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Volume 33, Number 2, 2017

URI: <https://id.erudit.org/iderudit/1043060ar>

DOI: <https://doi.org/10.7202/1043060ar>

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Publisher(s)

Centre for Refugee Studies, York University

ISSN

0229-5113 (print)

1920-7336 (digital)

[Explore this journal](#)

Cite this article

Molnar, P. (2017). Discretion to Deport: Intersections between Health and Detention of Syrian Refugees in Jordan. *Refuge*, 33(2), 18–31.
<https://doi.org/10.7202/1043060ar>

Article abstract

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Discretion to Deport: Intersections between Health and Detention of Syrian Refugees in Jordan¹

PETRA MOLNAR

Abstract

Detention and deportation of migrants is a clear performance of state sovereignty that relies on discretionary practices and policies. The ongoing conflict in Syria highlights the strain and social disruption in neighbouring countries that host the majority of the world's Syrian refugees. This article looks at Jordan's policies to detain and deport Syrian refugees. Documented reasons for detention and deportations include work permit infractions, including the deportation of Syrian doctors and medical practitioners, as well as deportations for communicable diseases. Detention and deportation policies in Jordan are highly discretionary, making interventions and advocacy on behalf of those detained difficult. Detention and deportation can also have disproportionate impact on populations that are already marginalized, including members of the LGBTI community, survivors of sexual and gender-based violence, and those engaged in sex work.

Résumé

La détention et la déportation des migrants constituent de manière évidente une conduite de souveraineté étatique basée sur des politiques et des pratiques discrétionnaires. Le

conflit actuel en Syrie éclaire les tensions et les perturbations sociales dans les pays voisins, qui hébergent la majorité des réfugiés syriens du monde. Cet article examine les politiques jordaniennes de détention et de déportation des réfugiés syriens. Les motifs documentés de détention et de déportations comportent les infractions de permis de travail, y compris la déportation de médecins et de praticiens médicaux syriens, ainsi que les déportations motivées par des maladies transmissibles. En Jordanie, les politiques de détention et de déportation sont très discrétionnaires, ce qui rend difficiles les interventions et la défense des droits des personnes détenues. La détention et la déportation peuvent également toucher de manière exagérée des populations déjà marginalisées, y compris les membres des communautés LGBTI, les survivants à des violences sexuelles et sexistes, et les personnes pratiquant le travail du sexe.

Introduction*

The notion that Syrian refugees are detained and deported back into zones of active conflict is shocking. However, such detentions have been documented in the neighbouring countries of Turkey, Lebanon, and Jordan, which host the majority of the world's Syrian refugee

* The findings in this piece rely on field research from the summer of 2015 by the author as a researcher for the International Human Rights Program, University of Toronto Faculty of Law. At time of publication, deportations of Syrian refugees continue to be routinely documented in Jordan. In October 2017, Human Rights Watch released an investigative report detailing multiple allegations of *refoulement*, or forced return, to zones of active conflict in Syria. See Human Rights Watch, "I Have No Idea Why They Sent Us Back: Jordanian Deportations and Expulsions of Syrian Refugees," 2 October 2017, <https://www.hrw.org/report/2017/10/02/i-have-no-idea-why-they-sent-us-back/jordanian-deportations-and-expulsions-syrian>.

populations. The threat of detention and deportation is profoundly damaging for an already traumatized refugee population. These policies also disrupt social cohesion in the host country and exacerbate protection issues for marginalized communities, especially when the detention and deportation of Syrians is linked to health-care concerns and human rights abuses.

The broader use of detention as a mechanism to interdict and control refugee populations has been widely noted, particularly in so-called transit countries that serve as an intermediary to a final destination.² However, countries like Jordan do not neatly fit this transit-country label. Jordan already had a large Syrian population before the start of the conflict, and it will likely continue to host significant numbers for the foreseeable future. As a result of Jordan's explicitly exclusionary policies, Syrian refugees remain impermanently permanent³—not fully Jordanian but also not simply transiting. As a result, they continue to be vulnerable to discretionary policies of detention and deportation at the hands of Jordanian authorities.

In times of crisis,⁴ a nation under threat strengthens and polices its borders by enacting increasingly hardline policies of control over migrants.⁵ In particular, detention and deportation of migrants highlight this performance of sovereignty, as these practices sharply differentiate between those who can and cannot remain. For example, scholars of detention practices such as Mainwaring and Silverman have described state practices of detention as a spectacle,⁶ a practice that is at once both visible and obscure.⁷ Detention practices as a particular enforcement spectacle of interdiction and migration control have also been discussed.⁸ In particular, it is the discretionary nature of detention that allows the state to benefit from being able to enact unfair policies with few safeguards, under the guise of having to protect its security in times of crisis. Discretion in detention practices also exacerbates issues of access to justice for detainees and perpetuates ongoing human rights abuses.⁹ By stripping them of their rights, these discretionary practices also render detainees as undesirable, detainable, and ultimately, deportable.¹⁰

While Jordan should be commended for handling a large number of Syrian refugees over the last six years with relative stability, Jordanian detention policies are an ineffective way to control the numbers of Syrian refugees and instead perpetuate a discretionary system that is in direct contravention of international law. Jordan exercises its broad discretion to detain and deport Syrian refugees for a host of reasons that the state sees fit. These can include vague "security threats," work permit infractions, including by Syrian doctors and medical personal who are gravely needed in the strained Jordanian health-care system, as well as detention and deportations of people living with communicable diseases,

such as tuberculosis and HIV/AIDS. The intersection between health concerns and detention is particularly troubling. Jordan's robust health-care system, once a leader in the region, has been under ongoing strain since the start of the Syrian conflict and the need to expand services to the war-affected Syrian population.

This strain on the health-care system is coupled with Jordan's broader problematic policy to deport *any* foreigner, refugee or not, who is found to be HIV positive.¹¹ Jordan's need to police its borders and prevent the incursion of a manufactured threat of a communicable disease results in a punitive system that stigmatizes people living with communicable diseases. These policies also deter people who may be living with communicable diseases from coming forward and seeking treatment for fear of detention and deportation, resulting in exceptionally low reporting rates and a lack of awareness of the impacts of the spread of infection among refugee and host population.

Methodology

This article is based on fieldwork conducted by the author on behalf of the International Human Rights Program (IHRP) based at the University of Toronto Faculty of Law. In May and June 2015, the IHRP conducted 45 interviews with 51 individuals in Turkey (Istanbul, Gaziantep, and Antakya) and Jordan (Amman and Irbid), including lawyers, doctors, frontline practitioners working with NGOs and INGOs, and Syrian refugees. The primary purpose of this research was to ascertain Canada's refugee policies and their impacts on Syrian refugees and host populations living with HIV, and resulted in an internal report written for the Canadian government.¹² However, troubling patterns of detention and deportation policies in Jordan also emerged, forming the basis of this article. A further piece on broader practices of attrition through enforcement in Jordan's and Turkey's detention policies is forthcoming.¹³

All interviews adhered to strict confidentiality principles and were conducted using an open-ended questionnaire. Most interviews were conducted in private offices of NGOs and INGOs, while some were more informal. Many interviews with service-providers and NGO and INGO workers were followed up with by email or Skype. The interviewees were fully informed about the nature and purpose of our report and the manner in which their information would be used. They were also explicitly provided the option of not participating or remaining anonymous in the final report. All of the interviewees agreed to share their experiences and participate in the research; some chose anonymity and others changed or deleted their names for security reasons during the course of the interview or in subsequent communications with the authors. None of the interviewees

received incentives in exchange for their participation. The interviews were conducted in-person with the exception of approximately 10 interviews, which were conducted either by phone or email, including correspondence with an organization in Beirut, Lebanon. Additional contacts were gathered using the snowball sampling method based on established contacts in the region through journalistic, legal, and not-for-profit networks.

Part 1 of this article will provide a brief overview of the ongoing Syrian conflict and Jordan's responses to the large numbers of Syrian refugees it continues to host. Part 2 will highlight the documented cases of detention and deportations and how detention intersects with the discrimination of already marginalized groups, exacerbating their isolation and fear of deportation. Part 3 will discuss recommendations for reform, including targeted domestic interventions to ongoing detentions and deportations, as well as international pressure to end Jordan's problematic detention and deportation policies, which are in contravention of the principle of *non-refoulement* and international law.

Part 1: Syrian Conflict and Jordan's Responses

The former UN high commissioner for refugees António Guterres has characterized Syrian refugees as "the biggest refugee population from a single conflict in a generation. It is a population that needs the support of the world but is instead living in dire conditions and sinking deeper into poverty."¹⁴ As of August 2016, the United High Commissioner for Refugees (UNHCR) estimated the number of Syrian refugees at 4.8 million.¹⁵ In addition, there are at least 7.6 million internally displaced people (IDPs) within Syria.¹⁶ Exact numbers of fatalities are difficult to verify in the ongoing conflict. However, according to the Syrian Centre for Policy Research, a non-governmental independent think tank, by 2016 war fatalities would amount to over 470,000, and the number of injured and killed since the start of the conflict in 2011 was approximately 11.5 per cent of the population.¹⁷ Syrian civilians are targeted in urban centres by the Assad regime¹⁸ and by armed militants including members of the Islamic State, also known as ISIS.¹⁹ As a result of ongoing violence, huge numbers of Syrians have fled to neighbouring countries such as Turkey, Jordan, and Lebanon, estimated to hold as high as 95 per cent of the total number of refugees.²⁰ This has created a precarious situation for the refugees as well as host country communities as the conflict continues.

Under international law, there is an obligation on all signatories to the 1951 Refugee Convention to provide international protection, including physical relocation of refugees. When protection cannot be guaranteed in the country where refugees first sought asylum, resettlement to a third country becomes an option. The UNHCR is mandated by its statute and

by the UN General Assembly Resolutions to oversee resettlement as one of the three "durable solutions" to refugee crises around the world.²¹ Resettlement is a small but vital piece of the international refugee response. However, the UNHCR estimates that only approximately 3 per cent of the overall Syrian refugee population has been offered viable resettlement.²² Therefore, neighbouring countries continue to deal with large numbers of arriving Syrian refugees.²³ This creates a strain on resources and social services and exacerbates the tension between host populations and Syrian refugees. It also unfortunately exacerbates problematic policies of interdiction, detention, and deportation of Syrian refugees.

This article focuses on the responses in Jordan and its policies of detaining and deporting Syrian refugees for work infraction, including those of Syrian medical professionals, as well as potential deportations of Syrian refugees with communicable diseases. As noted above, the designation of Jordan as a transit country must be problematized. While some Syrian refugees do continue to third countries after arriving in Jordan, and some are resettled, the majority of Syrians in Jordan are likely to remain there indefinitely. As such, they become enmeshed in the Jordanian formal and informal economies, and access Jordan's social and health-care services. They are also a major source of international humanitarian and development funding for Jordan. With the Syrian conflict showing no signs of abating, it is unlikely that the majority of Syrian refugees will be leaving Jordan. However, the Syrian refugee population continues to occupy a precarious space in Jordan, as seen by their detention and deportability.

Jordanian Responses to the Syrian Conflict

The Hashemite Kingdom of Jordan shares its northern border with Syria. Since the start of the Syrian conflict in 2011, Jordan has received approximately 1.257 million registered and unregistered refugees.²⁴ The UNHCR coordinates the overall refugee response in collaboration with the Government of Jordan. Jordan has two main refugee camps housing Syrian refugees: the Zaatari refugee camp complex and the Azraq refugee camp, both under the mandate of the Syrian Refugee Affairs Department (SRAD) of Jordan and managed by the UNHCR. There is also a privately operated Emirati Jordanian Camp, access to which is difficult to obtain and operates its own set of admission standards outside the mandate of the UNHCR.²⁵ Tent cities have also appeared around Ramtha, Cyber City, and King Abdullah Park, near the border with Syria's southern Dara'a Province, and there is a large urban refugee population in cities such as Irbid, Mafraq, and Amman. According to a UNHCR report, 84 per cent of Syrian refugees in Jordan were living outside refugee camps in 2014.²⁶ Unfortunately, the exact numbers of Syrians living outside Jordanian refugee camps are difficult to verify. Many

Syrians were already living and working in Jordan before the start of the conflict, and families have blended for generations. Syrians are also involved in both formal and informal economies in Jordan without registering with the UN or with the Jordanian authorities.

While informal border points remain open along the Jordan-Syria border, according to Human Rights Watch, as of April 2015, all crossings had been officially sealed.²⁷ This created a precarious security situation where thousands of Syrian refugees were trapped in border areas as they tried to enter Jordan. For example, Human Rights Watch obtained satellite imagery of approximately 175 tent structures in June 2015.²⁸ By June 2016, the International Committee of the Red Cross (ICRC) estimated that “around 60,000 people [were] currently without food, water or healthcare.”²⁹ These border regions operate outside the reach of the Jordanian authorities and are very dangerous. They are cut off from humanitarian assistance, and as a result of a suicide bombing attributed to ISIS on 21 June 2016, Jordan completely sealed its borders.³⁰

Jordan's Refugee Policies

The principle of *non-refoulement* is the “cornerstone of asylum and of international refugee law.”³¹ Under the Refugee Convention, the principle of *non-refoulement* prohibits a state from removing refugees to their country where their life or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.³² Article 33 (1) of the 1951 Convention relating to the Status of Refugees states, “No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”³³ This principle ensures that all persons can fully enjoy their human rights, including right to life, liberty, and security of the person, and freedom from torture or cruel, inhuman, or degrading treatment or punishment. Returning a refugee to persecution or danger threatens these rights.

However, Jordan has not signed or ratified the 1951 UN Convention Relating to the Status of Refugees or its 1967 Protocol. Nevertheless, Article 21 of the Jordanian Constitution prohibits the extradition of political refugees,³⁴ and according to the UNHCR, the Jordanian government considers Syrians to be refugees.³⁵ Jordanian law also lacks clear domestic refugee legislation or policy to protect refugees.³⁶ For example, Law No. 24 of 1973 on Residence and Foreigners' Affairs requires those entering the country as political asylum seekers to present themselves and register at a police station within three days of arrival.³⁷ Article 31 grants the administrative body of the Ministry of the Interior the power

to determine whether persons who entered illegally will be detained and deported, on a case-by-case basis.³⁸ Moreover, the law does not identify explicit conditions under which individuals will be eligible for asylum.³⁹

Jordan is a signatory to the 1984 UN Convention against Torture⁴⁰ and is bound by Article 3 not to return or expel any persons to states where they would be in danger of being tortured.⁴¹ Jordan also issued its only domestic refugee-specific directive in 1998 in the form of a memorandum of understanding (MOU) with UNHCR.⁴² This MOU gives UNHCR the right to determine the refugee status of asylum-seekers in Jordan. Article 1 of the MOU removes any geographic and time limitations for asylum-seekers, and Article 2(1) respects the concept of *non-refoulement*.⁴³ According to the UNHCR, in the absence of any international or national legal refugee instruments in force in Jordan, the MOU “establishes the parameters for cooperation between UNHCR and the Government.”⁴⁴ This cooperation includes UNHCR interventions in the detention of refugees, as will be discussed below.

Part 2: Deportations from Jordan

Jordanian policies of detention and deportation have long been discretionary and have raised numerous critiques about procedural justice safeguards. Groups such as Human Rights Watch have criticized Jordan's broad administrative detention regime and point out that “governors and other officials routinely circumvent the criminal justice system when they detain people by administrative order and without judicial review.”⁴⁵ The Global Detention Project's 2015 report on Jordan's immigration detention practices details how Jordan's ad hoc system of laws governing migration, refugee status, and detention results in a highly discretionary system with few procedural safeguards for detained migrants. While the 1973 Law on Residence and Foreigners' Affairs and the Crime Prevention Law and the Act No. 9 of 2004 on Prisons and Reinsertion Centres provides very basic procedural guarantees for all detainees, there is a “lack of uniformity or transparency in the decision-making process [which] leaves many immigrants vulnerable to human rights violations and arbitrary detention.”⁴⁶ Charting the history and statistics of Jordan's immigration detention practices is difficult, as the Jordanian government does not make these statistics available.⁴⁷ However, multiple cases of torture, deprivation of rights, and death have been noted, including the death of a Syrian refugee in the Zaatari Refugee Camp.⁴⁸

Forcible detainment and deportations to Syria were documented in a number of interviewees in May and June 2015. While there were no any official reports by the Jordanian authorities of these deportations, and exact numbers were difficult to verify, the UNHCR has publicly acknowledged that they are aware of deportations of Syrian refugees from Jordan.⁴⁹

However, there were local reports on the deportation of Syrians from Jordan. For example, Hazm al-Mazouni, a Syrian journalist with the Ammanet news agency based in Amman, Jordan, was the principal investigator on a report released in June 2015 that documented 58 deportations since 2014.⁵⁰ During his interview on June 2015, Mr. al-Mazouni estimated that there were also 11 cases of children under 18 years deported from Zaatari camp with their families back to Syria. In Mr. al-Mazouni's experience, deportations occur relatively quickly, often less than 24 hours after the person is apprehended. Out of the 19 cases found by Mr. al-Mazouni and his colleague, 16 were also deported on Fridays and Saturdays, which are considered holidays in Jordan. Mr. al-Mazouni thought this was to curtail access to legal representation and the UNHCR. According to Mr. al-Mazouni, out of the 19 cases investigated, one person died in Syria in a bombardment, while five people were in detention, with at least some inside an al-Nusra prison. Four people were volunteers with local organizations and were deported alongside wounded Syrian refugees, allegedly for not being allowed to work in Jordan.⁵¹

In 2015, the UNHCR was aware of these deportations and, given its close relationship with the Jordanian government, it serves as the primary advocacy mechanism for the release of those detained.⁵² The UNHCR's deportation unit liaises with the governorate that has administrative oversight over enforcing deportations and intervenes on individual cases. The UNHCR also has a 24-hour hotline and liaison officers who attempt to find out where the person is detained and intervene as soon as possible to secure the person's release. The UNHCR also has some access to the administrative detention facilities where people are held in order to halt any deportations. The UNHCR is also aware of children in detention and works to secure their release.⁵³

Deportations for Work Permit Infractions

During the course of fieldwork in 2015, interviewees noted that one main reason for deportation of a Syrian refugee was work permit infractions. This included documented cases of practising Syrian physicians and medical personnel.⁵⁴ However, as a result of pressure following an international conference (also known as the Jordan Compact) in London in February 2016, Jordan publicly committed to provide a target of 50,000 work permits for Syrians by the end of the 2016.⁵⁵ As a reward for this pledge, the European Union ratified a new tariff-free export agreement with Jordan and business would benefit when they pledged that Syrian refugees would comprise 25 per cent of their workforce after three years.⁵⁶

This public push for work permits in Jordan has garnered mixed results at best.⁵⁷ For example, information

dissemination about implementation of this policy varies greatly, both for agencies supporting refugees as well as refugees themselves.⁵⁸ Also, there are also issues with the formalization of work and the fear felt by refugees of losing benefits such as food vouchers or supports from international organization when they receive a work permit.⁵⁹ There is also no explicit mention of work permits for medical practitioners or specialists who could benefit from such as regime. Therefore, while the following data were gathered before changes were made to the work permit regime in Jordan, the findings remain relevant to highlight the many challenges for Syrians wishing to work in Jordan and potentially facing detention or deportation as a result of being unable to access legal work.

A number of interviewees noted the difficulty faced by medical practitioners when trying to work legally in Jordan. For example, the Justice Centre for Legal Aid (JCLA) is a legal aid organization in Amman, Jordan, that regularly represents Syrian refugees living and working in Jordan. In the JCLA's experience, only a few people with "rare PhDs from Syria" were given work permits in Jordan before the Jordan Compact in 2016. For the rest of the Syrian population they must resort to working without a permit, and if they are caught by Jordanian authorities, they may be sent to a refugee camp or deported back to Syria. This happened to Yaser,⁶⁰ a middle-aged Syrian lawyer who sat in on the meeting with the JCLA staff and was volunteering at the organizations. He came with his family to Jordan from Syria but was caught working without a work permit, detained, and ultimately sent to Azraq refugee camp. After a few weeks, he managed to escape from the camp, walked through the desert to catch a transport truck to Amman, and rejoined his family in Amman. He is now especially careful about his work and status as a Syrian urban refugee living in Jordan. Yaser now spends his time volunteering at the JCLA, lending his legal expertise from Syria, but continues to be unable to work without proper authorization.

The JCLA has documented other cases of refugees being deported and has represented Syrian clients facing deportation from Jordan. According to an assistant at the clinic, the idea is that if "you are a refugee, you shouldn't work, and UNHCR should be paying for your food. You should not be influencing the Jordanian economy." However, the inability to work and earn a sustainable income creates a host of problems, including access to health care and services. For example, while Yaser's family is covered for comprehensive health care by virtue of being present in Jordan before the start of the conflict, he has access only to coverage available to uninsured Jordanians and must pay for any additional care.

The detention and deportation of Syrian doctors and medical personnel has also been observed. Dr. Khalid

al-Adi⁶¹ was a physician from Syria who came to Irbid, a city in northern Jordan, in October 2014. He was working as a physiotherapist in Syria but had to escape to Jordan because he was wanted by the Syrian authorities. He now worked in Irbid, Amman, and Ramtha as an intermediary referring physician in a network of 50 doctors, including approximately 20 Syrian physicians. Dr. al-Adi sent Syrian patients who contacted him to Jordanian doctors who were able to provide them with the required services. Doctors such as Dr. al-Adi were clearly in high demand: over the course of the two-hour interview in June 2015, his phone rang non-stop, and he received over three thousand WhatsApp messages from his patients that day alone.⁶²

In June 2015, Dr. al-Adi was aware of at least 10 Syrian physicians who had been deported from Ramtha hospital in early 2015. These physicians were working with wounded refugees and were referring to specialists working in Ramtha, a city in the northwest of Jordan. Once they disappeared, Médecins sans frontières took on the mission in Ramtha. Dr. al-Adi was also aware of the imprisonment and deportation of three other Syrian doctors with whom he worked regularly who were deported in approximately March 2015 for working without a work permit. Two additional Syrian doctors were then caught for working in a hospital. According to Dr. al-Adi, they were initially detained but had since received bail and were fighting their deportations in court.⁶³

Doctors like Dr. al-Adi cannot openly practise medicine in Jordan. Some practise under the name and licence of Jordanian doctors, with some having to pay up to 300 dinars to do so.⁶⁴ This created an unwelcome environment for Syrian physicians in an overburdened medical system. As Dr. al-Adi noted, “Unfortunately we are losing our own Syrian doctors. Many are leaving to Germany. For example, a rare specialist in bone diseases and three other neurosurgeons are gone. This is a huge loss for the Syrian situation, as they were a huge gain. We need these kinds of specialists ... For example, a specialist doctor, a cousin of mine, is the only doctor in vascular surgery in the north of Jordan. But because of the strictness of the Jordanian government, he chose to go back to work inside Syria in January 2015.”⁶⁵ The threat of detention and deportation forces many Syrian physicians to either abandon their practice completely, or greatly limits the scope of their work.

The detention and deportation of Syrian doctors is a troubling phenomenon. As the once-robust Jordanian health-care system becomes increasingly taxed to provide services to both Syrians and Jordanians, actively engaging Syrian medical experts and doctors would alleviate some of the strain. For example, there is only one hospital in the Middle East dedicated to providing free reconstructive surgery for people injured in war.⁶⁶ The Jordanian health-care system

is dealing with complex cases as a result of the conflict in Syria. Many cases require ongoing medical care, such as physiotherapy, rehabilitation, and prosthetics support for adult and children amputees. According to Hazm Almazouni, journalist with Ammanet, “Physiotherapy treatment is very limited and only a few sessions are offered. NGOs try to fill in, but do not have capacity, and others do it at random. People need time and care to adjust to their new life with lost limbs, and have to get used to wearing prosthetics. Some have lesions and allergies and it is very difficult.”⁶⁷ As a number of physicians explained, cases involving trauma and complex medical needs as a result of war wounds such as burn victims, amputees, and refugees requiring ongoing rehabilitation were not widely present in the Jordanian medical system before the Syrian conflict. In addition, cases involving psychological trauma and vulnerable survivors of sexual and gender-based violence (SGBV) and detention inside Syria also require ongoing care and access to treatment and services that is very difficult to obtain in Jordan.

Detention and Deportation for Communicable Diseases

Another troubling reason why Syrian refugees may be detained and deported from Jordan is for having a communicable disease, such as tuberculosis or HIV/AIDS. According to UNAIDS, Jordan is among 59 countries, territories, and areas that deny entry or residence to people because of their HIV status.⁶⁸ Jordan is also one of 26 countries that deport people who are living with HIV.⁶⁹ The UNHCR has explicitly stated that deportation of a refugee solely on the basis of their HIV status would breach the 1951 Convention and customary international law.⁷⁰

A number of interviewees noted that a refugee may be *refouled* back to Syria for having a communicable disease, such as HIV/AIDS or tuberculosis. According to a human rights lawyer in Amman specializing in combating the stigma around LGBTI and HIV/AIDS issues in Jordan, it is Jordanian policy to deport anyone who tests HIV+ while undergoing registration in Jordan, including an HIV+ Syrian refugee.⁷¹ However, it is not clear whether any HIV+ Syrians have actually been removed from Jordan under this policy. Nonetheless, for a researcher with Human Rights Watch, there was “no question that people are being deported” back to Syria for less serious reasons in 2015.⁷² This observation was echoed by Jordanian and international medical experts working in Amman, as well as on the northern border with Syria.⁷³ A number of medical experts in Jordan also noted the deportations of Syrian patients in the middle of the course of treatment for “security reasons.”⁷⁴ It is unclear what security reasons warrant deportation in the middle of medical treatment, but a number of interviewees suspected that being diagnosed with a communicable disease would qualify as

a ground for deportation. Two cases of HIV+ Iraqi refugees were referred to the Jordanian government for access to anti-retroviral treatment but had since disappeared.⁷⁵ It is unclear whether they were deported by the Jordanian authorities or whether they were in detention. There have also been documented cases of Syrian sex workers being deported on the grounds of work permit infractions as well as potential communicable diseases.

The impact of survival strategies and the fear of deportation is felt in the NGO community in Jordan. For example, Souriat without Borders is a small local NGO focusing on primary care and rehabilitation of Syrian war wounded in Amman, Jordan.⁷⁶ Dr. Hafiz, the head doctor, noted that in his practice he had come across cases where the Jordanian government has deported people back to Syria for a variety of reasons, including the deportation of wounded persons who entered Jordan seeking treatment. Dr. Hafiz stressed that Jordan was dealing with an unprecedented number of refugees, many of whom had serious medical issues.⁷⁷ According to Dr. Hafiz, the threat of detention and deportation only exacerbates people's reluctance to seek treatment, especially for stigmatized communicable diseases. Communicable diseases such as HIV/AIDS are a very publicly sensitive issue that the Jordanian government does not openly discuss, especially pertaining to the Syrian refugee population. While testing for HIV/AIDS does sometimes occur as part of the registration process, it is unclear whether these tests are accurate and how the medical information is handled, resulting in issues of discrimination and breaches of confidentiality. In the experiences of the physicians interviewed, while large samples of blood may be collected from the Syrian refugee population, there simply is no capacity to test everyone. There were also a number of cases reported of Syrian refugees being able to register without ever providing a blood sample.

Discrimination of People Living with Communicable Diseases

Discrimination against people living with communicable diseases further exacerbates their isolation and lack of access to treatment. It also creates a further deterrent to seek services for fear of being detained and deported. These risks disproportionately affect marginalized groups such as members of the LGBTI community, survivors of SGBV, and sex workers.⁷⁸ The ongoing Syrian conflict creates complex protection problems with legal, medical, and social dimensions that increase the risk of HIV infection. These risks disproportionately affect vulnerable groups, such as LGBTI, survivors of SGBV, and sex workers. The choice to highlight these groups is not meant to conflate them with higher incidences of communicable diseases. However, there is recognition that these groups are more vulnerable to transmission

and do not have access to regular treatment and services as a result of their marginalization.⁷⁹

LGBTI Discrimination

LGBTI rights are very contentious in Jordan and, as a result, LGBTI individuals keep a low profile. Driving the LGBTI community underground increases risk factors of HIV infection, as people are less willing to openly identify if they need testing or treatment. In addition, large portions of the LGBTI population in Jordan may not even be aware of the risk of infection, since outreach and education on prevention of STIs such as HIV are virtually non-existent.

Survivors of SGBV

There are documented cases of sexual violence inside the Zaatari and Azraq camp complexes, as well as within the urban refugee population.⁸⁰ The Zaatari refugee camp complex houses approximately 79,150 refugees⁸¹ and the Azraq refugee camp houses approximately 26,820 refugees.⁸² The JCLA and other community advocacy groups have been documenting cases of sexual abuse and sexual harassment in Azraq and Zaatari camp since the start of the Syrian refugee conflict. While there is some SGBV psychosocial support provided to women and children by the NGOs and INGOs working in the camps, the method of delivery is problematic and some women refuse to attend these services. According to one worker, "Awareness sessions can be offered on a daily bases, but women prefer to walk over two kilometres to get bread for their children rather than sit in an awareness workshop. Instead, NGOs should go door-to-door when talking about sensitive issues."⁸³ It is also unclear whether there is any focus on communicable diseases and the potential detention and deportation that can result by openly identifying.

Increase in Forced Sex Work and Forced Marriage⁸⁴

In Jordan, domestic labour laws do not allow the majority of Syrian refugees to work.⁸⁵ The Jordanian Constitution explicitly states in Article 23 that the right to work is reserved for Jordanian citizens.⁸⁶ However, as discussed above, the recent push to issue an increased number of work permits for Syrian refugees is meant to alleviate the need for Syrians to resort to informal work. However, many Syrian refugees simply do not have the means to pay the registration fee required for the work permit and medical coverage, especially for large families, and resort to remain in the informal economy.⁸⁷ The UNHCR estimates that one in six Syrians living in Jordan live in extreme poverty and "desperate living conditions"⁸⁸ with incomes below US\$3.20 per day.

The difficulty of working legally in Jordan exacerbates an increase in sex work.⁸⁹ Peace Link Operator, an NGO launched in 2015 in Irbid, Jordan, provides psychosocial support and

services to vulnerable women and girls who have experienced SGBV as a result of the war in Syria, as well as women who have entered the sex trade in Jordan. They have worked with 200 Syrian women and 13 Jordanian women who have been engaged in the sex trade. They provide psychosocial support and long-term evaluation, access to social workers and psychiatrists, and a number of projects for the women and girls to join.⁹⁰ Rima Tahat, co-founder of Peace Link Operator, has noted a steady increase of prostitution in the Zaatari and Azraq refugee camps. Women engage in sex work or are sold to other men for the night by their own husbands or families for as little as 70 JD/US\$98.⁹¹ Peace Link Operator has documented 13 such cases from Zaatari camp. Ms Tahat spoke of workers in camps, truck drivers, or private security officers who pay Zaatari refugee girls and women for sex.⁹²

Ms Tahat also observed instances of early and forced marriage, often motivated by economic pressures: “One woman told me, ‘I can’t let her [the daughter] go to school, I want to marry her off. It is OK to marry her off at 11. She will mature with him.’ They don’t care who will marry her, just whoever will pay more.”⁹³ Peace Link Operator, which worked in prostitution, has worked with cases where young girls were forcibly married off or forced to enter the sex trade in Jordan’s urban centres. For example, in April 2015, the NGO started working with two girls they found in Mafraq city. In addition, in a publicized case, 11 Syrian girls were captured by Jordanian police for prostitution in Irbid, and were subsequently detained in Azraq camp.⁹⁴ According to Rima Tahat, if a woman is caught engaging in sex work, “The choice is to either go back to the camp or face expulsion to Syria. If she doesn’t have family in the camp, she will be sent back, unless she is able to pay off the officials.”⁹⁵

In Ms Tahat’s experience, women engaged in sex work cannot be approached directly to offer counselling or testing and treatment for communicable diseases. Instead, trust must be nurtured through psychosocial services until the woman is willing to talk about her traumatic experiences.⁹⁶ The women have come to trust staff at Peace Link Operator, and according to Ms Tahat, “Sometimes they do not want to take the prescribed medicine and are ashamed to talk to Jordanian doctors. They prefer to talk to someone they know.”⁹⁷

Lack of Focus on Treatment and Prevention Education

While there is recognition among medical professionals and humanitarian workers that communicable diseases are on the rise, there is reticence to discuss this sensitive issue, even in international organization. For example, international humanitarian organization staff in Amman acknowledged that there continues to be a general lack of awareness in Jordan about safe sex practices and how they are linked to the transmission of communicable diseases such as HIV.

However, with increased population mixing, individualized sexual violence, and early marriage on the rise, they stated, “It is a myth that [HIV] won’t happen here.” For example, four IRC medical volunteers interviewed in Irbid, Jordan, in June 2015 saw approximately 400 Syrian families a month for health monitoring, including cases of communicable diseases. They emphasized that shame and stigma continue to affect disclosure of contracted infections. According to one IRC nurse volunteer, “We have seen cases where they think they have an infection but because they are not well educated and ashamed to say that they have this disease, and they do not tell.”⁹⁸ The team also noted a lack of strict confidentiality policies and case management between NGOs, especially when dealing with sensitive topics such as sexually transmitted diseases.⁹⁹ This exacerbates people’s unwillingness to disclose their communicable disease out of fear of being reported to the authorities, detained, and deported. In fact, the IRC team noted one case of a family deported en masse to Syria when one member was found to have a communicable disease, suspected to be HIV.¹⁰⁰ However, it was not possible to verify this deportation.

In Peace Link Operator’s work inside the Azraq refugee camp, the NGO also noted a gap between the focus of humanitarian organizations and the reality in the field. While some international organizations focus on issues such as personal hygiene and pregnancy prevention in Jordan, they do not work on sensitive issues such as HIV prevention and infection. According to Ms Tahat, “No one tries to deal with sensitive areas like this.”¹⁰¹ The JCLA and IRC teams also noted the inadequacy of outreach activities to directly address HIV and other communicable diseases, and the reluctance of Syrian refugees to attend seminars that could increase their stigma if they were openly identified as survivors of SGBV, LGBTI, or living with or vulnerable to HIV infection. As a result, Tahat saw the work of local organizations with connections to the community as being able to gain access to vulnerable populations to offer them culturally appropriate services.¹⁰² While local efforts can begin to address the chronic need for related health services and information, dedicated funding and further resources are needed to reach as many affected people as possible.

Focus is also needed on education about the risks of detention and deportation as a result of disclosing one’s status as a person living with communicable diseases such as HIV. This includes strengthening access to mechanisms to stop deportations from Jordan, as well as local and international advocacy to prevent deportations altogether.

Part 3: Mechanisms to Stop Detention and Deportation from Jordan

Early intervention and advocacy is the most successful way to prevent deportations back to Syria. Organizations such

as the Arab Renaissance for Democracy and Development (ARDD) and JCLA, as well as the UNHCR, routinely intervene and have stopped a number of deportations. For example, as noted by lawyers at one community legal centre, in the last week of May 2014, a Syrian husband and wife were caught working as sex workers. As noted by a Jordanian lawyer, Syrians in Jordan are desperate for work, and sex work is on the rise in order for families to survive. The husband was detained in the city of Irbid, and the Jordanian authorities planned to deport his wife and their four children. However, the deportation was stopped by the legal team at the centre.¹⁰³

Importantly, detention and deportations from Jordan do not fall under the purview of Jordanian courts. Instead, the governor of the Interior Ministry has the ultimate jurisdiction to detain and deport Jordanians and non-Jordanians. In the experience of one Jordanian legal team, the governorate exercises its discretion to detain and deport people arbitrarily: “It is all about the governor’s mood that day.”¹⁰⁴ This makes advocacy efforts for counsel to intervene in Syrian detention and deportations very difficult. In the experience of this legal team, there is no access to a tribunal or appeal in accordance to principles of procedural justice. Instead, the decision whether to deport a person or not rests on an informal conversation with the governor on a case-by-case basis. The governor can also impose additional days in detention as he sees fit. In a poignant example of the discretionary nature of detention, a Jordanian lawyer recalled one case of a Syrian female detainee that was declared free to go, but at the last minute the governor decided that he would keep her in detention for additional days in order to “teach her a lesson.”¹⁰⁵

Ultimately, deporting Syrian refugees back to Syria is in contravention of the Jordanian MOU with the UNHCR and a clear violation of the principle of *non-refoulement*.¹⁰⁶ While there are no official government reports to corroborate these deportations, the UNHCR has acknowledged that they are aware of deportations of Syrian refugees from Jordan,¹⁰⁷ including documented deportations for work permit infractions (including Syrian doctors treating their patients),¹⁰⁸ and deportation for “security concerns,” including families with children.¹⁰⁹ Human Rights Watch also documented cases of Syrian patients being deported mid-treatment from hospitals,¹¹⁰ and a number of sex workers have also been deported back to Syria. Jordan has been internationally criticized for the detention and deportation of other groups of refugees, such as its problematic policy to deport eight hundred Sudanese refugees in early 2016.¹¹¹ There has also been some pushback from donor nations to suspend funding to Jordan if these deportations continue.

However, there been little attention paid to the deportations of Syrians back into the zone of active conflict.

While Jordan is not a signatory to the 1951 Convention, it is a signatory to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and as such is bound by Article 3 not to return or expel any persons to states where they would be in danger of being tortured.¹¹² Jordan also ratified the International Covenant on Economic, Social, and Cultural Rights, which clearly stipulates universal rights to physical and mental health.¹¹³ The right to health is also recognized in numerous Articles of the Convention on the Elimination of All Forms of Discrimination Against Women,¹¹⁴ and the Convention on the Rights of the Child,¹¹⁵ as well as Article 25 of the Universal Declaration of Human Rights,¹¹⁶ all of which Jordan has ratified.

Jordan’s deportations of Syrian refugees back into active conflict is not only a violation of international law. This practice can also exacerbate incidences of undisclosed communicable diseases, which can result in increased exposure both for the Syrian refugee population as well as the host country population. For example, while numbers of HIV are low among refugee and host-country populations in Jordan,¹¹⁷ the social disruption and instability due to the ongoing Syrian conflict creates an environment for increased exposure to HIV and other communicable diseases. For refugees who identify as LGBTI, as survivors of SGBV, or as sex workers, marginalization, precarious living situations, and unequal access to resources in host countries aggravate the risk factors that can render them vulnerable to HIV infection.

There is a need to raise awareness of health rights in Jordan and with Syrian refugees living there. According to Dr. al-Adi, a Syrian doctor working in Irbid, Jordan, “It is very necessary to speak up now, while numbers are small. If we don’t, there will be huge costs to economy and human life. I am positive there will be lots of HIV cases.”¹¹⁸ Raising awareness of the right to testing and treatment could help to promote prevention and counter discrimination against persons living with HIV. However, as journalist Hazm Almazouni, told IHRP, there is no such “culture of rights” among people who may be most vulnerable to HIV, and “people often do not know they are being discriminated because they do not understand their rights.”¹¹⁹ Even if people are aware of discrimination, they are afraid to self-identify, as they do not want to place themselves at increased risk of detention, deportation, and further mistreatment by Jordanian authorities. Deporting Syrian physicians for practising in Jordan is a grave misstep, as Jordan struggles to meet the complex medical needs of the Syrian refugee population. Instead, specifically targeted efforts to introduce Syrian physicians into the strained Jordanian medical system and economy

would alleviate the lack of doctors and medical personnel needed to serve both the Syrian refugees and the Jordanian population.

Any durable solutions and future directions for responses to the Syrian conflict must address the impact on host countries such as Jordan and position draconian and discretionary policies of deporting Syrian refugees back into active conflict in the broader social context. Jordanian detention policies are an ineffective way to control the numbers of Syrian refugees and instead perpetuate a discretionary system that directly contravenes international law. Concerted local advocacy to prevent detention and deportations of Syrian refugees should be bolstered by an international response directly condemning the Jordanian practice that is in contravention of the principle of *non-refoulement*. However, as the ongoing policy to detain and deport Syrian refugees in Jordan highlights, it is a result of ongoing social disruption, strained economy and health sector, and overall lack of resources for the small country of Jordan to deal with millions of Syrian refugees who will likely continue to live in Jordan for the foreseeable future. The Jordanian government and INGOs are obliged to uphold the right to health care and should explicitly address the spread of communicable diseases that are linked to social processes of survival strategies in a marginalized population. One way to uphold the universal right to health while meeting its obligations of *non-refoulement* is to advocate for specific work permits for doctors, nurses, and other medical professionals, which would both alleviate the pressure on the Jordanian health-care system while allowing more Syrian refugees access to legal work.

NOTES

- 1 The author would like to acknowledge the International Human Rights Program at the University of Toronto Faculty of Law for allowing me the use of the data that form the basis of this article, in particular Mr. Samer Muscati, director of the IHRP; Ms Kristin Marshall, staff lawyer, who also collected the data; and the Elton John AIDS Foundation, which funded the IHRP project. The author would also like to thank Ms Etaf Roudan, journalist with *Amman-net* in Amman, Jordan, without whom none of this work would have been possible, as well as all the interviewees who graciously shared their time for this project.
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Migration: The Missing Link between Emigration and Settlement (Basingstoke: Palgrave Macmillan, 2008). For further discussion of the inadequacy of the term *transit migration* in ongoing refugee situations, see also Robyn C. Sampson, Sandra M. Gifford, and Savitri Taylor, "The Myth of Transit: The Making of a Life by Asylum Seekers and Refugees in Indonesia," *Journal of Ethnic and Migration Studies* 42, no. 7 (2016): 1135–52. DOI: 10.1080/1369183X.2015.1130611.

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- 4 The term *crisis* is used in an illustrative way only, as this article does not want to perpetuate the damaging discourses of associating refugee movements with tropes of fear, flood, or influx. See also J. Blommaert, "Language, Asylum, and the National Order," *Current Anthropology* 50, no. 4 (2009): 415–24; Liisa Malkki, "Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization," *Cultural Anthropology* 11, no. 3 (1996): 377–404; Malkki, *Purity and Exile: Violence, Memory, and National Cosmology among Hutu Refugees in Tanzania* (Chicago: Chicago University Press, 1995).
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- 70 UNHCR, "Note on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern," 2006, at para 24, <http://www.unhcr.org/444e20892.html>. The UNHCR argues that a person with HIV/AIDS does not fall within the national security exceptions provided within these provisions, as they are meant to apply as a last resort to persons representing "a very serious future danger to the security of the country of refuge"; see para 26 and notes 26 and 27.
- 71 Name has been changed, International Human Rights Program in-person interview, Amman, Jordan, 3 June 2015.
- 72 International Human Rights Program in-person interview with Adam Coogle, Human Rights Watch, 1 June 2015, Amman, Jordan.
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- 74 Ibid.
- 75 Ibid.
- 76 The organization was started by five women to address lack of resources devoted to the rehabilitation of men, women, and children affected by the Syrian conflict, including war widows and unaccompanied minors. They have seen approximately 230 patients suffering from paralysis head

- injuries, amputations, and other war-related wounds. Dr. Amir Hafiz, the head doctor at Souriat without Borders, stated that while the organization continues to focus on providing primary care and a space for rehabilitation services for Syrian refugees, they have also started to provide free English classes to over 200 students. Souriat across Borders also supports a variety of community activities, such as hosting an art auction by Syrian artists living in refugee camps and mounting a theatre production of *Romeo and Juliet* by Syrian children healing at the health centre, all as part of its efforts to raise funds for the war wounded and to provide ongoing rehabilitation and community engagement.
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 - 82 Ibid.
 - 83 International Human Rights Program in-person interview, 5 June 2015, Ibid, Jordan
 - 84 This section of the article discusses forced sex work and forced marriage and does not wish to conflate these incidences with voluntary sex work. However, in the course of fieldwork in multiple urban centres in Jordan, all discussions of sex work centred on instances of forced sex work, or at least sex work strongly motivated by economic drivers as a means of survival.
 - 85 ILO, "Access to Work for Syrian Refugees in Jordan."
 - 86 Constitution of the Hashemite Kingdom of Jordan.
 - 87 ILO, "Access to Work for Syrian Refugees in Jordan."
 - 88 UNHCR, "UNHCR Study Shows Rapid Deterioration in Living Conditions of Syrian Refugees in Jordan," news release, 14 January 2015, <http://www.unhcr.org/54b635b49.html>.
 - 89 Jamal Halaby, "In Jordan, Desperate Syrian Refugees Turn to Prostitution," *Times of Israel*, 9 March 2013, <https://www.timesofisrael.com/in-jordan-desperate-syrian-refugees-turn-to-prostitution/>. See also Phoebe Greenwood, "Rape and Domestic Violence Follow Syrian Women into Refugee Camps," *Guardian*, 25 July 2013, <http://www.theguardian.com/world/2013/jul/25/rape-violence-syria-women-refugee-camp>.
 - 90 One such project, in partnership with Oxford University, encouraged treatment for psychological issues through handicrafts and singing, fostering creative ways to engage Syrians in the community again. They also provide sex workers with skill-building activities, such as perfume making and creation of handicrafts from recycled materials.
 - 91 International Human Rights Program in-person interview with Rima Tahat, Peace Link Operator, 5 June 2015, Amman, Jordan.
 - 92 Ibid., also Halaby, "In Jordan"; Greenwood, "Rape and Domestic Violence."
 - 93 Ibid. See also UNHCR, "Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: Jordan," March 2013, 7, Refworld, <http://www.refworld.org/pdfid/513d90172.pdf>. See also Greenwood, "Rape and Domestic Violence Follow Syrian Women."
 - 94 Halaby, "In Jordan." See also UNHCR, *Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: Jordan*, supra note 94 at 7.
 - 95 International Human Rights Program in-person interview with Rima Tahat, Peace Link Operator.
 - 96 Ibid.
 - 97 Ibid.
 - 98 International Human Rights Program in-person interview with IRC Field Team, Ibid, Jordan, 3 June 2015.
 - 99 Ibid.
 - 100 Ibid.
 - 101 International Human Rights Program in-person interview with Rima Tahat.
 - 102 See also the work of the Arab Renaissance for Democracy and Development: Legal Aid and their numerous campaigns to combat gender-based violence against Syrian refugees. "Think Twice: Gender Based Violence in Jordan," <https://ardd-jo.org/multimedia/think-twice-gender-based-violence-jordan>.
 - 103 International Human Rights Program in-person interview Amman, Jordan, 5 June 2015.
 - 104 Ibid.
 - 105 Ibid.
 - 106 While Jordan is not a signatory to the 1951 Convention, it is a signatory to the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and as such is bound by Article 3 not to return or expel any persons to states where they would be in danger

- of being tortured (non-refoulement), see article 3; Jordan's 1998 Memorandum of Understanding with the UNHCR expressly prohibits refoulement in Article 2(1), UNHCR, "Memorandum of Understanding between the Government of Jordan and UNHCR."
- 107 See also UNHCR, "Jordan Rounds Up Refugees."
- 108 See also Human Rights Watch, "Jordan: Syrian Medical Workers Deported."
- 109 Al-Hamwi and Shawabkeh, "Jordan Puts the Lives of Syrian Refugees at Risk." See also Human Rights Watch, *Jordan: Vulnerable Refugees Forcibly Returned to Syria*.
- 110 Human Rights Watch, "Jordan: Syrian Medical Workers Deported."
- 111 Adam Lucente, "Sudanese Refugees Nervous after Deportation from Jordan," *Al Jazeera*, 3 February 2013, <http://www.aljazeera.com/news/2016/02/sudanese-refugees-nervous-deportation-jordan-160201092327205.html>.
- 112 See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 3; Jordan's 1998 memorandum of understanding with the UNHCT expressly prohibits refoulement in article 2(1).
- 113 Article 12, UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 999 UNTS 3 (entered into force 7 January 1976).
- 114 UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13 art 12 (entered into force 3 September 1981).
- 115 Convention on the Rights of the Child, 2 September 1990, 1577 UNTS 3 art 24, (entered into force 2 September 1990).
- 116 Universal Declaration of Human Rights, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.
- 117 UNAIDS, *Country Progress Report: Hashemite Kingdom of Jordan*, January 2012–December 2013, http://www.unaids.org/sites/default/files/country/documents//JOR_narrative_report_2014.pdf; UNAIDS, "Summary of HIV/AIDS Control Program in Turkey," 2014, http://www.unaids.org/sites/default/files/country/documents//TUR_narrative_report_2014.pdf.
- 118 International Human Rights Program in-person interview with Dr. al-Adi.
- 119 International Human Rights Program in-person interview Hazm Almazouni.

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