to a neo-natal intensive care unit, where she was not permitted to visit him; she said she was denied any further news by prison officials.

Amnesty International researchers were able to find out from the prison administration that her son was still in the intensive care unit.<sup>148</sup> “Rana” cried when she heard the news and told researchers that when she asked for information on her son from prison officials, she was told she had no business caring.<sup>149</sup>

Likewise, Pia, a migrant domestic worker from Bangladesh, who had been administratively detained for four-and-a-half months and had given birth during that time to a son that was taken away told researchers:

**“I am desperate to see my son. I ask to see him every day, and every day the prison officials tell me that I need to be patient. They give me no information. He is two months old now, and I don’t even know where he is. I don’t know if he is in the prison kindergarten, or if he has been taken somewhere else. I don’t know what is going to happen to me or him.”<sup>150</sup>**

While there is a prison kindergarten for the children of women detainees in Juweideh so that women may keep their young children with them in detention, it is only for “legal babies” - that is, babies born within the framework of marriage. Children born outside of marriage are excluded.<sup>151</sup>

Detained migrant domestic workers are also at risk of being deported without their children. Lucy (name changed), a domestic worker activist who was administratively detained for two months in Juweideh in 2015 told Amnesty International about a woman she had met in prison:

**“She was a domestic worker with a family. She didn’t know she was pregnant until she went to the hospital. The father was the driver in the same house and he was a Jordanian. They arrested her because of zina and were going to deport her and keep her baby in Jordan.”<sup>152</sup>**

There is no law in Jordan that specifically prohibits unmarried women from keeping their children. Instead, the practice of separating children from unmarried mothers is an institutional practice by the Family Protection Department of the Public Security Directorate and the Ministry of Social Development acting in what it claims is the child’s best interests. An official from the Ministry of Social Development told researchers that “illegal children are taken from unmarried women until legal issues can be solved.”<sup>153</sup>

An instruction document issued on the Ministry of Social Development website on “Licensing and management system for child care homes”, sets out, that “there is a need to use institutional social welfare services because there is no possibility of caring for an original or alternative family and that the child is one

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<sup>146</sup> Amnesty International interview with journalist, 9 October 2018.

<sup>147</sup> See Nadine Nimri, ‘Having a child outside of wedlock in Jordan’, 14 March 2017, Raseef22, at <https://raseef22.com/article/1068890-child-wedlock-jordan>.

<sup>148</sup> Amnesty International interview in Juweideh prison, February 2019. The NGO Dignity also reported observing the disdainful attitude of staff towards unmarried mothers concerned about their children first-hand *Dignity Conditions for women in detention in Jordan: needs, vulnerabilities and good practices*, 2015, p. 57.

<sup>149</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>150</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>151</sup> Amnesty International interview with Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018, confirmed by Juweideh prison officials, February 2018.

<sup>152</sup> Amnesty International interview with migrant domestic worker activist, June 2018.

<sup>153</sup> Amnesty International interview with Head of Family Protection Department of the Ministry of Social Development, 17 February 2019.

of a number of enumerated categories.”<sup>154</sup> The enumerated categories include “unknown children”. The term unknown children is undefined, but civil society activists in Jordan told researchers that it refers to children of unmarried women.

The Ministry of Social Development has also issued on its website a document titled “Role of the Ministry of Social Development in dealing with the issue of children of unknown origin”, dated 2007. The document states that the Ministry’s role includes “Signing cooperation protocols with some ministries of social affairs in sisterly and friendly countries to share experiences of best practices in the care of children of unknown origin **and to control the behavior of those entering into illicit sexual relations** (emphasis added).”<sup>155</sup>

Advocate Eva Halaweh confirmed that Mizan for Law had worked with unmarried women who had wanted to keep their children, and that for the most part these women were not able to resist their children being taken into state institutions. She said that it is a struggle to fight these cases in the courts: “The legal action is hard... you can try the Sharia court for custody, or we are also trying to argue that it is unlawful deprivation of the child. The legal avenues are unclear.”<sup>156</sup>

In a positive development, Dar Amneh is able to cater for children up to age six.<sup>157</sup> In another indication that Dar Amneh may constitute a real turning point for women’s rights in Jordan, as of September 2019, two unmarried women have also been supported to reunite with their children who had previously been taken away from them and care for them in the facility.<sup>158</sup> In an additional case, a girl in a Ministry of Social Development institution was also reported to have been able to reunite with her child.<sup>159</sup> It remains unclear however if the women and girl will be able to leave with their child if they do not marry the child’s father.

## MOTHER CAN APPLY TO BE FOSTER PARENT OF HER CHILD

Ministry of Social Development officials told researchers that unmarried mothers whose children are forcibly removed may reunite with their child through a legal process. Women may petition the juvenile courts (through an application to the Ministry of Social Development) to have their child returned to them, but they may only seek to do so **as a foster parent**.<sup>160</sup>

The process is complex and will rely on a social worker’s assessment as to whether the child will be at risk if it is returned to live with its mother.<sup>161</sup> Several experts raised concerns with researchers that judges discriminate against unmarried women and consider them unfit to foster their own child. A representative from an international organization told researchers that this attitude had improved over the last few years.<sup>162</sup> The journalist Nadine Nimri, reporting Ministry of Social Development figures, said 33 children entered into foster care (also known as “alternative families”), in the first 8 months of 2019.<sup>163</sup>

Amnesty International met with “Ghada” who told researchers that she had not been able to reunite with her child (conceived through rape), despite trying since her release from administrative detention several years earlier. She said she was unsuccessful because social services determined she was too poor to foster. She said that she used to regularly visit her child in a state institution and would spend the evenings crying after being told she could not take the child home with her. Eventually, she submitted to pressure from officials to give up her rights to the child, who has now been adopted by another family.<sup>164</sup>

According to civil society experts and affected women that Amnesty International spoke to, some unmarried women give birth at home to protect against their child being taken away and the risk of being detained.<sup>165</sup> In such cases, women may be able to keep their child, but still face massive challenges.

<sup>154</sup> Licensing and management system for child care homes, Article 12, published in Official Gazette No. 4976 dated 16/8/2009, at: <http://www.mosd.gov.jo/UI/Arabic/ShowContent.aspx?ContentId=94>.

<sup>155</sup> MoSD document, “Role of the Ministry of Social Development in dealing with the issue of children of unknown origin”, at: <http://www.mosd.gov.jo/UI/Arabic/ShowContent.aspx?ContentId=486>

<sup>156</sup> Amnesty International Interview with Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018. Sharia courts have jurisdiction for personal status law issues for Muslims in Jordan.

<sup>157</sup> Article 8 of the “Instructions for Shelters for Women at Risk 2018”.

<sup>158</sup> Amnesty International communication, women’s rights activist, 24 September 2019.

<sup>159</sup> Amnesty International communication, women’s rights activist, 24 September 2019.

<sup>160</sup> The system to foster a child in Jordan was established in 2012, see for more information: [https://www.unicef.org/protection/jordan\\_66468.html](https://www.unicef.org/protection/jordan_66468.html)

<sup>161</sup> Amnesty International interview with protection official at an international organization (name withheld), 21 February 2019. In a 2014 hearing in the Committee on the Rights of the Child, a Jordanian government delegate said: “A woman who had a baby out of wedlock was by law known as the ‘foster mother’ and was allowed to keep the child if she could prove that she could provide for it, a delegate said.” See:

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14649&LangID=E>

<sup>162</sup> Amnesty International interview with senior protection official at an international organization (name withheld), 21 February 2019.

<sup>163</sup> See, in Arabic, article in Al Ghad, September 2019. <https://alghad.com/اخبار-99-تسلمهم-طفلا-منسب-إبناات>

<sup>164</sup> Amnesty International interview, Amman, February 2019.

<sup>165</sup> Amnesty International interviews with Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018; journalist, 9 October 2018; Linda al Kalash, Director of Tamkeen, 18 February 2019, Amnesty International interviews with one migrant domestic worker activist in October 2018, with two migrant domestic workers who had given birth at home in October 2018, and with two Jordanian women in Juweideh prison, February 2019.

## 7.3 CHILDREN OF UNMARRIED WOMEN DENIED LEGAL AND SOCIAL IDENTITY

Where women give birth at home, they may be able to keep their child but they may not have adequate medical support or pain relief while giving birth, putting them and their child at risk, and they will not be able to legally register the child's birth.<sup>166</sup> This appears to be a problem of practice, as the law does permit women to register children in their own name.<sup>167</sup> Officials in the Civil Status Department, where parents must go to register their child's birth, demand a marriage certificate or a family book, and refuse women who cannot provide this.<sup>168</sup>

An unregistered child will face many barriers to access his or her rights. He or she will not be able to access public services, such as health care or education, and will struggle to access jobs as an adult. In effect, the child will also be stateless.<sup>169</sup>

Linda al-Khalash, the Director of Tamkeen Fields for Aid, an NGO that is particularly focused on the rights of persons who have been trafficked and migrant domestic workers, told researchers that Tamkeen was aware of 20 cases over the last two years in which unmarried migrant domestic workers had children at home - because of fears they would be arrested or their child would be taken away - that they have not been able to register for lack of a marriage certificate.<sup>170</sup> Amnesty spoke to two women migrant domestic workers from the Philippines who said they had given birth at home in order to keep their child from being taken into care. Neither have been able to register their child(ren) and obtain a legal identity for them.<sup>171</sup>

Likewise, while a child taken into state care will be registered and obtain a legal identity - he or she will be given an invented family name.<sup>172</sup> The family name carries tribal/social identity, which has wide social importance in Jordan; replacing it with a made-up name is often obvious and leaves these children outside a network of protection and at risk of further discrimination and stigma.<sup>173</sup> In 2014, the UN Committee for the Rights of the Child raised concerns that that "children of unmarried mothers are often placed in institutions", and recommend that the state provide unmarried mothers with support to enable them to take care of their children, and conduct awareness-raising campaigns to eliminate the stigma attached to "out-of-wedlock" pregnancy.<sup>174</sup>

The impact of discriminatory laws and practices, which prohibit unmarried women from passing identity to their children is exacerbated by the limited circumstances in which paternity is recognised for children born outside of marriage. In the absence of a valid marriage certificate to the child's birth mother, paternity may only be established by a father's declaration of paternity or an evidentiary document.<sup>175</sup> This means that where a couple are unmarried, so long as the man denies he is the child's father, the child will not be able to inherit either his mother or father's name or tribal affiliation. Civil society activists highlighted the injustice of a situation in which DNA evidence, accepted as forms of evidence in the criminal courts, is not accepted to establish paternity in the civil courts including to allow a child to gain its father's family name. There are some initial indications that the law may change, as in a recent case brought by Mizan for Law, the Sharia courts accepted that two children born outside of marriage could take their father's name based on his declaration and a paternity test.<sup>176</sup>

<sup>166</sup> Amnesty International interviews with Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018 and, journalist, 9 October 2018. See also: USA State Department. *2018 Country Reports on State Human Rights Practices, Jordan*, March 2019, at: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/jordan/>

<sup>167</sup> Amnesty International interview with a senior protection official at an international organization, 21 February 2019, and email correspondence 7 July 2019.

<sup>168</sup> See also Norwegian Refugee Council, *Registering rights: Syrian refugees and the documentation of birth, marriage and death in Jordan*, May 2015. NRC also pointed out the disproportionate impact of this practice on Syrian refugees, especially as parents may not have proof even where married.

<sup>169</sup> For more on link between *zina* laws and statelessness, see: <https://harvardhrh.com/2015/01/why-non-marital-children-in-the-mena-region-face-a-risk-of-statelessness/>

<sup>170</sup> Amnesty International interview with Linda al Kalash, Director of Tamkeen, 18 February 2019.

<sup>171</sup> Amnesty International interviews, October 2018.

<sup>172</sup> Amnesty International interview with journalist, 9 October 2018.

<sup>173</sup> The Information and Research Center- King Hussein Foundation (IRCKHF), *Empowering care leavers in Jordan*, 7 March 2017, p. 14.

<sup>174</sup> UN Committee on the Rights of the Child (CRC), Concluding observations on the consolidated fourth and fifth periodic reports of Jordan, 13 June 2014, paras 39 and 40b. CRC/C/JOR/CO/4-5, at: <https://www.refworld.org/docid/541bf99a4.html>

<sup>175</sup> Article 157 of the Jordanian Personal Status Law (Act No. 36 of 2010).

<sup>176</sup> Amnesty International interviews with advocate Eva Abu Halaweh, Executive Director of Mizan for Law, 25 June 2018 and, journalist, 9 October 2018.

## 7.4 WOMEN FORCED INTO UNWANTED OR ABUSIVE MARRIAGES TO REGISTER THEIR CHILD

Where women's families refuse to provide the guarantee that women need to leave administrative detention, the only other available option for women to be released (unless she is transferred to Dar Amneh) is through marriage. Amnesty International met two women who had left administrative detention through marrying men they had not previously known.<sup>177</sup> Jordanian scholar Afaf Jabiri has reported that governors have been known to suggest marriage to unknown men to women in administrative detention,<sup>178</sup> and one activist group working to rehabilitate former detainees told researchers that they try to find husbands for women who are in detention.<sup>179</sup>

"Hanan", aged in her late teens, told Amnesty researchers that she was arrested and administratively detained after fleeing home to escape a forced marriage, and that she will only be permitted to leave prison if she married a man her guardian has chosen for her (otherwise he will not provide the "guarantee" she needs). She told researchers she had been in detention for five months.<sup>180</sup>

Researchers also met several women in detention who said they were looking to marry any man to be able to leave. One woman, aged in her twenties, told researchers she wanted to be able to live independently from her family to escape their abuse, but that considering the options available to her, she knew her only option was to find someone to marry to be able to leave prison. She said: **"I want to get married. I would marry anyone to be able to leave, even a drug lord or drug dealer just to get out. I am willing to marry anyone just to leave here..."**<sup>181</sup> She told researchers her dream was to continue with her studies, then open a museum.

In the same way that women may be forced into marriage to be able to secure their release from detention for "absence" or *zina*, unmarried women have also in some cases been left with little choice but to marry to be able to keep and/or legally register their child.

Several organizations working with women told Amnesty International that they reluctantly encourage unmarried pregnant women who want to keep their child to marry the man even if they divorce immediately after, so the mother can keep her child and legally register it.<sup>182</sup>

Amnesty International met one woman who said she felt forced to marry a man who had been abusive to her and had raped her, in order to be able to register her two children she had with him. "Amy", a migrant domestic worker in her mid-30's told researchers that:

**"I gave birth to my children at home, so now I don't have papers for them. I knew other women who gave birth in hospital and the babies were taken away, so I stayed home.**

**I didn't want to marry [the man who became my husband] but I was advised to do so by [name of NGO withheld]. I am worried one day he will beat me to death. But I have no choice, I must stay with him. The lawyer said I had to marry him so I can register the two boys. Am I to be with him until he beats me to death?**

**My marriage was now concluded in [date withheld]. But there is a problem. I am still trying to register the children. It takes time and my husband is not in a rush to do it. I went to Family Protection three or four times [asking for help from the abuse]. They told me, fix the certificates of the kids, and then you can divorce him.**

**Last time he beat me, I thought he would kill me and I ran to the neighbours naked... Now, my husband is also beating our oldest child - he is [young], he doesn't understand why his father beats him so viciously... I can't protect him. I try to provoke my husband now to beat me instead."**<sup>183</sup>

The Jordanian NGO Arab Renaissance for Democracy and Development has also highlighted how despite the removal of Article 308 of the Penal Code (which allowed perpetrators of sexual violence to escape punishment by marrying their victim), discriminatory legal provisions and state practices around detention and child registration mean that women and girls are still sometimes forced to marry their rapist in order to

<sup>177</sup> Amnesty International interviews, October 2018 and February 2019.

<sup>178</sup> A. Jabiri. *Gendered politics and law in Jordan: Guardianship over women*, 2016, p. 192.

<sup>179</sup> Amnesty International interview, October 2018.

<sup>180</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>181</sup> Amnesty International interview in Juweideh prison, February 2019.

<sup>182</sup> Amnesty International interviews (names withheld), October 2018.

<sup>183</sup> Amnesty International interview, Amman, October 2018.

be able to avoid imprisonment themselves and to be able to give legal rights to their children.<sup>184</sup> The NGO DIGNITY likewise found that as a result of these discriminatory rules, women were being effectively forced into marriages they did not want, which were exploitative or abusive: “**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, sourced for her by an NGO**”.<sup>185</sup>

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<sup>184</sup> AARD, *Draft legislative changes to Article 308: Discrimination against women continues*, 2016, pp. 6-7, at: [https://ardd-jo.org/sites/default/files/resource-files/legislative\\_changes\\_to\\_article\\_308\\_discrimination\\_against\\_women\\_continues\\_0.pdf](https://ardd-jo.org/sites/default/files/resource-files/legislative_changes_to_article_308_discrimination_against_women_continues_0.pdf)

<sup>185</sup> Dignity, *Conditions for women in detention in Jordan; needs, vulnerabilities and good practices*, 2015, at: [https://dignity.dk/wp-content/uploads/publication\\_series\\_no9.pdf](https://dignity.dk/wp-content/uploads/publication_series_no9.pdf) p 30



# 8. VIOLATIONS OF INTERNATIONAL LAW

The patterns of abuse documented in this report relating to the policing of women's actions and decisions around sex, marriage and reproduction, are all serious human rights concerns. Among other human rights protections that are violated are the right to be free from arbitrary detention, the right to be free from torture and other ill-treatment, and the rights to equality and non-discrimination, to privacy and to health.

## 8.1 MALE GUARDIANSHIP

The practice of guardianship over women impedes and, in some cases, nullifies women's exercise of a host of human rights, violating the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which Jordan ratified in 1992, and other international human rights treaties to which Jordan is a state party. Numerous treaties and treaty bodies acknowledge women's equal right to men to travel, work, study, access health care, and marry without discrimination.

CEDAW explicitly acknowledges harmful social and cultural norms as the source of many women's rights abuses and obliges governments to take appropriate measures to eliminate such norms and prevent gender and intersectional discrimination, gender-based violence and other human rights abuses related to them. In 2017, CEDAW expressed concern over male guardianship in Jordan, noting that it limited women's capacities and possibilities, and called for amendments to discriminatory legislation, including the personal status law.<sup>186</sup> The UN Working Group on Discrimination Against Women in Law and Practice has likewise recommended that states should eliminate laws that allow women to be arbitrarily stripped of legal capacity and/or placed under guardianship.<sup>187</sup>

## 8.2 ADMINISTRATIVE DETENTION OF WOMEN FOR "ABSENCE" AND ZINA

Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that no-one shall be subject to arbitrary detention. This protection applies whether individuals are detained in a prison, or in a shelter, provided that the person is not, as a matter of fact, at liberty to leave the place of detention.<sup>188</sup>

To be considered lawful, any deprivation of liberty must be compatible with international law as well as domestic law. In particular, the grounds and procedure established by law must conform to international law

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<sup>186</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations on the sixth periodic report of Jordan, 9 March 2017, CEDAW/C/JOR/CO/6, at: <https://www.refworld.org/docid/596f495b4.html>.

<sup>187</sup> Report of the Working Group on the issue of Discrimination Against Women in Law and Practice, Human Rights Committee, UN Doc A/HRC/41/33, 15 May 2019, para 80 (b), at: <https://undocs.org/A/HRC/41/33>.

<sup>188</sup> UN Human Rights Committee (HRC), General comment no. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, (16 December 2014), paras 4 and 5, at: <https://www.refworld.org/docid/553e0f984.html> Report of the Working Group on Arbitrary Detention, Human Rights Council, A/HRC/16/47 (19 January 2011) para. 8, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement>.

and the deprivation of liberty must be neither arbitrary, nor violate the safeguards contained in the ICCPR. These include the rights to freedom of movement, privacy and to non-discrimination.<sup>189</sup>

Detaining women for leaving home without their guardian's permission, and where they are accused of eloping or sex outside marriage, violates a number of rights, including their right to freedom of movement and to privacy, and is a form of discrimination. Only women are detained for leaving home without permission of their guardian, and administrative detention is also used in these circumstances as a tool of social control over women's sexuality, marital and reproductive decisions, and to bring them under the control of male family members.<sup>190</sup> The UN Human Rights Committee raised concerns about the use of administrative detention in Jordan in 2017, including the detention of thousands of women for months, and extreme cases for years.<sup>191</sup>

## 8.3 PROTECTIVE CUSTODY

The authorities have asserted that women administratively detained for absence or sex outside of marriage are being detained for their own protection. However, according to the evidence set out in this report, this is often used as an excuse. Moreover, even where responding to a genuine protection risk, human rights law and standards are explicit that protective custody may only be used in limited circumstances (if at all<sup>192</sup>).

The United Nations Working Group on Arbitrary Detention has, for example, urged states to "reconsider recourse to deprivation of liberty in order to protect victims," noting that detention may only be permitted where it is (i) subject to judicial supervision; (ii) utilized as a measure of "last resort"; and (iii) requested by a victim.<sup>193</sup> 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.<sup>194</sup>

The 2011 UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) likewise state that generally, non-custodial means of protection, for example in shelters managed by independent bodies, NGOs or other community services, should be used to protect women where there is a need. Temporary measures involving custody should be applied only 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 should not be applied against the will of the woman concerned.<sup>195</sup>

Crucially, none of the women researchers spoke with in Juweideh prison were there voluntarily. Even the few who said that they would be at risk if they left, also said they were in detention against their will, and that they wanted to leave and live independently from their families. Likewise, there is no judicial supervision of women who are detained "for their protection" in Jordan, and women detained for this reason are not even provided minimal legal protections. In addition, the authorities do not appear to have taken all other measures that could be expected to find alternatives for women to ensure their safety outside of protective custody - for example, the state is failing to act with due diligence to protect women from gender-based violence, as described in this report.<sup>196</sup>

The Committee on the Convention Against Torture has raised concerns about the use of administrative detention in Jordan, "in particular against women and girls who are victims of violence, under the pretext of protecting them, as well as against migrant workers fleeing abusive employers."<sup>197</sup> In 2017, the CEDAW

<sup>189</sup> UN Human Rights Committee (HRC), General comment no. 35, para 17. See also Report of the Working Group on Arbitrary Detention, Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, A/HRC/22/44, 24 December 2012, article 38(e), at: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf)

<sup>190</sup> While men may also be administratively detained for sex outside marriage, it is because they are implicated in what is considered transgressive behavior by women.

<sup>191</sup> Concluding observations on the fifth periodic report of Jordan, Human Rights Committee, UN Doc CCPR/C/JOR/CO/5, 4 December 2017, para 18: at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/JOR/CO/5&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/JOR/CO/5&Lang=En)

<sup>192</sup> The Report of the Working Group on the issue of Discrimination Against Women in Law and Practice, recommends that states "Put an end to practices of protective institutionalization of survivors or those at risk of gender-based violence"; Report of the Working Group on the issue of discrimination against women in law and in practice, Human Rights Committee, UN Doc A/HRC/41/33, 15 May 2019, para 80 (d).

<sup>193</sup> Report of the Working Group on Arbitrary Detention, Human Rights Commission, UN Doc E/CN.4/2002/77, 19 December 2001, Para 47.

<sup>194</sup> Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, Commission on Human Rights, UN Doc. E/CN.4/2001/73/Add.2, 6 February 2001.

<sup>195</sup> The 2011 UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok rules) rule 59.

<sup>196</sup> Moreover, as far as Amnesty International could determine, the state does not appear to be working as required under Article 5 of CEDAW to change social and cultural attitudes with regards to women and promote women's rights. On the contrary - it reinforces and strengthens gender discrimination by supporting male guardianship and reinforcing it with criminal laws. In 2017, in its review of Jordan, the CEDAW committee raised concerns with the persistence of deep-rooted discriminatory stereotypes in Jordan and recommended that Jordan address them, including the putting into place of a comprehensive action plan, and accelerated efforts to launch information campaigns with the media. Concluding observations on the sixth periodic report of Jordan CEDAW/C/JOR/CO/5, 9 March 2017, para. 24, at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/JOR/CO/5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/JOR/CO/5&Lang=en)

<sup>197</sup> Committee Against Torture, Concluding observations on the third periodic report of Jordan: UN Doc CAT, 26 January 2016, C/JOR/CO/3, paras 21 and 22, at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/JOR/CO/3&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/JOR/CO/3&Lang=En)

committee raised concerns about “the continuous recourse of the State party [Jordan] to administrative detention or ‘protective custody’ of women and girls.” The Committee called on Jordan to amend the Crime Prevention Law with a view to abolishing the practice of administrative detention, in particular the use of “protective custody”; to immediately release women and girls arbitrarily placed in “protective custody”; to establish appropriate shelters and mechanisms for women’s protection throughout the country; and to ensure that they consent to any protection measure extended to them.<sup>198</sup>

The opening of Dar Amneh for women at risk is a welcome step. With this establishment of this facility, there should no longer be any reason to administratively detain women to protect them. The authorities must also ensure that women who wish to leave Dar Amneh are freely permitted to do so.

## 8.4 CRIMINALISATION OF ZINA IN THE PENAL CODE

The Human Rights Committee confirmed that criminalization of private consensual sex between adults violates the right to privacy in the International Convention on Civil and Political Rights (ICCPR, ratified by Jordan in 1975) as detailed in the *Toonen v. Australia* decision.<sup>199</sup> Subsequently, the Human Rights Committee, the CEDAW Committee and the Committee on Economic, Social and Cultural Rights (ESCR Committee) expressed concern regarding the discriminatory nature of “adultery” and “fornication” laws and their disproportionate impact on women.<sup>200</sup> The CEDAW Committee has also consistently criticized the discriminatory nature of “adultery” laws,<sup>201</sup> describing them as “obsolete,”<sup>202</sup> and has called for their repeal.<sup>203</sup>

The criminalization of *zina* in the Jordanian Penal Code is discriminatory on its face and in practice, which renders the practice arbitrary. The law provides for the complaint of a husband or a male guardian to trigger a criminal prosecution of a woman, but for a man only his wife’s complaint can have such an effect. Male guardians are empowered to trigger prosecutions *against* their female dependents, but not in their defence (i.e. against adulterous husbands).

In practice, women are at risk of being prosecuted for pre-marital sex especially where they have male family members seeking to punish or control them in a manner in which men are not. Experts in Jordan widely agreed that women were much less likely to pursue a complaint of *zina* against their husband for economic, social and cultural reasons. Women may also be more at risk because they are more likely to live with their husband’s family, and because pregnancy is a visible marker of potential sex outside marriage for women. Moreover, men may also take up to four wives in Jordan and can thus legally have sexual relationships with more than one person while women may not.

Likewise, the law is also a concern for its expressive value. Criminalization of *zina* reinforces cultural understandings that women that have had sex outside of marriage should be punished, which is a particular concern in a context where so-called “honour” killings continue. As noted above, Jordan is required under the Convention on the Elimination of All Forms of Discrimination Against Women to address harmful stereotypes that undermines women’s equality.<sup>204</sup>

The Working Group on Discrimination against Women in Law and Practice concluded that there was no “cure” to the discriminatory features of penalizing “adultery” short of full decriminalization for both women and men.<sup>205</sup> The Working Group has called on governments to end the use of fines, imprisonment, and physical punishment for “adultery”<sup>206</sup> and has called on member states to decriminalize “adultery” as a means of eliminating gender-based violence.<sup>207</sup>

Where criminalizing women for sex outside marriage involves “virginity testing” or other humiliating forms of forensic testing, it also violates a number of additional rights, including the right to be free from torture and other cruel, inhuman and degrading treatment, discussed below. Likewise, where it stops women from being

<sup>198</sup> CEDAW, Concluding observations on the sixth periodic report of Jordan, 9 March 2017.

<sup>199</sup> *Toonen v Australia*, UN Human Rights Committee, UN Doc. CCPR/C/50/D/488/1992, 1994, para. 8.6

<sup>200</sup> UN Human Rights Committee, Concluding Observations: Venezuela, UN Doc. CCPR/CO/71/VEN, 2001, para. 22.

<sup>201</sup> UN CEDAW, Concluding observations: Congo, UN Doc. CEDAW/C/COG/CO/6, 2012, para. 43; UN CEDAW, Concluding Observations: Burundi, UN Doc. CEDAW/C/BDI/CO/4, 2008, para. 12; UN CEDAW, Concluding Observations: Uganda, UN Doc. A/57/38(SUPP), 2002, para.153.

<sup>202</sup> UN CEDAW, Concluding Observations: Congo, UN Doc. A/58/38, 2003, para. 160.

<sup>203</sup> UN CEDAW, Concluding Observations: Yemen, UN Doc. CEDAW/C/YEM/CO/6, 2008, para. 267/8.

<sup>204</sup> Article 5, CEDAW.

<sup>205</sup> UN OHCHR, Statement by the UN Working Group on the issue of discrimination against women in law and in practice, Adultery as a criminal offence violates women’s human rights (UN Working Group Statement on Adultery), 2012,

<https://www.ohchr.org/Documents/Issues/Women/WG/AdulteryasaCriminalOffenceViolatesWomenHR.pdf>

<sup>206</sup> UN OHCHR, UN Working Group Statement on Adultery, 2012.

<sup>207</sup> Working Group on the issue of discrimination against women in law and in practice, UN Doc. A/HRC/29/40, 2015, para. 49.

able to access contraception and safe abortion, or access medical care (particularly for unmarried pregnant women), it also violates the right to health.

## 8.5 CRIMINALISATION OF CONSENSUAL ADOLESCENT SEXUALITY

While age of consent provisions may be intended to provide protection from child sexual abuse or early marriage, they can also be used to unfairly suppress, regulate or prosecute consensual sex between adolescents. Although states have an obligation under international human rights law to protect children and adolescents from sexual coercion and violence, they are also required to respect, protect and fulfil their human rights, including in the realms of their developing sexualities, and in accordance with their evolving capacities.<sup>208</sup> To that end, human rights bodies have called upon states to recognise that adolescents are rights holders, and (in accordance with the principle of evolving capacities) not to impose a strict age of consent requirement on adolescents.<sup>209</sup>

The Committee on the Rights of the Child (CRC Committee) has called on states to: "... take into account the need to balance protection and evolving capacities [in determining the legal age for sexual consent and to] avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity."<sup>210</sup> The UN Working Group on Discrimination Against Women in Law and Practice has also raised concerns with how, as women's sexuality is dubbed "promiscuity", teenage pregnancy can constitute a basis for confining adolescents in group homes, in violation of their rights.<sup>211</sup>

## 8.6 VIRGINITY AND OTHER FORENSIC TESTING

A joint statement by UN Women, the World Health Organization, and the Office for the High Commissioner for Human Rights has highlighted how "virginity testing" is incompatible with the international advancement of all people and international human rights.<sup>212</sup>

"virginity testing" violates the rights to privacy and physical integrity protected in the ICCPR, as it is invasive, humiliating and painful, and condones the interest of women's family members and the community in controlling their sexual lives. The practice also violates the right to be protected from discrimination based on sex and gender as only women and girls are subjected to such tests.

As stated by the United Nations Special Rapporteurs on Violence against Women, its Causes and Consequences,<sup>213</sup> and on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>214</sup> "virginity testing" is a form of sexual violence, and constitutes a particularly gross form of ill-treatment, and custodial violence. Where virginity tests purport to "find" that women are not virgins, it also puts these women at risk of additional violence. In 2014, the CRC Committee and the CEDAW committee jointly issued an interpretation of their respective treaties which set out the obligations of states to end practices that harm girls, including elimination of virginity examinations.<sup>215</sup>

Women and girls who have been detained by the authorities are under heavy pressure to submit to a virginity test, and in some cases appear to have been forced to do so. Even in the absence of obvious forms of coercion, women and girls who are in detention cannot give free consent.

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<sup>208</sup> UN Convention on the Rights of the Child 44/25, [www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx).

<sup>209</sup> See UN General Assembly resolution, CRC, 44/25, 1989, paras. 9 and 12, [www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx).

<sup>210</sup> UN CRC, General Comment 20 (Implementation of the rights of the child during adolescence), UN Doc. CRC/C/GC/20, 2016, para. 40

<sup>211</sup> Report of the Working Group on the issue of discrimination against women in law and in practice, Human Rights Committee, UN Doc A/HRC/41/33, 15 May 2019, para 35.

<sup>212</sup> Eliminating "virginity testing": An Interagency Statement, WHO, OHCHR and UN Women, 2018, UN Doc WHO/RHR/18.15, at: <https://apps.who.int/iris/bitstream/handle/10665/275451/WHO-RHR-18.15-eng.pdf?ua=1>;

<sup>213</sup> Report of the Special Rapporteur on Violence against Women, UN Doc 2016 A/HRC/32/42/Add.2; at: <http://www.refworld.org/docid/57d90a4b4.html>.

<sup>214</sup> Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Human Rights Council, UN Doc 2008 A/HRC/7/3, at: <https://www.refworld.org/docid/47eba2802.html>

<sup>215</sup> Joint general recommendation/general comment 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; at:

[https://tbinetnet.ohchr.org/\\_layouts/15/treatybodyexternal/TBSearch.aspx?SymbolNo=CEDAW/C/GC/31/CRC/C/GC/18](https://tbinetnet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?SymbolNo=CEDAW/C/GC/31/CRC/C/GC/18)

## 8.7 CRIMINALISATION OF ABORTION AND DENIAL OF REPRODUCTIVE HEALTH SERVICES

Accommodating women's specific health needs and ensuring access to comprehensive, quality sexual and reproductive health information and services, including contraception, safe and legal abortion and post-abortion care, is critical to realizing women and girls' human rights.<sup>216</sup> The Human Rights Committee has confirmed that interference with access to reproductive health services violates women's right to equality and non-discrimination<sup>217</sup> and criticized states that fail to provide sexual and reproductive health services, including abortion, thus undermining women's equal participation in social and political life.<sup>218</sup> The CEDAW Committee has explicitly addressed the issue of restrictive abortion laws as a form of discrimination against women implicating violence against women.<sup>219</sup> It has also noted impermissible barriers to women's access to appropriate health care "include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures."<sup>220</sup>

UN treaty bodies have expressed concerns about provisions that criminalized abortion in all circumstances<sup>221</sup> or in all but a few limited circumstances.<sup>222</sup> They have increasingly called for decriminalization of abortion<sup>223</sup> and ensuring access on "at least" certain grounds such as risk to life, health, for victims of rape and incest and when diagnosed with severe or fatal fetal impairment,<sup>224</sup> or access to safe and legal abortion more broadly.<sup>225</sup> UN treaty bodies have also found that the denial of access to abortion in cases of rape or incest or on medical grounds can lead to physical or mental suffering that constitutes cruel, inhumane and degrading treatment (and may amount to torture in some cases) and have called on states to provide abortion as a minimum in such cases.<sup>226</sup>

UN treaty bodies and independent experts have also increasingly criticized abortion laws that restrict and undermine pregnant people's reproductive autonomy and their right to make decisions about their pregnancy.<sup>227</sup> The CESCR Committee has called on states to "liberalize restrictive abortion laws" and "guarantee access to safe abortion services and quality post-abortion care"<sup>228</sup> and advised states to ensure that sexual and reproductive health care includes access to safe abortion services.<sup>229</sup> The CESCR Committee has explicitly stated that increased access to abortion and other sexual and reproductive health services are part of states' obligation to "respect the right of women to make autonomous decisions" about their health.<sup>230</sup>

Furthermore, UN treaty bodies have consistently expressed concerns regarding legal, administrative and practical barriers to access to sexual and reproductive health services, including third party authorization requirements to obtain an abortion – whether from a spouse or partner<sup>231</sup> or from healthcare professionals – and the adverse effect these have on women's ability to access services.<sup>232</sup> The CEDAW Committee has noted that: "States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or

<sup>216</sup> See CESCR, *General Comment 22 on the right to sexual and reproductive health*, 2016, paras 9 and 10. See also CEDAW, *General Recommendation 24, 1999, on Women and Health*, paras 11 and 14.

<sup>217</sup> HRC, *General Comment No. 28*, 2008, paras 10, 11 & 20, UN Doc. HRI/GEN/1/Rev.9 (Vol. I).

<sup>218</sup> See e.g. HRC, Concluding Observations: Chile, para. 8, UN Doc. CCPR/C/CHL/CO/5 (2007); Argentina, para. 13, UN Doc. CCPR/C/ARG/CO/4 (2010); Peru, para. 14, UN Doc. CCPR/C/PER/CO/5 (2013).

<sup>219</sup> CEDAW, *LC v Peru* (2011); CEDAW, *General Recommendation 19 on Violence Against Women* (1992), para 24(m).

<sup>220</sup> CEDAW, *General Recommendation 24 on Women and Health* (1999), para 11.

<sup>221</sup> See e.g. CESCR, Concluding Observations: El Salvador (2007), UN Doc. E/C.12/SLV/CO/2; Philippines (2008), UN Doc. E/C.12/PHL/CO/4; Mauritius, UN Doc. E/C.12/MUS/CO/4 (2010); CRC, Concluding Observations: Nicaragua, UN Doc. CRC/C/NIC/CO/4 (2010); Malta, UN Doc. CRC/C/MLT/CO/2 (2013); HRC, Concluding Observations: Dominican Republic, UN Doc. CCPR/C/DOM/CO/5 (2012); Madagascar, UN Doc. CCPR/C/MDG/CO/4 (2017); CAT, Concluding Observations: Nicaragua, UN Doc. CAT/C/NIC/CO/1 (2009); Sierra Leone (2014), UN Doc. CAT/C/SLE/CO/1; CEDAW, Concluding Observations: Chile, UN Doc. CEDAW/C/CHL/CO/5-6 (2012); Andorra UN Doc. CEDAW/C/AND/CO/2-3 (2013).

<sup>222</sup> CAT, Concluding Observations: Paraguay, UN Doc. CAT/C/PRY/CO/4-6 (2011); CEDAW, Concluding Observations: Afghanistan (2013), HRC, Concluding Observations: Jordan (2017), UN Doc. CCPR/C/JOR/CO/5; CRC, Concluding Observations: Gambia (2015), UN Doc. CRC/C/GMB/CO/2-3.

<sup>223</sup> Full decriminalization means that abortion should be removed from the criminal law and that criminal or other punitive laws, policies and practices should not be applied to women and girls for seeking or obtaining an abortion or to healthcare providers and others solely for having performed abortions or assisted or facilitated abortion medication or services.

<sup>224</sup> See CEDAW, Concluding Observations: Haiti, UN Doc. CEDAW/C/HTI/CO/8-9 (2016); CRC, Concluding Observations: Mexico CRC/C/MEX/CO/4-5 (2015).

<sup>225</sup> See e.g. CESCR, *General Comment 22*, 2016, para 28; Joint Statement by CEDAW and CRPD, "Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities", 2018, at: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDStatements.aspx>.

<sup>226</sup> HRC, *K.L. v. Peru*, paras. 6.3-6.6, 7, UN Doc. CCPR/C/85/D/1153/2003 (2005); *L.M.R. v. Argentina*, para. 9.2, UN Doc. CCPR/C/101/D/1608/2007 (2011); *Mellet v. Ireland*, paras. 7.6, 7.7, 7.8, UN Doc. CCPR/C/116/2324/2013 (2016); *Whelan v. Ireland*, paras. 7.7, 7.8, 7.9, 7.12, UN Doc. CCPR/C/119/D/2425/2014 (2017).

<sup>227</sup> See e.g. CEDAW, Concluding Observations: New Zealand, UN Doc. CEDAW/C/NZL/CO/7 (2012).

<sup>228</sup> CESCR, *General Comment 22*, 2016, para 28.

<sup>229</sup> CEDAW, *General Recommendation 30 on women in conflict prevention, conflict and post-conflict situations*, 2013, para 52 (c); See also CEDAW, Concluding Observations: New Zealand, para. 35(a), UN Doc. CEDAW/C/NZL/CO/7 (2012); Sierra Leone, para. 32, UN Doc. CEDAW/C/SLE/CO/6 (2014).

<sup>230</sup> CESCR, *General Comment 22*, 2016, para 28.

<sup>231</sup> CRC, Concluding Observations: Pakistan, UN Doc. CRC/C/PAK/CO/5 (2016); CEDAW, Concluding Observations: Japan, UN Doc. CEDAW/C/JPN/CO/7-8 (2016); Turkey, UN Doc. CEDAW/C/TUR/CO/7 (2016); HRC, Concluding Observations: Zambia, UN Doc. CCPR/C/ZMB/CO/3 (2007).

<sup>232</sup> CEDAW, Concluding Observations: Rwanda, UN Doc. CEDAW/C/RWA/CO/7-9 (2017); Timor-Leste, UN Doc. CEDAW/C/TLS/CO/2-3 (2015); New Zealand, UN Doc. CEDAW/C/NZL/CO/7 (2014); CAT, Concluding Observations: Kenya, UN Doc. CAT/C/KEN/CO/2 (2013).

health authorities, because they are unmarried or because they are women.”<sup>233</sup> Along similar lines, the CRC Committee has urged states “to decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services” and that “their views are always heard and respected in abortion-related decisions.”<sup>234</sup>

The Human Rights Committee (CCPR), in its General Comment No. 28 on the equality of men and women, has called on that states to eliminate the imposition of a legal duty on doctors or other health providers to report cases of women who have undergone abortion as an example of an interference in women’s reproductive decisions, which can jeopardize women’s rights to life and to be free from torture and ill-treatment.<sup>235</sup> Furthermore, the Committee has explicitly recommended that a state should “avoid penalizing medical professionals in the conduct of their professional duties” in relation to abortion and the right to life.<sup>236</sup>

Several UN treaty bodies – the Human Rights Committee, the CEDAW and CRC Committees - have expressed concerns regarding women and girls being prosecuted for abortion in Jordan and that the criminalization of abortion in almost all circumstances compels women and adolescent girls to resort to unsafe clandestine abortion at the risk of their lives.<sup>237</sup> They recommended that Jordan amend its legislation to guarantee safe, legal and effective access to abortion where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or is non-viable” and as a measure to “protect the best interest of the victims” of sexual violence and ensuring they are provided with “health assistance and rehabilitation services.”<sup>238</sup> They urged Jordan to remove criminal sanctions against women and girls undergoing abortion or against medical service providers assisting them in doing so and emphasized that the State party may not regulate pregnancy or abortion in all other cases in a manner that runs contrary to its duty to ensure that women and girls do not have to undergo unsafe abortions. They have recommended that Jordan should also ensure access to contraceptives and implement awareness-raising programs on women’s sexual and reproductive health and rights.

## 8.8 FORCIBLE SEPARATION OF NEWBORN CHILDREN FROM UNMARRIED WOMEN

The act of taking a woman’s child away simply because she is unmarried, when forced upon her, constitutes torture. Torture is defined in Article 1(1) of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and requires an act meet the following four requirements:

- (1) It must be intentional;
- (2) It must cause severe pain or suffering, whether physical or mental;
- (3) It must be carried out for a specific purpose such as punishment, coercion, intimidation or obtaining information/confession (or for a reason based on discrimination); and
- (4) It must be carried act by an official or at least with a degree of official involvement.

These requirements are met in this context: The acts of separation of newborn children from their mothers are clearly intentional. Such a separation, when forced on women for an indefinite period (possibly forever) inevitably causes severe mental pain or suffering. The reason is discriminatory – because she is unmarried. Finally, the separations are carried out by government officials who take the newborn child to a government child welfare institution.

Discriminating against unmarried women and their children by forcibly removing children into state institutions, prohibiting unmarried women registering their children, and denying children of unmarried mothers the right to a family name, is also a violation of several additional human rights treaties, including the Convention on the Rights of the Child (CRC) and CEDAW.

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<sup>233</sup> CEDAW, *General Recommendation 24* (1999), para. 14. See also CEDAW, Concluding Observations: Turkey, UN Doc. CEDAW/C/TUR/2-3 (1997); Indonesia, UN Doc. CEDAW/C/IDN/2-3 (1998).

<sup>234</sup> CRC, *General Comment 20 on the implementation of the rights of the child during adolescence*, 2016, CRC/C/GC/20, para. 60. See also CRC, Concluding Observations: Morocco, UN Doc. CRC/C/MAR/CO/3-4 (2014), para. 57 (b); Kuwait, UN Doc. CRC/C/KWT/CO/2 (2013), para.60; Sierra Leone, UN Doc. CRC/C/SLE/CO/3-5 (2016), para. 32 (c).

<sup>235</sup> HRC, *General Comment No. 28*, UN Doc. CCPR/C/21/Rev.1/Add.10, para. 20.

<sup>236</sup> HRC, Concluding Observations: Nicaragua, UN Doc. CCPR/C/NIC/CO/3 (2008), para. 13.

<sup>237</sup> HRC, Concluding Observations: Jordan, UN Doc. CCPR/C/JOR/CO/5 (2017), paras. 20 and 21; CEDAW, Concluding Observations: Jordan, UN Doc. CEDAW/C/JOR/CO/4 (2007), para.9; Jordan, UN Doc. CEDAW/C/JOR/CO/5 (2012), para. 40; CRC, Concluding Observations: Jordan, UN Doc. CRC/C/JOR/CO/4-5 (2013), paras. 45 and 46.

<sup>238</sup> HRC, Concluding Observations: Jordan, UN Doc. CCPR/C/JOR/CO/5 (2017), para. 21.

The CRC prohibits the separation of a child from his or her parents against their will, except when the competent authorities subject to judicial review determine in accordance with applicable laws and procedures that such separation is necessary of the best interests of the child.<sup>239</sup> CEDAW prohibits discrimination against women based on marital status.<sup>240</sup>

In Jordan, the Ministry of Social Development institutional practice of separating children from their unmarried mothers is not being carried out in line with any applicable domestic law. Likewise, it does not appear to be carried out in a manner in line with the best interests of the child.

The state argument that forcibly removing children from unmarried women is for the child's protection cannot be accepted to justify the removal of all (or most) new-born children simply on the basis that there are unmarried women who give birth in public hospitals. That children of unmarried women face discrimination in access to legal and social identities (gaining a birth registration and family name) is a further indication that this pattern of action is not concerned with the best interest of the child. Instead, this practice appears intended to punish and control women's sexuality and reproduction and deter relationships outside marriage.

In 2014, the CRC committee reiterated concerns with the use of the term "illegitimate" to describe children born outside marriage in Jordanian law, noting that this was discriminatory and in violation of the CRC.<sup>241</sup> It called on the state to "provide unmarried mothers with support to enable them to take care of their children, and conduct awareness-raising campaigns to eliminate the stigma attached to out-of-wedlock pregnancy."<sup>242</sup>

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<sup>239</sup> Article 9 of the CRC.

<sup>240</sup> Article 1 of CEDAW.

<sup>241</sup> UN Committee on the Rights of the Child (CRC), Concluding observations on the consolidated fourth and fifth periodic reports of Jordan, (Concluding observations) 13 June 2014, paras 15 and 16, UN Doc. CRC/C/JOR/CO/4-5, at: <https://www.refworld.org/docid/541bf99a4.html>.

<sup>242</sup> UN Committee on the Rights of the Child (CRC), Concluding observations, 13 June 2014, para 40b, UN Doc. CRC/C/JOR/CO/4-5.



# 9. RECOMMENDATIONS

***“The pressure of parents on their children must stop, they must not force them to marry and leave school, especially girls. They must have their rights as children. Most of the cases here [in administrative detention] are of women who ran away with guys – they did it because it was too difficult to stay at home. Women need a right to choose how to live. There needs to be equality between men and women... Instead of becoming the poet I had dreamt of becoming, I have been living here, in Juweideh prison. In another world, I might be married now, I might have children, and I would be writing poetry.”***

“Samira”, detainee in her mid-twenties in Juweideh prison.<sup>243</sup>

Amnesty International calls on the relevant executive, parliamentary and judicial Jordanian authorities to take the following steps to protect and promote the rights of women:

1. End male guardianship in law and practice, in particular through reforming the Personal Status Law, by implementing public information campaign raising awareness among key stakeholders of this reform and its implications, and informing women of their rights in this regard. Repeal or reform other discriminatory provisions of the Personal Status Law.
2. Reform the Penal Code to remove provisions that criminalise consensual sexual relations and women’s reproductive decisions, including *zina* and abortion. Ensure that women are protected in law, without discrimination based on their marital status, virginity status, or past sexual conduct. Ensure that all women criminally detained in relation to *zina* or abortion are released, their charges dropped, and their criminal records expunged.
3. End the practice of arresting women who have left their guardian’s home without permission and the practice of returning these women to their guardian’s home or detaining them.
4. End the practice of administrative detention under the Crime Prevention Law of 1954.

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<sup>243</sup> Amnesty International interview, February 2019.

5. Immediately release all women currently administratively detained in Jordanian detention facilities, including the detention of women for absence or *zina* - and allow them to freely choose where to go, such as returning to their families, living independently, or, for those at risk, who fit the criteria and so request it, transferring to Dar Amneh.
6. Ensure that systematic action is taken to intervene to protect women where there is a credible risk of so-called “honour” killing or other form of gender-based violence, including by way of investigation and prosecution, and through the imposition and enforcement of protective orders.
7. Expand the size and support available to Dar Amneh for women at risk (and open other shelters, as appropriate). Ensure that no woman is forced to reside in a protective shelter without her consent. This also requires each woman to have the option to live freely and independently, with any child she may have, without her family being informed (without the woman’s consent) of her release or whereabouts, and without the risk of being arrested and sent back to her family, as well as the option to leave at any time. Where a woman does choose to leave where there is an ongoing risk that family members may seek to harm her, ensure all reasonable measures are taken to guarantee her safety while also upholding her human rights.
8. Put in place procedures to guarantee women living within Dar Amneh are protected and their rights upheld, including safeguards to ensure women’s confidentiality; mechanisms for participation of all women who reside in the facility in decision-making that affects them; and concrete steps being taken when/if a woman wants to leave including setting up a case conference with all relevant people and with the participation of the woman herself. Continue to work with civil society organisations to strengthen law, policies and practices to address gender-based violence in Jordan, and to bring perpetrators to justice.
9. Ensure there is sufficient training and capacity building in human rights protections related to gender-based discrimination for the police, prosecutors, judiciary, governors and district administrators, and staff working at Dar Amneh and Al-Khanza shelters.
10. Remove any obligation on medical staff to report to the authorities’ cases of *zina*, illegal abortion or children born to unmarried women.
11. End discrimination against women seeking to access contraception; ensure that modern contraceptive methods including emergency contraception are made readily available to all women regardless of their marital status, age, sexual orientation or gender identity.
12. Ensure all women can access a safe and legal abortion, in particular women and girls who have become pregnant as a result of sexual violence, as per the calls of women’s rights organizations in Jordan, and recommendations by UN human rights bodies.
13. Ensure that women are never detained or forced to continue their pregnancy for the purpose of ensuring a possible DNA test of their new-born babies.
14. End the use of “virginity testing” and other humiliating forensic exams in all circumstances, including where purportedly used to investigate premarital sex, adultery or sexual violence.
15. End the practice of removing children from the care of unmarried mothers. While ensuring the best interests of the child, end discrimination against unmarried women. Policies related to when children should be removed from their families and taken into state institutions should be in line with the standards set out in the Convention on the Rights of the Child and the Committee on the Rights of the Child recommendations to Jordan.
16. Ensure that all children taken from unmarried women are reunited with their mothers, except and for as long as there is a compelling reason in an individual case not to do so, there has been judicial oversight, and the woman in question has had access to legal assistance. In the meantime, enable non-governmental organizations to be able to petition the juvenile judges directly (instead of through the Ministry of Social Development) to support unmarried mothers be able to foster their child.
17. Provide unmarried mothers with support to enable them to take care of their child and conduct awareness raising calling on people to respect the rights of unmarried mothers and children born to unmarried parents? Enable and facilitate unmarried women to register their children and provide them legal identity.

18. Reform discriminatory laws and practices to enable women to pass on their nationality and family name to their children. Enable paternity to be established using DNA evidence.
19. End the practice of detaining and deporting migrant domestic workers who become pregnant outside of marriage or who are absent from their employers' home without permission.
20. Ensure the provision of free legal aid to women facing imprisonment or other legal sanction because of issues related to sexuality or autonomy.
21. Ensure that healthcare professionals are aware that they do not have any obligation to and should not report illegal abortions, sex or pregnancy outside marriage to the police or any other relevant authorities.

**Amnesty International calls on doctors and other healthcare professionals in Jordan to take the following steps to protect and promote the rights of women:**

1. Refrain from reporting illegal abortions or sex or pregnancy outside marriage to the police or any other relevant authorities in all cases. The police should only be alerted in response to a specific identifiable threat that the woman is at risk of being harmed (and where possible informed consent has been obtained from the woman or girl at risk).
2. Refuse to undertake virginity examinations and other humiliating forensic tests of women or girls in state custody.
3. Ensure non-discrimination in access to sexual and reproductive health information and services, including access to contraception and emergency contraception, to unmarried women, and to migrant workers.

**Amnesty International calls on donors, diplomatic missions and UN agencies to take the following steps to protect and promote the rights of women:**

1. Continue and increase the provision of financial support to women at risk of gender-based violence, including for women in shelter facilities, and women seeking to reintegrate with their families, or independently from their families, upon leaving.
2. Support and facilitate the programming, research and advocacy work of Jordanian organizations and activists working to address sexual and reproductive rights, including the policing of sex, marriage and pregnancy. Support organizations working with a human-rights based approach to support those affected in detention and during reintegration.
3. Engage with the Jordanian authorities to monitor for full implementation of the human rights protections included in the instructions for Shelters for Women at Risk 2018 (published in the Official Gazette in May 2018). In particular the provisions that set out that women may leave the shelter if they wish, and that women's children may join them in the facility.
4. Engage with the Jordanian authorities to monitor and advocate for an end to administrative detention in Jordan, including the administrative detention of women for leaving their home without permission of their male guardian, accused of sex outside of marriage, and/or in cases of "protective custody".
5. Seek regular access to Jordanian detention facilities, through Jordanian NGOs but also, where possible, directly, to monitor the use of administrative detention. Monitor and call for the release of women administratively detained, including for leaving their home without permission of their male guardian, accused of sex outside of marriage, and/or in cases of "protective custody". Ensure that any woman being detained in protective custody is, if she requests it, transferred to an appropriate alternative safe place.
6. Increase support to migrant domestic workers subjected to administrative detention in Jordan, including because they left their employers home without permission, have unpaid visa overstay fines, or are accused of sex outside marriage.
7. Ensure that medical assistance programs that they operate or support provide assistance without discrimination. Sexual and reproductive health services should not discriminate - and staff should receive training on non-discrimination - including on the basis of gender, marital

status, age, sexual orientation and gender identity, and nationality. Where possible, support women's access to emergency contraception, safe abortions and post-abortion care.

8. Support and facilitate the programming, research and advocacy work of Jordanian organizations and activists working to address sexual and reproductive rights, including the policing of sex, marriage and pregnancy. Support organizations working with a human-rights based approach to support those affected in detention and during reintegration.

# 10. ANNEX: RESPONSE RECEIVED FROM THE PRIME MINISTER'S OFFICE, 14 OCTOBER 2019

How many women were released from administrative detention in the first six months of 2019 (i.e. between 1 January 2019 and 30 June 2019; please can you disaggregate for Jordanian and non-Jordanian women)?

Answer:

List	No. of female detainees who have been released (from administrative detention)	No. of female Jordanian detainees who have been released (from administrative) detention	No. of foreign female detainees who have been released (from administrative) detention
January 2019	188	123	65
February	228	142	86
March	230	78	152
April	225	113	112
May	199	141	58
June	189	109	80
<b>Total</b>	<b>1259</b>	<b>706</b>	<b>553</b>

- 1- How many women are currently in administrative detention, and for what reason (a category would suffice – e.g. begging, theft, zina, protective custody etc.)?

Answer: Current number of female detainees is 149 for different reasons.

- 2- Are you able to confirm how many women were apprehended in 2019 so far for being absent from home without their guardian's permission? How many "absence" warrants have been issued so far in 2019?

Answer: There is no case where women have been apprehended for being absent from home without their guardian's permission, unless this is combined with a complaint about committing a crime or an offence.

**3- What is the legal basis for apprehending women for being absent from their home without the permission of their male guardian?**

**Answer:** Women who are absent from their homes are ultimately not apprehended. If a woman's circumstances require a safe place to be provided for her, she is hosted at a women's shelter (*Dar Al-Wifaq*) until a suitable solution is found to the problem she has with her relatives.

**4- How many women are currently in administrative detention in prison in relation to absence?**

**Answer:** There is no case where women have been apprehended for being absent from home without their guardian's permission, unless this is combined with a complaint about committing a crime or an offence.

**5- How many women are currently in administrative detention in relation to zina?**

**Answer:** The total number of women held in administrative detention in 2019 is 85. They are held in custody to ensure their protection. They have been released and seven women currently remain in custody as of the drafting of this report.

**6- How many men are currently in administrative detention in relation to zina?**

**Answer:** The total number of men in administrative detention in 2019 is 86. All of them have been released with the exception of two men as of the time of the drafting of this report.

**7- How many women have been arrested in connection with zina so far in 2019, and how many are currently in judicial detention?**

**Answer:** The answer to this question is contained in the answered to question 6 above.

**8- How many men have been arrested in connection with zina so far in 2019, and how many are currently in judicial detention?**

**Answer:** The number of men currently held in custody on the charge of zina is two. The number of men arrested in connection with zina in the period from 1/1/2019 - 17/9/2019 is 86.

**9- How many women are currently in protective custody in prison in Jordan?**

**Answer:** The number of women in administrative detention is currently 149.

**10- Do women need the permission of a governor or other official to leave Dar Amneh? What is the legal basis for this?**

**Answer:** The beneficiary has access to the services of the shelter after it is confirmed that there is a risk to her life and after she has confirmed that she wishes to stay at a shelter and upon a referral decision by the administrative governor in accordance with Article 9 of the Shelters for Women at Risk Law, no. 117/2016. If, at any time, she expresses her wish to leave the shelter, she must sign the required written declarations that she bears responsibility for her decision. They are then filed with the administrative governor to confirm this officially. She is then permitted to leave as paragraph b of this same article states that "The beneficiary's qualification to benefit from the shelter shall be cancelled by a decision of the administrative governor".

**11- Is it a state policy that children are separated from their unmarried mothers and taken to ministry of social development child welfare centres?**

**Answer:** According to Jordanian legislation, there is nothing that requires the mother to be separated from her children because they were born outside of marriage. However, there are cases that require children to be separated from their mothers by the family protection department and in coordination and with the participation of the Ministry of Social Development; the child is placed in a children's home due to their age under a recommendation by a social worker, supported by medical reports and a report issued by the juvenile court judge under the Jordan Juveniles Law, no. 32/2014. These cases include:

A - The mother is unable to care for her children, upon a request from her, or as she is incompetent to do this.

B - There is a risk to her life from her family and the community and thus they must be separated.

C - There is a case being heard before the court to establish paternity or concerning a sexual assault she was subject to, in which case the children are kept until the judgment is made.

D - In all of these cases, the mother is entitled to petition the competent court to obtain a summary decision to allow her to claim custody of her child. She is also entitled to inform

the Sharia public prosecution office, which offers a service to draft the court claim for the decision mentioned above to be issued. However, in all cases, the best interest of the child is the interest presented and it is up to the court to take this into consideration firstly. If this interest is not provided and the court establishes that there is no risk to the interest of the child, it shall decide to hand the child over to the mother directly. In all cases, the mother does not lose her right to contact the child if he or she is not in her custody and institutions are bound to enable her to do this legally.



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# IMPRISONED WOMEN, STOLEN CHILDREN

## POLICING SEX, MARRIAGE AND PREGNANCY IN JORDAN

This report documents how women accused of being “absent from home”, eloping, or having sex outside marriage, risk imprisonment without charge or trial in Jordan if male family members complain to the authorities. Provincial governors’ mis(use) their powers to detain women, often for months, until male family members accept them back. Where family members demand it, police also take women in custody for a “virginity test”.

Women pregnant outside marriage are at risk of both imprisonment and the forcible removal of their new-born child. To avoid this fate, some unmarried women, especially migrant domestic workers, give birth at home. However, they then struggle to register their child without a valid marriage certificate.

The authorities claim they are acting to protect women and their children from so-called “honour crimes”. In July 2018, in response to long-standing advocacy by women’s organizations, the Ministry of Social Development established Dar Amneh shelter to provide an alternative to “protective custody” for women at risk. However, while scores of women have benefitted from this facility, patterns of arbitrary detentions, virginity tests and child separations continue. First-hand testimonies describe how these acts often appear designed not to protect women, but to punish and coerce them to submit to male family members control.