



Accessibility to a legal mechanism to avoid the hysterectomy of females with impairments in Jordan

Policy Paper

Right to reproductive health rights

Equitable access to health care

Health Services

Access to sexual and reproductive health care

Health marginalized communities

Reproductive health rights

Gender and sexual and reproductive health

Health, sexual and reproductive justice

Childhood, youth

and sexual and reproductive health



The policy paper was designed based on a research paper prepared by the Information and Research Center in collaboration with the Arab Network for Civic Education «Anhar» on the rights of sexual and reproductive health service recipients and those in greatest need of protection in Jordan for the year 2023.

This paper is part of an advocacy initiative led by the Information and Research Center – King Hussein Foundation on the «Rights of Recipients of Sexual and Reproductive Health Services and Vulnerable Groups in Jordan.» It addresses a core objective of the project: identifying and closing gaps in legislation and policies that obstruct vulnerable populations from accessing sexual and reproductive health services. Furthermore, it proposes legislative and policy reforms to protect them from abuse and exploitation, in accordance with international standards and best practices.

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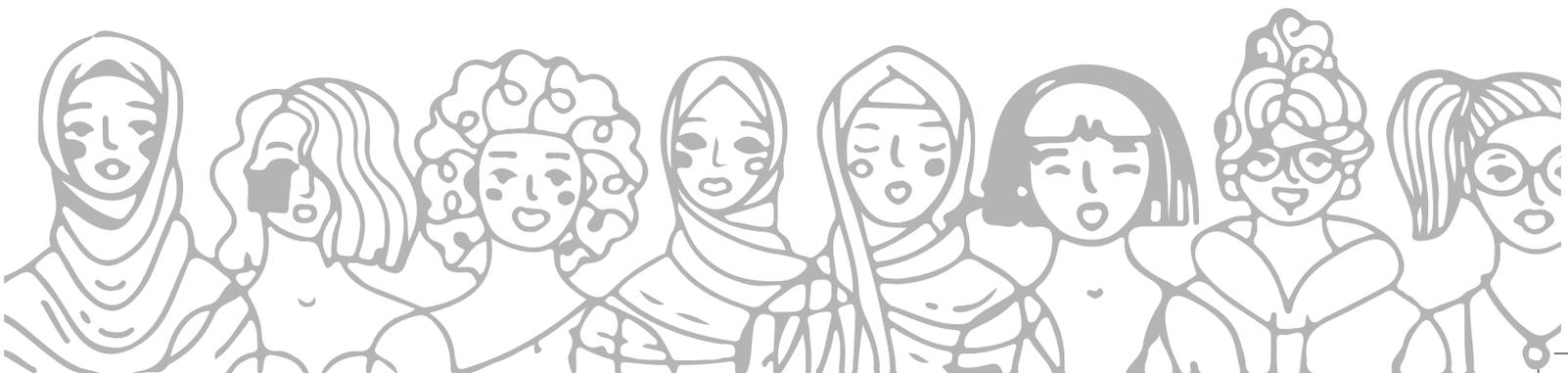
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Information and Research Center Team - King Hussein Foundation Team:

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The Advisory Committee for this project*, formed by the Information and Research Center for 2024, actively contributed to reviewing the content, offering feedback, and suggesting legislative and legal recommendations. It comprises representatives from government bodies, national institutions, and relevant civil society organizations, bringing together medical, health, and legal expertise. Additionally, the committee includes individuals involved in shaping national policies and legislation on sexual and reproductive health. Its primary objective is to enhance cooperation and develop collective strategies that support the inclusion of vulnerable groups, particularly persons with disabilities, in sexual and reproductive health services.

Members of the Advisory Committee

No.	Entity	Job title and name
1.	Sharia Public Prosecution – Chief Justice Department	Judge Dr. Omar Awwad Abu Kaf – Sharia Public Prosecution.
2.	Ministry of Health	Dr. Hadeel Al-Sayeh – Director of Women and Child Health Directorate.
		Dr. Mohammed Qaddoumi – Director of the Directorate of People with Disabilities and Mental Health.
		Dr. Basil Abuhdeeb – Director of the National AIDS Control Program, Head of the Sexually Transmitted Diseases Department.
3.	Ministry of Education	Mr. Bassam Al-Habahba – Head of Educational Guidance Department (Education Department).
4.	Higher Population Council	Dr. Rania Al-Abbadi – Assistant of the Secretary-General of the Higher Population Council
5.	Higher Council for the Rights of Persons with Disabilities	Ms. Ghadeer Al-Haris - Assistant Secretary-General for Technical Affairs.
6.	National Center for Human Rights	Dr. Nahla Al-Momani – Acting Commissioner for Protection / National Center for Human Rights.
7.	Jordanian National Commission for Women	Ms. Dania Hajouj – Coordinator of the Violence Against Women Program.
8.	National Council for Family Affairs	Ms. Ghada Al-Qadi – Senior Studies Specialist.
9.	United Nations Population Fund (UNFPA)	Mr. Ali Al-Gharabally – Health Policy Expert
10.	Royal Health Awareness Society	Mr. Mahmoud Al-Nabulsi – Deputy Director General and Director of Programs.
11.	Syndicate of Nurses and Midwives	Ms. Maysa Abdul-Jabbar Abu Saada - Member of the Council of the Nurses and Midwives Syndicate.
12.	Health Care Accreditation Council	Ms. Amira Elayyan – Head of the Consultation Unit / Health Institutions Accreditation Council
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Policy Paper Summary:

In Jordan, obtaining reliable statistics on hysterectomies performed on women with disabilities continues to be a challenge. However, numerous human rights reports, investigative studies, and personal narratives consistently document cases of women with disabilities undergoing these procedures. Current estimates indicate that approximately 65 hysterectomies are performed annually within this population¹.

The existing legal framework lacks clear limitations to limit hysterectomy since it is based on the incorrect perceptions and beliefs of females with disabilities' families rather than the rights and desires of females themselves. This approach reduces women and girls with disabilities to biological or psychological beings, denying them the fundamental right to physical integrity. Furthermore, arguments in favor of disability-based sterilization fail to acknowledge that menstruation and related issues are a biological necessity for all young women, whether they are disabled or not. Hysterectomy is frequently motivated by family preferences rather than medical and health needs.

The primary concern in this context is free and informed consent, which is defined as an individual with a disability or their legal representative's acceptance for any action or legal procedure that affects their rights or freedoms. This consent must be gained after receiving clear and understandable information regarding the nature, implications, and consequences of the action. Authorities frequently face difficulty in gaining free and informed consent in cases where obtaining the individual's assent is not feasible. Furthermore, this challenge violates Sharia principles, which forbid anyone—whether a competent adult or a person with a disability—from modifying their body or having an amputation.

In these specific cases of disability, we discover that those who represent females with disabilities, whether they are guardians, guardians, or co-guardians to perform hysterectomy, can overlook and justify the best interests of females with disabilities by justifications such as preventing childbearing in cases of rape, or even under the pretext of personal hygiene.

Another significant issue for women with disabilities is the lack of clear legal measures in national legislation that explicitly criminalize the practice of hysterectomy and coerced sterilization of this population.²

The lack of a legal framework to hold individuals who violate the rights of women with disabilities by performing unneeded and emergency hysterectomies compromises their right to equality and an adequate life. As a result, there is an urgent need for legal reforms to control hysterectomy practices and punish cases of hysterectomy or sterilization of women with disabilities that are not necessary in emergency situations.

1. A press report issued by the Jordanian Women's Solidarity Society, published on the Akhbar Al-Balad news website at the link: <https://albaladnews.net/article/73946>

2. Forced sterilization is described as a practice that is performed on people without their free and informed consent with the goal of producing permanent sterility. These practices are frequently used on specific populations, such as those living with HIV, people with disabilities, indigenous peoples and ethnic minorities, and transgender or non-intersex people. The World Health Organization (WHO)



In this policy paper, we offer mechanisms and solutions for determining the level of necessity that would allow for hysterectomy under the supervision of a qualified, impartial authority in order to prevent potential abuses of these operations. We recommend that the Jordanian judiciary at all levels play a more active role in this problem. This includes triggering the necessity for prior consent from Jordanian Sharia courts in cases where it is judged necessary, as well as notifying them in emergencies. If prior approval is not acquired in non-emergency cases, a report should be made to the Sharia Public Prosecution in accordance with the Jordanian Sharia Procedure Law. Those who represent women with disabilities, such as guardians or representatives, should be held accountable, and medical service providers should be directed to the relevant authorities. Furthermore, if a guardian fails to fulfill their responsibilities, their guardianship should be terminated or curtailed by the Sharia Court, or through a case filed by the Sharia Public Prosecution.

Important:

The significance of this paper is rooted in its commitment to strengthening the legal protection of women with disabilities by explicitly prohibiting hysterectomy procedures that lack medical justification, especially when the interests of their representatives may conflict with those of the women themselves. This paper advocates for the activation of relevant legislation and recommends legislative amendments to enhance the legal safeguards for these individuals. Such measures are intended to implement Article (6/5) of the Jordanian Constitution, which mandates the promotion of the rights of persons with disabilities and their protection from abuse and exploitation. Moreover, Article 30/A and B of the 2017 Law on the Rights of Persons with Disabilities stipulates that “any act or omission that deprives a person with a disability of a right or freedom, restricts their ability to exercise either, or inflicts physical, mental, or psychological harm based on or due to their disability shall be classified as violence.”

Women with disabilities have the right to establish families, have children, and exercise their reproductive rights on par with women without disabilities. Therefore, it is essential to prioritize discussions surrounding the hysterectomy of women with disabilities, along with their legal and legislative implications, as these directly impact the rights of this demographic. Islamic law acknowledges their rights to marry, build families, and have children, in accordance with standards and regulations that safeguard their interests, a principle also upheld by the Jordanian Personal Status Law. Article 15 of the 2019 legislation states: “The judge may authorize the marriage of an individual diagnosed with insanity, dementia, or a mental disability if an official medical report confirms that such a marriage serves the individual’s best interests, does not confer any rights to their descendants, and does not pose a danger to the other party, following a thorough assessment of their condition and verification of their consent.”

Some women with disabilities report challenges in making free and informed decisions regarding marriage, pregnancy, and childbearing. A recent study conducted by the Information and Research Center in 2023 has revealed that societal misconceptions persist about the abilities of women with disabilities to marry, establish families, and have children. The study found that approximately 70.5% of the sample population indicated that women with disabilities encounter social stigma related to pregnancy and childbearing.





“The stance of international human rights law.”:

Hysterectomy affecting women with disabilities, especially when informed consent is not obtained, is a form of disability-based violence and a serious violation of the right to bodily integrity. International human rights legislation acknowledges the significance of human dignity and prohibits forced sterilization of both children and adults. It advocates for the removal of all laws that permit hysterectomy or forced sterilization operations, such as genital surgery or involuntary sterilization, without the individual’s free and informed consent. Furthermore, it emphasizes the importance of avoiding forced or compulsory sterilization under all circumstances.

The Convention on the Rights of Persons with Disabilities, which Jordan has signed and ratified, serves as a fundamental framework for protecting the rights of individuals with disabilities, particularly concerning the contentious issue of involuntary sterilization. Article 23 of the Convention affirms the right of persons with disabilities to establish and care for a family and to retain their reproductive capacities on an equal footing with others. Additionally, Article 12 reinforces the right of persons with disabilities to be universally recognized as individuals under the law and to possess legal capacity on par with others, including the right to assistance in exercising their legal rights. Furthermore, Article 25 explicitly stipulates that health care services provided to individuals with disabilities must be contingent upon their voluntary and fully informed consent. The Committee on the Rights of Persons with Disabilities has called for a moratorium on surgeries and treatments that do not have the explicit and informed consent of the patient, highlighting this necessity in one of its initial recommendations to the State party.

The Committee of Economic, Social, and Cultural Rights pointed out that forced sterilization of girls and women with disabilities violates Article 10 of the International Covenant of Economic, Social, and Cultural Rights, which protects the institution of family. Article 17 preserves the right to privacy, whereas Article 24 gives additional guarantees for children.³ The Committee against Torture further urged states to conduct promptly thorough investigations into all allegations of forced sterilization, prosecute and punish perpetrators, and give victims with fair compensation.⁴

The Committee on the Rights of the Child has acknowledged forced sterilization of disabled girls as a form of violence, emphasizing that States Parties to the Convention on the Rights of the Child must prohibit such practices by legislation. Furthermore, the Committee emphasizes that the premise of the “best interests of the child” cannot justify activities that violate the child’s intrinsic dignity and the right to bodily integrity.⁵

The Committee on the Elimination of Discrimination against Women considers that forced sterilization violates women’s right to independent decision-making and informed consent, violating their dignity and physical integrity. It emphasizes that, except in cases that pose a serious threat to life or health, sterilization of girls and adult women with disabilities without full and voluntary consent should be prohibited.⁶

3. General comment no. 5: Persons with disabilities. New York, United Nations Committee on Economic, Social and Cultural Rights, 1994.

4. Conclusions and recommendations of the Committee against Torture: Peru. Geneva, United Nations Committee against Torture, 2006 (UN Doc CAT/C/PER/CO/4).

5. General comment no. 13: The right of the child to freedom from all forms of violence. Geneva, United Nations Committee on the Rights of the Child, 2011 (UN Doc CRC/C/GC/13).

6. Committee on the Elimination of Discrimination against Women, General recommendation No. 30, CEDAW/C/GC/30.

The Stance of Islamic law:

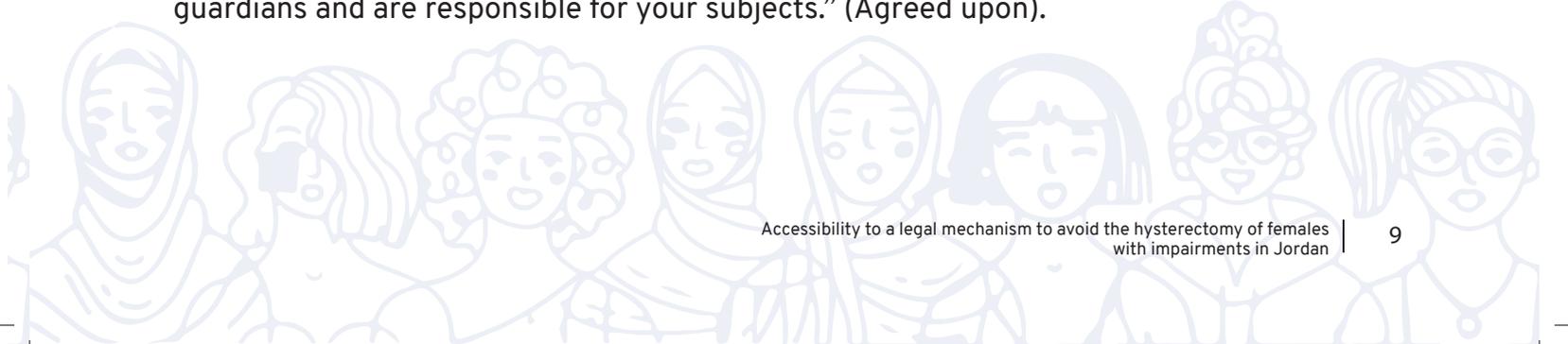
Islamic law emphasizes the importance of preserving the five essential necessities, one of which is the protection of life. Accordingly, safeguarding bodily integrity is a critical aspect of preserving life, as the protection of the whole is intrinsically linked to the protection of its parts. It is firmly established in Islamic jurisprudence that any act that is prohibited is also forbidden to pursue. Furthermore, the sanctity of life and its associated bodily members are subject to legal compensations and penalties, as specified by Islamic law or determined by just governance. Violating rights that are recognized by Islamic law ultimately leads to actions that are expressly prohibited, thereby necessitating punishment and accountability. As a result, Islamic law forbids attacks on the dignity and integrity of people with disabilities and states that no part of the human body may be removed unless its survival leads to death.

Consequently, Islamic law forbids the removal of any part of the human body unless its preservation would result in death, and it emphasizes the impermissibility of assaulting the dignity of individuals with disabilities and the integrity of their bodies. Islamic jurisprudence also clarified the controls of necessity in removing an organ from the human body, which are as follows: the occurrence of a grave prohibition and its occurrence, whether specific or public, the impossibility of permissible means to remove this harm, and that this necessity be assessed according to its extent, and the outcome be considered, so that no harm equal to or greater than the harm already incurred results.

Islamic jurisprudence also acknowledges the right of persons with disabilities, both males and females, to marry and form a family. This is still what we explicitly state under Personal Status Law No. (15) of Jordan for the year 2019 in Article (12) that: “The judge may authorize the marriage of someone who suffers from insanity, dementia, or a mental disability if it is recorded in an official medical report that there is an interest in his marriage and that what he suffers from cannot be transmitted to his offspring because it does not increase the suffering of the other party and after reviewing his condition in detail and verifying his consent.”

The Jordanian Iftaa Department’s Fatwa Council issued Decision No. (194/2/2014), prohibiting the performance of hysterectomies on females with disabilities and emphasizing the societal responsibility to protect them. The decision states: “It is not permissible to remove any part of the human body created by Allah, except in cases where the procedure is medically necessary for treatment. For individuals with disabilities or mental illnesses, there is no valid justification for such surgeries. They constitute a violation of divine creation, pose health risks due to the nature of the operation, and may lead to negative repercussions, including potential abuse and harm to these girls.”

Parents and guardians have a duty to protect their daughters with disabilities and keep them safe from harm. Communities also need to ensure their protection from exploitation and take necessary steps to do so. It’s important to uphold the rights of vulnerable individuals to prevent further harm. Everyone should be patient with individuals with disabilities and seek reward from Allah, as the Prophet Muhammad (peace be upon him) said: “All of you are guardians and are responsible for your subjects.” (Agreed upon).





Medical complications of hysterectomy:

Hysterectomy procedures vary, with some involving the removal of the uterus only, while others include the removal of the uterus along with the fallopian tubes and ovaries. In some cases, the entire uterus and cervix are excised. These surgeries result in the permanent elimination of female hormones like estrogen and progesterone, the cessation of menstruation, and the irreversible loss of reproductive capability.

Hysterectomy procedures are typically performed using one of three approaches: an abdominal hysterectomy, which involves making an approximately 20 cm incision in the lower abdomen; a vaginal hysterectomy, where the uterus is removed through the vaginal canal without any abdominal incision; or a laparoscopic-assisted vaginal hysterectomy (LAVH), which combines vaginal removal with the use of a laparoscope, requiring small abdominal incisions to insert the laparoscope and surgical instruments.

Medical studies have proven that females in general, whether they have a disability or not, differ from one patient case to another, and medical experiments have shown that the response of females with disabilities to post-hysterectomy treatment is slow while the response of females without disabilities is faster, especially since the psychological response plays a major role and has serious effects such as depression, anxiety, and post-traumatic stress disorder (PTS)⁷.

Complications associated with hysterectomy in females are often more complex and challenging⁸. One significant concern for women and girls with disabilities undergoing this procedure is its potential impact on rectal function and overall quality of life⁹. Research indicates that hysterectomy, whether performed abdominally or vaginally, can lead to alterations in rectal function. These changes may include reduced anal sphincter relaxation pressure, decreased rectal compliance, and diminished rectal sensation. The rectum, which is the terminal segment of the large intestine extending from the sigmoid colon to the anus, can experience functional impairments as a result of these procedures.

These changes can lead to an increased incidence of fecal incontinence, constipation, and other bowel-related issues, which can significantly affect the quality of life for women who already experience existing mobility or sensory disabilities¹⁰.

In addition, the physical and psychological impact of hysterectomy can be particularly profound for females with disabilities. Major surgeries, such as hysterectomy, can contribute to muscle weakness, posture instability, and other functional challenges that can delay recovery and lead to extended hospital ¹¹stays.

7. National Health Law Program. 2011. «Fact Sheet: Women with Disabilities and Legal Issues Concerning Reproductive Health.» Prepared by Jina Dhillon and Celine Lefebvre. July 2011 ,29.

8. Magrina, J. F. (2002, June 1). Complications of laparoscopic surgery. *Lippincott Williams and Wilkins*, 45(2), 469-480. <https://doi.org/00018-200206000-00003081/10.1097>

9. Pearson, A., Ozban, A.S., Ozpan, M., and Kozo, M.A. (2018, August 14). Effects of abdominal and vaginal hysterectomy on rectal function and patient quality of life. *Makerere University*, 18(3), 612-612. <https://doi.org/10.4314/ahs.v18i3.19>

10. Ibid. No. (10).

11. Petrucci, L., Montelioni, S., Ricotti, S., Gerromini, E., Galas, M., Ambrosini, E., Ferreiro, J., and Tovola, E. D. (2018, September 1). Disability after major abdominal surgery: determinants of walking restoration in elderly patients. *Edizioni Minerva Medica*, 54(5). <https://doi.org/10.23736/s4-9087.18.04348-1973>

Reasons Prompting Parents to Pursue Hysterectomy for Females with Disabilities

Many parents of girls with disabilities resort to hysterectomy for the following reasons:

- **Limited Accessibility:** A study evaluating the services provided in the area of sexual and reproductive health for girls with disabilities in comprehensive health centers in 2024 highlights significant shortcomings in accessibility. Health service providers often struggle to effectively communicate with individuals with disabilities, and there is a lack of information available in accessible formats, hindering their access to comprehensive health centers. The inadequate accessibility of “motherhood and childhood” wards in these centers contributes to a lack of awareness among individuals with disabilities and their families, potentially leading them to make decisions that include the hysterectomy of females with disabilities.
- **Medical Considerations:** Some parents of girls with disabilities opt for hysterectomy to halt menstruation, driven by the belief that their daughters cannot adequately manage personal hygiene and require assistance. They also aim to alleviate the discomfort associated with menstrual pain. Furthermore, there exists a misconception that girls with disabilities are unlikely to marry or establish families, leading parents to view the uterus as an additional burden. Consequently, they believe that removal of the uterus would provide comfort for both the individual and their family¹².

One of the mothers expressed in the discussion groups that her daughter has Down syndrome and is now 8 years old, and that she does not know how to teach her daughter how to deal with the issue of her periods, while another mother stated that her daughter began to have a period, and that the girl She still has no idea about it, and when it happens, the girl begins crying at the sight of blood¹³.

Other countries have developed integrated strategies for females with disabilities and their parents in the early stages of life to deal with periods, menstrual issues, personal hygiene, and other preventive measures to reduce the load on parents. Social reasons: Many parents live with constant anxiety and fear of a girl with disabilities being sexually assaulted¹⁴, due to her inability to discriminate and realize the seriousness of this matter and her weak ability to report this crime, especially if the disability is intellectual, and may also lead to her pregnancy and thus result in her parents suffering new.

- **Psychological Reasons:** The negative societal attitudes towards individuals with disabilities, especially in cases of rape, often result in blame directed at them or their families. This pressure can lead to the decision to Hysterectomy¹⁵.
- **Economic Factors:** The costs of medications and menstrual supplies for women with disabilities can create a financial burden for families, leading them to consider hysterectomy. This decision often overlooks the potential pain and complications associated with the procedure.

12. World Health Organization (WHO): Provides guidance and evidence on the reproductive health of girls and women with disabilities.

13. Two discussion groups conducted by the Information and Research Center with the parents of females with intellectual disabilities in the capital Amman on August 11, 2024

14. A study published in the Journal of Pediatric and Adolescent Gynecology: provides evidence on the causes related to menstrual cycle management in girls with disabilities.

15. Two discussion groups conducted by the Information and Research Center with the parents of females with intellectual disabilities in the capital Amman on August 11, 2024



The Validity of Judicial Authorization for Hysterectomy Procedures in Islamic Law

The current legislative framework, as of the drafting of this paper, outlines various provisions by the Jordanian legislator regarding the prohibition of female hysterectomy procedures in general. It establishes specific conditions under which such operations may be permitted. Article 14 of the Medical Liability Law emphasizes that no action or intervention intended to sterilize a woman is permissible except under certain circumstances. Specifically, it states, “No action or intervention aimed at sterilizing a woman may be performed without her written consent and based on a recommendation from a specialized medical committee comprising at least three qualified physicians, except in emergency situations.”

It is essential to recognize that Sharia law prohibits obtaining written consent for sterilization in the absence of necessity. Islamic law strictly forbids any modifications to the human body or the amputation of any limb unless there is an urgent need as assessed by qualified medical professionals.

This text, while addressing women and hysterectomy or any procedure related to sterilization, does not specifically mention females with disabilities, which may facilitate the decision-making process for parents or legal guardians regarding the hysterectomy of a girl with disabilities. Currently, the procedure is often conducted when parents seek care at a private hospital, where the facility forms an internal medical committee comprising three physicians to evaluate the case. If deemed necessary, the surgery is performed within the hospital, particularly in emergency situations.

The legislator has also included a specific provision in Article (5/c) of the Law on the Rights of Persons with Disabilities, which stipulates: “Conducting experiments, research, or medical, scientific, and pharmaceutical studies on individuals with disabilities is prohibited. Furthermore, except in emergencies or urgent situations, no therapeutic or preventive medical intervention may be undertaken without obtaining the informed consent of the individual

In such cases where parents frequently consider the hysterectomy of women with disabilities, there exists a violation of the guardian’s duty to protect these individuals. Consequently, neither the Medical Liability Law nor the Law on Persons with Disabilities adequately addresses this issue in relation to informed consent.

In light of the aforementioned considerations, the appropriate course of action is to refer to the general provisions outlined in the Jordanian Personal Status Law, which prohibits the hysterectomy of girls with disabilities except in cases of necessity and with authorization from the relevant court. Thus, turning to the Sharia or ecclesiastical judiciary to address the matter of informed consent for girls with disabilities is a viable legal solution. This approach is founded on the principle of obtaining prior judicial approval in situations deemed necessary for performing hysterectomies on females with disabilities, which is the central focus of the legal solution discussed in this paper.

Proposed legal solutions to reduce hysterectomy of females with disabilities

First: Recourse to the Sharia judiciary

The law ensures the protection of the rights of individuals with disabilities and promotes their participation and integration in various aspects of society¹⁶. It is the responsibility of the Sharia courts to uphold these protections, as all legal matters involving individuals with disabilities necessitate representation. This includes affirming the guardianship of their legal guardian or appointing a legal guardian or assistant guardian in cases specified by law, particularly for individuals classified as “deaf-mute, blind-deaf, or blind-mute¹⁷.”

The authority of the guardian and trustee, their accountability, and the adjudication of the outcomes of this accountability are matters addressed by the Sharia courts¹⁸. The Sharia Public Prosecution holds exclusive jurisdiction to initiate legal proceedings for the accountability of guardians and trustees, as well as the associated consequences, including the revocation or limitation of guardianship and the removal of guardians if such actions are not pursued by the concerned parties¹⁹.

In instances where the Sharia Public Prosecution initiates a lawsuit, it shall be considered a primary party to the case, possessing the same rights as an ordinary litigant. Its involvement is mandatory in cases brought against individuals deemed incapacitated or those that affect their rights²⁰.

In light of the provisions of the Jordanian Personal Status Law No. 15 of 2019, there is a clear stipulation regarding the right to marry for individuals suffering from insanity, dementia, or mental disabilities. Such marriage is permissible if supported by an official medical report indicating that it serves the individual’s best interests, does not transfer any conditions to their descendants, and poses no risk to the other party. This is contingent upon a thorough assessment of the individual’s condition and verification of their consent²¹.

Therefore, the hysterectomy of women with disabilities, except in cases of necessity or emergencies as determined by specialized doctors, is prohibited by Sharia according to the ruling of the Jordanian Ifta Council and is also criminalized by law. Such actions deprive women with disabilities of their right to marry, establish a family, and have children. The competent court may be petitioned for permission to perform a hysterectomy in cases of necessity, and it has the authority to approve or deny this request after consulting with experts, ensuring it serves the best interests of the individual. Additionally, the court must be notified of any hysterectomy performed in emergency situations.

If the guardian or legal representative performs a hysterectomy on an individual with a disability without obtaining the required permission or attempts to do so, a report can be submitted to the Sharia Public Prosecution. The prosecution will then conduct the necessary investigations related to the incident within a period not exceeding thirty days. If the investigation reveals that the guardian has the same disability and that their presence poses a potential danger to the individual, the Sharia Public Prosecutor may file a joinder lawsuit with the competent court. This lawsuit would request an expedited decision to

16. Article 6 of the Jordanian Constitution.

17. Articles 103/2 and 105 of the Jordanian Constitution.

18. Article 2 of the Code of Sharia Procedure.

19. Article 172 of the Code of Sharia Procedure.

20. Article 175 of the Code of Sharia Procedure.

21. Article 12 of the Jordanian Personal Status Law



assign guardianship of the individual to a trusted or competent official body for shelter and care, as necessary, in a manner that safeguards the individual's well-being and serves their best interests.

If investigations determine that the guardian or legal representative performed a hysterectomy on the individual with a disability without the required authorization, and this procedure was conducted outside of emergency circumstances, the guardian may be subject to deprivation or limitation of their guardianship if valid justifications are present. Additionally, the guardian may be removed from their role if it is established that their continued guardianship endangers the health and well-being of the individual with a disability. In such instances, legal action may be initiated in the competent court to seek accountability for the guardian's actions.

The hysterectomy of women with disabilities performed by the guardian or legal representative will also incur legal compensation, calculated in accordance with Sharia law and statutory provisions, for the loss of the benefits associated with the excised uterus. The Sharia Public Prosecutor may refer the individual under investigation to the appropriate authority at any stage of the inquiry if it is determined that a felony or misdemeanor has been committed against the individual with a disability.

It should be mentioned that if a disabled girl converts to Christianity, she must seek approval from the ecclesiastical judiciary.

Second: The legal consequences resulting from the hysterectomy of individuals with disabilities without obtaining prior permission from the competent Sharia court.

Reference has previously been made to the Sharia penalties imposed by the relevant Sharia courts concerning the hysterectomy of women with disabilities without obtaining prior authorization from the competent court. These penalties may include deprivation or dismissal of guardianship, removal of custody, the imposition of blood money, and referral to the appropriate judicial authorities to address the damages incurred.

If a medical procedure results in the removal of a disability without prior approval from the competent Sharia court, and it is found to involve a felony or misdemeanor, the case will be referred to the Public Prosecution to initiate legal proceedings in the court of first instance. The act will be classified as a felony of causing permanent disability under Article (335) of the Penal Code. The case will then be transferred to the criminal division of the Court of First Instance for minor felonies, and the doctor may be prosecuted under Article (335), which states: "If the act results in the removal of a body part, amputation of a limb, loss of a sense, or causes severe disfigurement or any permanent disability, the perpetrator shall be subject to temporary imprisonment."

The legal representative shall be subject to the penalties prescribed for an instigator or accomplice, as applicable, based on the legal characterization of their actions under Articles 80 and 81 of the Jordanian Penal Code²². The stakeholder can also take the capacity of claiming a personal right or filing a civil lawsuit to claim compensation for the material and moral damage caused to the girl as a result of this act.

22. Article (80) of the Jordanian Penal Code.

Third: Enhancement of Criminal Penalties

The Committee supports the proposal by the Higher Council for the Rights of Persons with Disabilities in Jordan to amend the Penal Code and the Law on the Rights of Persons with Disabilities to explicitly criminalize the removal of reproductive organs, such as the uterus or testes, for the purpose of forced sterilization of individuals with disabilities, in the absence of medical necessity. The Council suggests that, instead of relying on the general interpretation of causing permanent disability under Article (335), a distinct prohibition should be established to address the current legal gap in deterring and penalizing such cruel practices²³.

The proposed amendment aims to introduce paragraph (b) to Article (335), which would impose penalties on individuals who conduct surgical procedures resulting in the forced sterilization of persons with disabilities. This provision would align with the penalties outlined in paragraph (a) of the same article. The amendment seeks to provide robust legal protections for individuals with disabilities, particularly those with intellectual and psychiatric disabilities.

The other proposed change includes an amendment to article (297) of the penal code, which currently punishes crimes committed against individuals who are unable to resist due to physical disability, mental insufficiency, deception, or coercion. The proposed amendment would include the word “ or mental or psychological “ after the word “physical disability” to accurately include various forms of disabilities and in line with disability rights principles and human rights nomenclature.²⁴

While the Law on the Rights of Persons with Disabilities does not explicitly criminalize the performance of hysterectomies absent a necessity determined by a competent authority, Article (30) of the law provides pertinent considerations. It is important to highlight that a hysterectomy performed without legitimate medical justification is regarded as an offense under Article (335) of the Penal Code, given that it results in permanent disability and constitutes a form of harm.

However, the existing regulation does not achieve the necessary deterrent effect, as healthcare practitioners commonly believe it does not encompass hysterectomy procedures. This misunderstanding undermines the objective of deterrence, as our aim is not solely to impose sanctions but to prevent healthcare providers and institutions from engaging in such practices. The focus should be on implementing preventive measures rather than reactive interventions to avert incidents of this nature and ensure compliance with ethical medical standards.

Therefore, our goal is to establish a legal and judicial framework that serves as a robust safeguard against violations of the rights of girls with disabilities, particularly concerning the integrity of their bodies. This framework should impose penalties on those who perform unnecessary and unjustified hysterectomies, thereby undermining their rights to equality and a dignified life. To achieve this, we advocate for a legislative amendment to the Law on the Rights of Persons with Disabilities that explicitly criminalizes the removal of wombs or sterilization of girls with disabilities in the absence of a genuine state of necessity or emergency.

23. Article (335) of the Jordanian Penal Code stipulates that “if the act leads to the cutting or removal of a member, the amputation of one of the limbs, its disruption, the disruption of one of the senses from functioning, or the cause of serious mutilation or any other permanent disability or having the appearance of a permanent disability, the perpetrator shall be punished by temporary labour.”

24. Article 297 of the Jordanian Penal Code stipulates that “ anyone who indecent assaults a person who is unable to resist because of physical disability, physical, psychological or mental disability, or because of the deception used against him or induced him to commit it, shall be punished by temporary labour.”

Activating the role of awareness in the field of hysterectomy for females with disabilities.

It is widely understood that legal interventions alone are insufficient to mitigate the prevalence of surrogacy. Therefore, it is imperative to focus on additional strategies that create a supportive environment for the reproductive rights of girls with disabilities, facilitating their ability to establish families and decreasing the incidence of non-indicated hysterectomies.

Among the most prominent of these things is the role of awareness in the field of hysterectomy for females with disabilities, the provision of health centers and hospitals equipped to provide sexual and reproductive health services for girls and women with disabilities, and the use of the services provided, in addition to providing information related to sexual and reproductive health in accessible and adapted ways for persons with disabilities, including methods of personal care. Holding awareness programs for families of girls with disabilities and girls with disabilities themselves on how to take personal care during the menstrual cycle.

It is necessary to activate the process of free and informed consent by service providers in the health sector in order to clarify the medical procedure to be taken, its results, effects and negatives, the proposed alternatives to this procedure, and to train health personnel on the requirements of providing health services to girls and women with disabilities and methods of effective communication with them. The importance of providing rehabilitation services through special education centers and providing rehabilitation services in comprehensive health centers should not be overlooked to ensure the provision of these services in the areas of family residence, especially in Areas where such services are not available.

Recommendations:

Sharia Public Prosecution – Chief Justice Department:

- The relevant medical team shall notify the Sharia Public Prosecution of any medical intervention aimed at removing the wombs of disabled persons without prior permission from the competent Sharia court to conduct the necessary investigations in a manner that achieves the best interests of disabled persons.
- Developing and approving a procedural/guidance manual through the Department of the Chief Justice, the Ministry of Health, and the Supreme Council for the Rights of Persons with Disabilities, with the goal of clarifying the procedures for granting permission to remove the uteruses of girls with disabilities by the competent Sharia court in cases of necessity and emergency for health service providers, and informing the Sharia Public Prosecution in the event

Higher Council for the Rights of Persons with Disabilities

- The addition of a new provision in the Law on the Rights of Persons with Disabilities prohibiting the eradication of wombs and forced sterilization except on the basis of a judicial ruling in cases of necessity or after obtaining permission from the Shari 'a Public Prosecutor's Office.
- Develop a media plan to raise awareness of the right to found a family for girls with disabilities and criminalize hysterectomy for them
- Training of medical personnel on the legal methodology for dealing with persons with disabilities and effective communication with them.

Ministry of Health:

- The Ministry of Health, alongside with the Higher Council for the Rights of Persons with Disabilities and civil society institutions, has developed integrated plans for girls with disabilities and their parents to address menstrual issues, personal hygiene, and other preventive measures, reducing the burden on parents.
- Issuing a directive from the Ministry of Health prohibiting government and private hospitals from performing medical procedures related to the hysterectomy of any girl with disabilities.
- Add a precise definition of “medical necessity” to Article 14 of the Medical Liability Act, allowing women with disabilities to be removed.
- Amend the Medical Liability Law to prohibit hysterectomy and offspring cutting for girls with disabilities without informed permission or medical need.
- Preparation of a fixed-term plan by the Ministry of Health aimed at preparing health centers and hospitals that provide sexual and reproductive health services for the access of girls with disabilities in accessible ways and places worthy of dignity. Providing rehabilitation programs in comprehensive health centers.
- The Ministry of Health provides training to medical and rehabilitation workers on how to communicate with people with disabilities in a respectful manner.
- Preparing a simplified guide by the Ministry of Health in partnership with civil society organizations and the Higher Council for the Rights of Persons with Disabilities to create a simplified guide for obtaining free and informed consent from individuals for medical procedures. The guide will clarify the procedure, its results, effects, and disadvantages, as well as proposed alternatives.
- Providing free menstrual supplies for women with severe disabilities during their menstrual cycles, thereby alleviating the financial burden on their parents, by adding a provision to the 2023 guidelines for including individuals with disabilities in civil health insurance.
- Adding policy paper outputs to the Ministry of Health’s procedural guidance for dealing with gender-based violence, domestic violence, and child protection.
- Creating a database through the Ministry of Health to track all cases of hysterectomy in girls with disabilities, categorizing them based on age, kind of disability, and surgical treatments performed, and verifying that they meet legal and medical standards.

Ministry of Education and Higher Education:

- Implementing a specialized course focused on the rights and needs of individuals with disabilities for nursing students in Jordanian universities, organized by the Ministry of Higher Education in collaboration with relevant organizations.

At the level of penal sanctions:

- Refer anyone who performs a hysterectomy without the authorization of the Sharia Public Prosecution to the judiciary.
- Establishing a new provision in the Penal Code that criminalizes the excision of reproductive organs—such as the uterus or testes—for the purpose of forcibly sterilizing individuals with disabilities, in the absence of any medical necessity.

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- Amending Article 335 of the Penal Code by adding a clause to impose penalties on those who perform surgical procedures resulting in the hysterectomy of females with disabilities or the forced sterilization of individuals with disabilities, in accordance with the penalties prescribed in paragraph (A) of the same article
 - Amending Article 297 of the Penal Code, which imposes temporary hard labor for crimes committed against individuals unable to resist, by adding the words ‘or mental or psychological’ to accurately encompass various forms of disabilities. The text of the article shall read: ‘A person shall be punished with temporary hard labor for violating the honor of a person who cannot resist due to temporary physical incapacity or a physical, mental, or psychological disability, or due to any forms of deception employed against him or her.’



and reproductive health rights

Equitable access to health care

Health Services Access to
sexual and
reproductive
health care

Health marginalized communities
reproductive health rights Gender and sexual and reproductive

Health, sexual and reproductive justice Childhood, youth
and sexual and reproductive health

