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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Women deprived of liberty****Report of the Working Group on the issue of discrimination against
women in law and in practice****Summary*

In the present report, the Working Group on the issue of discrimination against women in law and in practice analyses the causes of deprivation of liberty of women from a gender perspective to provide an understanding of the ways in which women are uniquely and disproportionately affected by deprivation of liberty, owing to structural discrimination throughout their life cycle. While deprivation of women's liberty manifests differently in different contexts, there are common underlying causes: the persistence of patriarchal systems which shape gender stereotypes and forms of discrimination that normalize them. The report contains recommendations to support States in developing and implementing comprehensive measures that are aimed at legal, institutional, social and cultural transformation.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



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I. Introduction

1. The present report covers the activities of the Working Group on the issue of discrimination against women in law and in practice from the submission of its previous report (A/HRC/38/46) in May 2018 to April 2019, and also contains a thematic report on women deprived of liberty.

2. In the thematic report, the Working Group analyses the causes of women's deprivation of liberty from a gender perspective.¹ In preparing the report, the Working Group analysed responses to a questionnaire sent out to Member States and other stakeholders and inputs from experts.²

II. Activities

A. Sessions

3. During the period under review, the Working Group held one session in Geneva and two sessions in New York. At its twenty-second session in New York (23–27 July 2018), the Working Group met with the Special Representative of the Secretary-General on sexual violence in conflict, representatives of the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the United Nations Population Fund and the Office of the United Nations High Commissioner for Human Rights (OHCHR). It benefited from expert consultations on the issue of women deprived of liberty and met with experts on surrogacy. It also held a meeting with Member States and New York-based civil society organizations, as well as a public event: “20 years after the Declaration on Human Rights Defenders: States' responsibility towards the protection of women human rights defenders”, organized jointly with civil society organizations and the Special Rapporteur on the situation of human rights defenders.

4. At its twenty-third session in Geneva (22–26 October 2018), the Working Group held meetings with other special procedures mandate holders, the Committee on the Elimination of Discrimination against Women and representatives of UN-Women, the International Labour Organization and OHCHR. It also met with the Rapporteur on persons deprived of liberty from the Inter-American Commission on Human Rights and other experts on the issue of women deprived of liberty.

5. At its twenty-fourth session in New York (28 January–1 February 2019), the Working Group met with representatives of UN-Women, OHCHR and civil society. It held a discussion with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. It also held a meeting with Member States and had consultations with experts on women deprived of liberty.

B. Country visits

6. The experts visited Honduras from 1 to 14 November 2018 (A/HRC/41/33/Add.1) and Poland from 3 to 14 December 2018 (A/HRC/41/33/Add.2). The Working Group thanks the Governments of those countries for their excellent cooperation before and during the visits. It also thanks the Government of Greece for the invitation to conduct an official visit from 1 to 12 April 2019 (the report of the visit will be presented to the forty-fourth session of the Human Rights Council). The Working Group currently has 35 pending requests for visits and encourages States to respond positively to those requests.

¹ Owing to word limit restrictions, the present report does not contain full references. A version of the report with full references and a bibliography for each section is available at: <https://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WomenDeprivedLiberty.aspx>.

² Responses to the questionnaire are available on the website of the Working Group.

C. Communications and press releases

7. During the period under review, the Working Group addressed communications to Governments, individually or jointly with other mandate holders. The communications concerned a wide range of issues falling within its mandate, including discriminatory legislation and practices, allegations of attacks against women human rights defenders, gender-based violence and violations of the right to sexual and reproductive health.³ The Working Group also issued press releases, individually or jointly with other mandate holders, treaty bodies and regional mechanisms.⁴

D. Commission on the Status of Women

8. Members of the Working Group addressed the sixty-third session of the Commission on the Status of Women and participated in its interactive dialogue on the theme of “Accelerating implementation of the Beijing Declaration and Platform for Action: exchange of best practices in preparation for the Beijing+25 review and appraisal”. The Working Group organized a side event on the theme of “Current challenges and opportunities for women human rights defenders: how can the international community better support their work?” and participated in a number of other events.

E. Other activities

9. Since its previous report to the Human Rights Council, members of the Working Group have undertaken numerous activities, including participation in regional consultations and expert meetings and engagement with stakeholders, descriptions of which can be found on its website.

III. Thematic analysis: causes of women’s deprivation of liberty⁵

A. Context

10. While the Working Group recognizes that there is a wide spectrum of practices that can be understood as depriving women of their liberty through a variety of autonomy constraints, for the purposes of the present report, deprivation of liberty is understood as confinement of the body.⁶ Within that definition, however, the Working Group takes a comprehensive approach, examining multiple forms of restrictions on women’s liberty by both State and non-State actors. It analyses the underlying causes for which women can be deprived of liberty in detention facilities, but also in other public and private institutions, in private homes or community spaces, and in situations of conflict and crisis.

11. The right to liberty is a fundamental right widely recognized in international instruments. It is enshrined in articles 4, 9 and 12 of the Universal Declaration of Human Rights and in articles 8, 9, 11 and 12 of the International Covenant on Civil and Political Rights, among other instruments. Deprivation of liberty also concerns other fundamental rights, including the rights to freedom of movement, personal integrity, privacy, health, work, education, and freedom of assembly, association, expression and religion or belief. Moreover, the rights to equality and freedom from discrimination and the equal rights of women and men, as guaranteed by article 2 of the Declaration and article 3 of the Covenant, as well as articles 2 and 3 of the Convention on the Elimination of All Forms of

³ See www.ohchr.org/EN/Issues/Women/WGWomen/Pages/Communications.aspx.

⁴ See www.ohchr.org/EN/NewsEvents/Pages/NewsSearch.aspx?MID=WG_Women.

⁵ Throughout the report, unless otherwise specified, the term “women” should be understood to include girls and women of all ages.

⁶ See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 3.

Discrimination against Women, also come into play. All these rights are inextricably interrelated.

12. Women's deprivation of liberty is a significant concern around the world and severely infringes their human rights. Against the backdrop of unequal power dynamics and systemic discrimination, women are deprived of their liberty, mostly arbitrarily and in a discriminatory fashion, as a practice in violation of the law and human rights standards, and this is often characterized by impunity. Depriving women of liberty also imposes great costs on society: not just the monetary costs of maintaining structures or institutions of confinement, but more importantly the human costs of missed opportunities and contributions and often intergenerational harm and negative impacts on families and communities.

13. Not only the causes but also the consequences of deprivation of liberty for women are gendered, because they experience their confinement in specific ways and are often at risk of heightened gender-based discrimination, stigma and violence. How women experience this deprivation will also differ, not only as a result of gender dynamics but also because of characteristics, such as age, (dis)ability, race or ethnicity or socioeconomic status, that combine to produce distinct forms of discrimination and vulnerability.

14. Discrimination against women with regard to the conditions of deprivation of liberty is a topic of great importance and one that has been carefully studied by several other special procedures mandate holders.⁷ In order to build on that work, in the present report the Working Group focuses on the underlying causes that lead to confinement occurring, rather than the conditions in which women are confined or the consequences thereof.

15. In examining the various contexts of deprivation of liberty, it emerged that there were common underlying causes or themes that were relevant in all situations in which women are found in forced confinement. Those causes are gendered social norms and stereotypes, economic deprivation and experiences of violence and conflict. The rest of the report is organized in a manner that illustrates each of those underlying causes. It must be noted, however, that they are interrelated and depict the intertwined and reinforcing manifestations of the discrimination that women face across the life cycle.

16. The causes of deprivation of liberty do not affect all women or all groups of women equally. Within every society and in every State, there are certain groups of women who experience multiple and intersecting forms of discrimination, many of whom are subject to particularly damaging stereotypes and/or are more likely to be confronted with violence or conflict, poverty and economic marginalization, and who are thus at higher risk of being deprived of their liberty. In the report, due consideration is given to those factors in relation to the different themes and contexts discussed.

B. Discriminatory social norms and gender stereotypes

17. Whereas under article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, States have clear obligations to commit to the elimination of prejudices and all practices which are based on stereotyped notions of the proper roles and places for men and women, such prejudices and stereotypes persist around the world and are all too frequently enshrined in law and in practice. As illustrated by the Working Group in previous reports, gender stereotyping undermines the equality of women and the realization of their human rights in all aspects of their lives.⁸ It thus comes as no surprise that such stereotyping also plays an important role in depriving women of their liberty in a disproportionate or discriminatory manner.

18. The persistence of gender stereotypes and patriarchal norms is visible in the underrepresentation of women in decision-making positions around the world, including in the organs of State that play a role in women's deprivation of liberty. Legislatures, the

⁷ See, for example, A/68/340, A/HRC/30/36 and A/HRC/40/54.

⁸ See, for example, A/HRC/23/50, A/HRC/26/39/Add.2, A/HRC/29/40, A/HRC/32/44 and A/HRC/35/29/Add.1

judiciary, police or security forces and administrative agencies still tend in most States to be dominated by men (see A/HRC/23/50). Similarly, the medical profession, psychiatry in particular, remains dominated by men, while playing an important role in decisions concerning the confinement of women. That presents a challenge in ensuring that women's perspectives are adequately incorporated and often results in gender discrimination and overreliance on gender stereotypes.⁹ The confinement of women in a private context also occurs in overly patriarchal social and family structures.

19. Three main forms of gender stereotypes may lead to and justify women's confinement: stereotypes related to women's roles in the home and in public, stereotypes related to women's "moral" or sexual behaviour and stereotypes that portray women as weak or in need of protection. All three are deeply entrenched in patriarchal norms and mutually reinforcing, and commonly operate to benefit or privilege certain groups of men.

1. Policing of women's public and private roles

20. In many parts of the world, the myth that women are inferior and "should be seen and not heard" continues to permeate society, influencing both law and cultural practice (see A/HRC/29/40). That stereotype dictates the way women are expected to behave in both the private and public spheres.

21. Within the home, women are expected in many societies and by many ideologies to be governed by men. That expectation is underpinned by notions of "sex difference" or "complementarity" that assign men the role of the (dominant) provider and women the role of the (subordinate) caretaker.¹⁰ That dichotomy often undervalues women's contributions, leading to an understanding of women, and particularly girls, as an economic burden on the household rather than rightfully equal members.

22. Understanding of women as subordinate within the family may be built into the law in a manner that reinforces male control and restricts women's agency and mobility, and can lead to their confinement. That is demonstrated in several States that maintain legal codes requiring married women to obtain their husband's permission to leave the house, or requiring all women to obtain the permission of a male "guardian" to engage in public activity, sometimes at the risk of confinement by the State if they do not comply with their guardian's wishes.¹¹ Gender stereotyping also plays a role in stripping women of legal capacity, which may result in decisions leading to their confinement.

23. Even where the formal legal system does not dictate that women are subordinate to men, women's failure to demonstrate adequate compliance and submission can result in their incarceration or institutionalization. Women who display "unfeminine" behaviour (for example, being violent or drinking alcohol) may be more at risk of arrest or aggravated charges.¹² Research among girls, in particular, has shown that behaviour that is perceived in girls as being "violent" and worthy of institutionalization, in boys might be understood as minor or legitimate self-defence.¹³ Women who refuse to conform to their families' commands or expectations risk being labelled as "crazy" and subjected to involuntary

⁹ See Andrea Huber, "Women in criminal justice systems and the added value of the UN Bangkok Rules," in *Women and Children as Victims and Offenders: Background, Prevention, Reintegration*, vol. 2, Helmut Kury, Slawomir Redo and Evelyn Shea, eds. (Springer International Publishing, 2016).

¹⁰ See Gila Stopler, "Countenancing the oppression of women: how liberals tolerate religious and cultural practices that discriminate against women," *Columbia Journal of Gender and Law*, vol. 12, No. 1 (2003).

¹¹ See Samar El-Masri, "Challenges facing CEDAW in the Middle East and North Africa", *International Journal of Human Rights*, vol. 16, No. 7 (2012).

¹² See Suzanne Young, "Policing 'uncontrollable banshees': factors influencing arrest decision making," *Safer Communities*, vol. 14, No. 4 (2015).

¹³ See Meda Chesney-Lind and Randall G. Shelden, *Girls, Delinquency and Juvenile Justice*, 4th edition, (Chichester, West Sussex, John Wiley and Sons, 2014).

institutionalization.¹⁴ That is also often the case with girls who demonstrate different sexual or gender expressions.

24. Stereotyped notions about women's roles within the family also underlie a number of cultural practices that lead to the deprivation of liberty. They include removing girls from school and confining them to the home to perform domestic labour¹⁵ and subjecting them to child, early and forced marriages, where they are often confined to the marital home. The abduction of girls may even be condoned by communities when followed by betrothal or marriage. In some cases, such practices also have the force of law, as in States that have not outlawed child marriage or where those who are accused of kidnapping or sexually assaulting a woman or girl may be exonerated if they take their victim as wife.

25. Stereotypes about a woman's "proper" role dictate not only how she should (not) behave within the home but also in public, and defying those standards in public may put women at risk of deprivation of liberty. Women who seek to participate in political, economic, social or cultural leadership in their communities or nations may be acting in defiance of stereotypes obliging women to stay quiet and invisible and defer to male governance. They may thus be stigmatized, or even criminalized or confined, to prevent them from speaking out or taking action (see A/73/301). For example, violence or confinement may be used to stifle and punish women politicians, or those who have an active voice in public, for transgressing traditional gender norms. Women human rights defenders, perceived as challenging traditional notions of family and gender roles in society, (A/HRC/40/60, para. 28), are increasingly at risk of facing criminalization and detention as a result of their legitimate public activism (see A/HRC/16/44 and Corr.1). In a number of States, women who work specifically to combat gender stereotypes and advance women's rights are most likely to be targets for criminal persecution and imprisonment. Certain laws, including "complicity" laws, and "public order" laws¹⁶ or even anti-terrorism laws, may be particularly instrumentalized to target women human rights defenders. In some countries, forms of public expression dominated by women, such as religious observances (for example, how they are dressed) related to "disfavoured" or minority faiths, are criminalized or are grounds for restricting access to essential services.

26. Discrimination and stereotyping may also lead to the denial of the asylum claims of migrant women and thus increase their risk of migration-related detention or incarceration for immigration-related offences. For example, certain legal systems require that asylum claims be submitted through a male head of household rather than allowing women to claim asylum as individuals, while immigration judges may apply stricter standards to women owing to gender bias.¹⁷ Gender stereotypes in immigration administration also manifest in legal frameworks that exclude consideration of women's experiences of violence, in particular domestic violence, for granting asylum.

27. The heightened policing of certain populations, owing to racial and ethnic biases intersecting with gender, poses risks for some women. Women from racial and ethnic minorities and indigenous women face specific and deeply damaging stereotypes and are disproportionately targeted for control. They may be scapegoated as lazy, criminal and deviant in order to reinforce the political and social power of the dominant group and justify the perpetuation of structures of exploitation,¹⁸ leading to perceptions of them as a "social problem" or a dangerous threat, to be met with punishment rather than compassion or justice. Those stereotypes may lead to the kind of bias that allows, for example, women

¹⁴ See, for example, Human Rights Watch, *"Treated Worse than Animals": Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India*, (2014).

¹⁵ See Save the Children and King Hussein Foundation, Information and Research Center, "Homebound girls in Jordan" (2013).

¹⁶ See Strategic Initiative for Women in the Horn of Africa and the Redress Trust, "Criminalisation of women in Sudan: a need for fundamental reform" (2017).

¹⁷ See Kimberlé W. Crenshaw, "From private violence to mass incarceration: thinking intersectionally about women, race and social control," *UCLA Law Review*, vol. 59, No. 6 (2012).

¹⁸ See George Lipsitz, "'In an avalanche every snowflake pleads not guilty': the collateral consequences of mass incarceration and impediments to women's fair housing rights," *UCLA Law Review*, vol. 59, No. 6 (2012).

from a racial minority in the United States of America to be more than twice as likely as women from the majority group to receive a sentence of incarceration for drug-related crimes. Indigenous women in Australia are also notably overrepresented in prisons; they make up only 2.2 per cent of the population of women, but around 34 per cent of women in prison. In Canada, a disproportionate number of indigenous women are to be found in solitary confinement.

28. Negative stereotypes about female ageing mean that elderly women are perceived as dangerous and in need of control in some societies. In certain communities, these women may experience non-judicial confinement and banishment from their homes because of accusations of witchcraft.¹⁹ Superstitions linked to elderly women and witchcraft are common in particular regions, such as Africa and the Asia-Pacific region, and gendered control of power and space heightens the risk of persecution for those who are vulnerable within family power dynamics.²⁰ Due to extreme fear of witch-hunting or reprisal attacks, those labelled as “witches” will be exiled to the margins of their communities and forced to remain confined in “safe” spaces, living in deplorable conditions and experiencing the worst forms of exclusion. Older women with disabilities are also at particular risk of confinement in homes or institutions, owing to prejudices based on both age and disability (see A/HRC/40/54).

29. Owing to patriarchal norms that embody stereotypes about women’s bodies being “impure” (for example, during menstruation) and bringing a “curse”, women may be subjected to seclusion amounting to deprivation of liberty. For example, this has manifested in the practice of *cheupadi* in Nepal, a punishable act, which involves isolating and confining women during their menstruation period, depriving them of the right to move freely and access basic needs and services.

2. Policing of women’s “moral”, sexual or reproductive behaviour

30. Further to expectations to be submissive and deferential to the commands of men, women are also expected to be morally and sexually “pure”. At the same time, owing to discriminatory social ideologies, they are sometimes seen as morally weak and with a tendency to be “sexually misguided”, warranting constant policing of their moral and sexual behaviour by men. Moreover, owing to gender norms and assumptions, women are mostly valued for their reproductive role and often regulated accordingly. Those stereotypes are transcribed into the law or sanctioned by religious and social norms in several States and, in practice, women who fail to conform to those expectations may be subject to harsh judgments and face confinement aimed at punishing, regulating or changing their behaviour.

31. Typically, patriarchal ideas of women’s “morality” and associated expectations concerning their public and private behaviour have detrimental effects for women in the justice system, as they may be subjected to moral judgments founded more on social expectations than on the crimes they may have committed. Studies show that girls are far more likely than boys to be arrested for “status offences” (such as truancy or running away from home), based on social behaviour rather than actual illegal activity, and are more likely to be sentenced to incarceration for such offences.²¹ The expectation that women should be “better behaved” than men may also lead to heavier penalties for women than men for the same crimes. Judicial gender bias often subjects women to disproportionate sentencing for non-conformity with gender stereotypes. In some cases, the penalties may even surpass aggravated imprisonment and attract the death penalty.

¹⁹ See, for example, Marie-Antoinette Sossou and Joseph A. Yogtiba “Abuse, neglect, and violence against elderly women in Ghana: implications for social justice and human rights”, *Journal of Elder Abuse and Neglect*, vol. 27, Nos. 4–5 (2015).

²⁰ Shelagh Roxburgh. “Witchcraft and space: a theoretical analysis of unseen political spaces in Ghana and Cameroon.” *Canadian Journal of African Studies/Revue canadienne des études africaines*, vol. 51, No. 1 (2017).

²¹ See Meda Chesney-Lind and Randall G. Shelden, *Girls, Delinquency and Juvenile Justice*.

32. Stereotyped standards of women’s “moral” conduct also plays a role in disproportionate female incarceration for drug-related crimes, as women are judged more strictly. They are more likely to be incarcerated for drug-related crimes than men: in 2018, approximately 35 per cent of women in prison worldwide had been convicted of drug crimes, compared to 19 per cent of men. An increasingly punitive approach to the drug problem, adopted by many States with policies of administrative detention of drug users and taking a harsh approach to pretrial detention and post-conviction sentencing of those accused of drug crimes, has been found to have a discriminatory and disproportionate impact on women (A/HRC/30/36, para. 58). Women tend to be engaged at the lower levels of criminal networks, but may receive disproportionate sentences under regimes that do not take the level of involvement into account. They may also have fewer opportunities to negotiate for reduced sentences or plea bargains owing to their lowly status within criminal networks, combined with their subservient role in a patriarchal system. In some jurisdictions, the roles that women typically play in such networks, such as transporting drugs, are subject to longer sentences than other roles.

33. A number of laws and practices legitimize efforts to control women’s sexual and reproductive behaviour. The Working Group has previously condemned the instrumentalization of women’s bodies for political, cultural, religious and economic purposes, and particularly the manner in which that instrumentalization leads to criminalization of women’s sexual and reproductive decisions (see A/HRC/32/44). The Working Group has also noted that legislation criminalizing consensual adult sexual activity often discriminates against women, either explicitly in the law itself or in practice in the manner in which it is enforced.²² Furthermore, in some States women’s involvement in extramarital sexual behaviour is criminalized even when it is not consensual, such that women may be jailed for having been raped.

34. Sexual and gender non-conforming women are disproportionately targeted for social control based on their perceived challenge to or “transgression of” established norms of gender roles and sexuality (A/HRC/23/50, para. 47). As a result, they face increased vulnerability to criminalization and deprivation of liberty. Even in cases where such women are not expressly criminalized based on their sexual orientation or gender identities, they may face a heightened risk of encountering the criminal justice system. For example, transgender women are arbitrarily profiled and targeted for prostitution/sex work.

35. Women’s sexuality is often dubbed “promiscuity”. When women express their sexuality in a manner that is considered to be outside social norms, even if not against the law, they may risk being institutionalized in mental health facilities or other care facilities. In some States, teenage pregnancy or sexual “promiscuity” can constitute a basis for confining adolescents in group homes.²³ In others, expressions of female sexuality can be labelled “hypersexual” and considered a sign of mental impairment, justifying civil commitment.²⁴ Moreover, in some families such sexual behaviour may indicate that a woman or girl, especially one with a disability, is too “difficult” to care for or control and thus better off in an institution.²⁵ Furthermore, overmedicalization is used as a form of social control, as some women perceived to be “difficult” are controlled through prescriptions of very strong psychiatric drugs that effectively “detain” them in home or care centres. This is also true of women whose sexuality is considered non-conforming. Such women are likely to undergo involuntary “treatments”, so-called “conversion therapies”, or forced medical incarceration in psychiatric institutions and specialized camps, as well as in

²² See Working Group on the issue of discrimination against women in law and in practice, “Adultery as a criminal offence violates women’s human rights”, available at www.ohchr.org/Documents/Issues/Women/WG/AdulteryasaCriminalOffenceViolatesWomenHR.pdf

²³ See Carolina Överlien, *Girls on the Verge of Exploding? Voices on Sexual Abuse, Agency and Sexuality at a Youth Detention Home* (Linköping, Sweden, Linköping University, 2004).

²⁴ See Maribel Morey, “The civil commitment of State-dependent minors: resonating discourses that leave her heterosexuality and his homosexuality vulnerable to scrutiny” *New York University Law Review*, vol. 81, No. 6 (2006).

²⁵ *Ibid.*

homes or places of worship, in order to attempt to force them to renounce their sexuality (see A/73/152).

36. Women in prostitution/sex work are likely to face deprivation of liberty because of laws and social attitudes that seek to control women's morality and sexuality. In States where prostitution/sex work is criminalized, women are disproportionately affected and targeted by law enforcement agents. Even in countries where sex work itself is not a criminal offence, women who engage in it have high rates of interaction with the police and may be prosecuted and incarcerated for other offences, including loitering, vagrancy and public indecency, and for migration-related infractions. Short of incarceration, women in sex work/prostitution may, in some States, be confined to "re-education" institutions, designed to "cure" them of "deviant behaviour".

37. Stereotypes regarding women's sexual and moral behaviour are often linked with valuing women primarily for their reproductive capacity and requiring them to live up to certain ideals of motherhood. That comes with detrimental consequences for women's liberty. In many cases where women are perceived as unable to fulfil the stereotyped expectations for reproduction and motherhood, as is frequently the case for women with disabilities, they may be viewed as "burdens", be less valued by their families and communities, and therefore more susceptible to involuntary institutionalization (see A/HRC/40/54).²⁶ There is also a linkage between the persecution and confinement of older women and the stereotyped notion that women beyond childbearing age have less social value (see para. 28 above).

38. Women may face deprivation of liberty when they do not conform to stereotyped notions of what constitutes good motherhood. Such stereotypes manifest particularly in the criminalization, detention and confinement of pregnant women who use, or are suspected of using, drugs. They frequently risk imprisonment for attempted abortion, miscarriage or harming the baby when using drugs during pregnancy. In addition, defying the dominant norms of motherhood may generally be taken as an aggravating circumstance in sentencing, while being a father may mostly constitute a mitigating circumstance.

39. Outside the justice system, pregnant women suspected of drug or alcohol use can also be involuntarily detained and forced to undergo medical treatment, often without sound medical evidence that they have a drug dependency or that the foetus is at risk. The Working Group on Arbitrary Detention has noted that special laws designed to detain pregnant women suspected of drug use are "gendered and discriminatory ... as pregnancy, combined with the presumption of drug or other substance abuse, is the determining factor for involuntary treatment" (A/HRC/36/37/Add.2, para. 74). There have also been cases of women being detained by hospitals simply to prevent them from choosing a home birth.

40. In States where abortion is criminalized, women risk incarceration for the decision to terminate a pregnancy, in some cases even when their own safety is at risk or when the foetus is not viable. In some countries, women are criminalized and incarcerated even when the termination was not their decision, as in cases of miscarriage. At times, public prosecutors have targeted women who have had abortions (whether spontaneous or induced) to enforce the harshest possible punishment, leading to longer incarceration.

41. Adolescent girls may be particularly exposed to deprivation of liberty for breaking social norms related to sexual and reproductive behaviour. In some States, they may be harshly punished for early or extramarital pregnancies, be excluded or expelled from school and confined at home or in an institution during pregnancy, while in many States they run a high risk of incarceration through seeking an illegal abortion. Furthermore, there exist hospitals and State institutions for detaining adolescent girls to prevent them terminating a pregnancy.

²⁶ See also Committee on the Rights of Persons with Disabilities, general comment No. 3 (2016) on women and girls with disabilities.

3. Perceptions of women as weak, incapable, or in need of care or protection

42. Other stereotypes that lead to women's deprivation of liberty are those that label women as weak, helpless, incapable or in need of care or protection. Those stereotypes are interconnected with those described above, as ideas of the frailty or incapability of women are tied to expectations that they should assume a submissive role in the household and in society, and it is often their moral virtue and sexual purity that are seen as most in need of preservation. Sometimes women are seen as easily falling prey to "vice" so that men and society have to "look after" them.

43. Those stereotypes are particularly likely to lead to detention in the family home and other private forms of detention, as family members may see it as their duty to "protect" women by keeping them within a "safe" space. That perception has permeated different forms of "protective" custody that can easily be translated into repressive control by male family members or unsupportive families or communities, resulting in the exclusion of women from certain areas of society and confinement in others.²⁷ For example, there are reports that capture the experiences of women trapped in a guardian system that restricts them from moving freely and making decisions on their own.²⁸

44. Women with disabilities in particular are seen as weak or in need of protection, causing families to determine that they are better off confined in institutions. In many cases, the State may orchestrate such acts of deprivation of liberty by allowing women with disabilities to be stripped of legal capacity, without adequate support structures or recognition of their autonomy. As a result, they may end up being placed under guardianship and have their decision-making ability relegated to a third party. Home confinement is another challenge for this group. Women with disabilities are in several cases confined at home owing to cultural stereotypes or a lack of services and support systems. Girls with disabilities are more likely to experience confinement in the family context, associated with fears that they might be prone to sexual abuse, combined with panic about girls' sexuality.

45. Women's actual or perceived vulnerability to gender-based violence has led some States to institute forms of protective/administrative detention for women who are at risk. In some such shelters, harsh curfews are applied for the sake of protection. Protective detention is also used to "protect" girls with disabilities or adolescent girls from violence and/or "unwanted" pregnancies. Although such institutions are intended to provide safety to women, sometimes they are, or may become, sites of deprivation of liberty, where women may be confined according to the dictates of the State or of their family members (see A/HRC/35/40 and Corr. 1). There have been reports of protective custody being used solely to "safeguard" or prevent women from deviance from societal norms and expectations, which has been identified as a form of arbitrary detention contrary to international human rights law (A/HRC/27/48 paras. 78–79).

46. The belief that women need protection has an impact in crisis situations, where families may be displaced and destabilized and face heightened risks, including, as has been extensively documented, that of gender-based violence for women. The Working Group has received reports of severe restrictions of liberty for women, and particularly girls, in humanitarian settings, where family members may force them to remain in their homes or shelters rather than risk moving about. As a result, camps for internally displaced persons and refugees sometimes become sites of confinement for women, from where they are unable to leave to access resources or services. On the other hand, detrimental stereotypes also influence responses to migration. In States that are seeking to stem migration flows, there is a tendency to believe that because women are viewed as weak and in need of protection, subjecting them to migration detention will be viewed as more shocking and thus have a greater deterrent effect.

²⁷ See Johannes Jütting and Christian Morriison, "Changing social institutions to improve the status of women in developing countries", Organization for Economic Cooperation and Development Centre, policy brief No. 27 (2005).

²⁸ Human Rights Watch *Boxed in: Women and Saudi Arabia's Male Guardianship System* (2016).

47. Mandated treatment programmes designed for care and cure are occasionally used to deprive women of their liberty. Studies show that women are confined in the penal systems in some States based on the idea that they need treatment for addiction, trauma, and/or “disorders” without any real evidence that these conditions exist. Sometimes confinement is in prisons, but more often in community correctional facilities. The ideology justifying mandated treatment for women is based on stereotypes that some women, especially women from certain racial groups, or those living in poverty, are dependent, “disordered”, “sexually deviant” or “bad mothers”. This is a trend that has the potential to increase the number of women in detention, prolong their custody under correctional supervision and even to make their detention more restrictive.

48. Widowhood, at any age, may be extremely gendered, with rites crafted against women and carried out through confinement, isolation, defacement and disinheritance. Confinement during the mourning period, supposedly to grieve over the bereavement or to protect them from potentially violent practices influenced by superstitious beliefs about the “inauspicious” presence of widows, may involve prohibiting them from leaving the home and participating in economic and public activities or performing important household tasks. Those restrictions could be further aggravated to the extent of exiling them and confining them in marginalized areas (see para. 28 above). In addition to the intersection of gender and marital status, widows without children or an adult male relative to provide them with leverage within the extended family are more vulnerable to persecution and confinement.

C. Women’s economic “unfreedom”

49. The feminization of poverty is widely recognized and documented. Worldwide, women are more likely than men to live in poverty and on average earn 23 per cent less than men, perpetuating a considerable lifetime income and welfare gap between them.²⁹ The Working Group has highlighted the stereotypes about women’s role in society that have a substantial impact on their participation in the labour market (A/HRC/35/29/Add. 1, para. 69). Almost 80 countries maintain restrictions on the types of work that women are permitted to undertake, while in 18 countries, husbands can legally prevent their wives from working. Accordingly, women are more likely than men to be unemployed and currently only 50 per cent of women are in the labour force compared to more than 75 per cent of men (see A/HRC/38/46). Women are also less likely to have access to assets within the household, as there are often inequalities in the distribution of resources and entitlements. In a number of countries, women and girls still have different or limited ownership and inheritance rights from men and boys, meaning that a large number of poor women may be living in households that are not categorized as poor.

50. When poverty is understood to be a factor not purely of income or wealth, but also as measured by the choices, opportunities and resources available to a person over the course of their lifetime, women’s poverty appears even starker.³⁰ Time poverty owing to women’s disproportionate responsibility for unpaid care and domestic work limits their ability to engage in income-earning activities. Their financial dependence on their partners and other family members increases their vulnerability to poverty and reduces their voice and bargaining power within the household. Unequal access to and control over resources, power, opportunities and services underpin women’s poverty, which can lead to their deprivation of liberty.

1. Lack of access to resources and services

51. Stakeholders have identified material poverty as a key factor in women’s deprivation of liberty and especially their incarceration. Laws that penalize and criminalize those living

²⁹ See UN-Women, *Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development* (2018) available at www.unwomen.org/en/digital-library/sdg-report.

³⁰ See Sakiko Fukuda-Parr, “What does feminization of poverty mean? It isn’t just lack of income”, *Feminist Economics*, vol. 5, No. 2 (1999).

in poverty have been extensively documented (see, for example, A/66/265). Links between economic and social inequalities and the criminal justice system can lead to trapping people in vicious cycles of poverty and criminalization.³¹ Those cycles are aggravated in times of austerity, when social services are cut, and women are particularly affected because, owing to the feminization of economic deprivation, they rely more than men on Governments for legal, social, health and other services. Women's access to services has also been reduced as a result of a rise in the negative stereotyping of poor people, and especially poor and racialized women, as attempting to "cheat the system" (ibid.).³²

52. Women are often imprisoned for crimes related to poverty, including theft and fraud, but also for infractions related to homelessness, poor living conditions, or to the struggle to earn a living, such as begging or street vending. In several States, women may also be at risk of civil conviction for their inability to pay their debts. In many jurisdictions, indigenous and racial minority women are not only more likely to be poorer than other women owing to intergenerational cycles of systemic oppression, but are also more likely to experience detention for issues such as the inability to pay off debts or petty offences such as theft.

53. Poverty shapes not only the crimes of which women are accused, but also their interactions with the criminal justice system, which also have an effect on the likelihood of their incarceration and its length. In particular, lack of income and wealth limits women's access to quality legal representation, negatively impacting their ability to obtain favourable outcomes in the court system. It also limits their ability to post bail, which not only subjects them to pretrial detention, but has also been found to dramatically increase the likelihood of their eventual conviction (ibid., para. 66). Furthermore, once convicted and incarcerated, women often have less access than men to rehabilitation and reintegration services, owing to a scarcity of gender-responsive custodial services designed for women inmates and a paucity of alternative services outside prison. That sometimes leads to worse outcomes upon release, increases the risk of recidivism and may leave women in a cycle of incarceration.

54. Women's lack of access to resources and services is also a factor in other forms of deprivation of liberty. Poverty may be a driver of family decisions to accept child, early and forced marriages when girls are viewed as an economic burden to be "offloaded" to another family. That understanding, and a lack of access to adequate community-based support services, may also contribute to family decisions to confine women and girls with disabilities to institutions. There have also been troubling trends of "medical detention" of women who lack the ability to pay for health services in hospitals, mostly after giving birth, which has become part of hospital policies and/or practice in some jurisdictions, as documented in several African and Asian countries, including Cameroon, the Democratic Republic of the Congo, India and Indonesia.³³

55. Older women without resources or livelihoods are often neglected by their families and find themselves involuntarily isolated in the home or in a care facility. Care facilities have been known to abuse or neglect residents through denying them the ability to move about freely, denying them contact with the outside world and withholding basic necessities such as food, health services, and recreational activities.

2. Lack of opportunity and choice

56. Poverty for women is not only a matter of material wealth and social services, but fundamentally a question of the choices they are able to make for their lives. Women have less access to decent work, may be restricted as to which fields they can work in and how high they can rise within those fields, while being responsible for a disproportionate share of unpaid care and domestic work. The gender opportunity gap starts early, with

³¹ Vanita Gupta, "Keynote remarks," *Michigan Journal of Race and Law*, vol. 21, No. 2 (2016).

³² See also Kaaryn Gustafson, "The criminalization of poverty," *The Journal of Criminal Law and Criminology*, vol. 99, No. 3 (2009).

³³ See Robert Yates, Tom Brookes and Eloise Whitaker, "Hospital detentions for non-payment of fees. A denial of rights and dignity", Royal Institute of International Affairs (2017).

discrimination in the family and in education that springs from or embodies the different stereotypes, which subsequently contributes to limiting their potential to exercise their capabilities and pursue the career and life choices available to them.

57. The constraints on women's choices and opportunities are a product of structural inequalities and discriminatory policies and institutions that fail to tackle adequately the injustices produced through globalized macroeconomic and political factors, including the privatization of public goods and the shrinking of the welfare state. Those factors further reinforce, and are perpetuated by, localized and particular discriminatory cultural and social norms that also engender different systems of oppression for different groups of women.

58. Discrimination, stereotyping, unpaid care work and lack of education limit the jobs that women can do, pushing them towards low-skilled positions and the informal job sector with exploitative workplace conditions. The overwhelming majority of women's jobs are in the informal sector and therefore lack basic entitlements and protections. Thus, women's employment may in some cases constitute a form of deprivation of liberty. That may be the case when women who work in industry or in agriculture are provided with housing under restrictive circumstances or subject to forced or bonded labour (see A/73/139 and Corr. 1). Likewise, there are home-based productions for global supply chains where the "employer" may in fact be a husband or other male relative who demands a certain amount of production in exploitative conditions amounting to deprivation of liberty. Such working conditions are also of particular concern for domestic workers, the majority of whom are women, who may find themselves unable to leave their place of employment.

59. Migrant women face particular risks, being largely pushed into unskilled, undervalued and lower-paid labour sectors in unregulated spaces, such as private homes. Women migrant domestic workers may be deprived of support networks and services and may face confiscation of their passports by their employers. Immigration laws that require working for a specific employer, such as the *kafalah* system in some countries in the Middle East, have been grounds of abuse and have incurred criminal penalties.³⁴ Owing to limited pathways for regular migration opportunities for women, irregular status becomes a contributing factor to deprivation of liberty of migrant women. Restrictions related to "protective" stereotypes that aim to prevent women from legally migrating, on the grounds that they may become victims of trafficking or forced prostitution, push women to seek alternative (irregular) migration channels and consequently increase their vulnerability to forced or bonded labour, confinement and other human rights violations.

60. Lack of choice and opportunities push women into the realm of human trafficking, contemporary forms of slavery and exploitative surrogacy arrangements that may result in varied forms of confinement, exploitation and violence. In certain countries women are kept in camps or so called "baby factories" for surrogacy purposes or forced impregnation, while in many more countries women are smuggled into brothels that they are not at liberty to leave.

61. Reduced job opportunities, coupled with a lack of social protection, may be a factor in women's criminalization and eventual imprisonment. Several stakeholders pointed to the lack of decent work opportunities as one of the major reasons for women's involvement in drug trafficking, certain forms of prostitution/sex work and other irregular businesses, resulting in them coming into conflict with the criminal justice system. Women who are incarcerated for their involvement in illicit economic ventures identify such activities as being the only opportunities available to them to provide for their families, given their financial constraints and family responsibilities. In several States, transgender women disproportionately engage in prostitution/sex work, owing to the limited opportunities available to them because of discrimination, and face criminalization or other types of restriction of liberty as a result of such activities.

62. Deeply embedded systemic racism leads to racial minority women being subjected to socioeconomic exclusion and poverty (see A/HRC/35/10), with a heightened risk of incarceration, including, inter alia, for increased involvement in drug trafficking, mostly at

³⁴ See, for example, A/HRC/26/35/Add.1, A/HRC/35/29/Add.2 and A/HRC/39/52.

the lower levels of drug networks. Similarly, the legacy of colonization and systemic marginalization, ensuing high levels of poverty, dire financial and social stress, and significant gaps in opportunities and well-being between indigenous and non-indigenous women, leading to exposure to alcohol and drug use, aggravates the disproportionate incarceration of indigenous women. Disproportionate criminalization of indigenous women and those from racial minorities remains a significant problem.

63. Women's economic subordination exposes them to being associated with or blamed for criminal acts committed by family members, in particular their male partners or spouses (see A/68/340). For example, many women are incarcerated for having dangerous arms, drugs or other illegal items in their homes when the owner is really their partner. However, because of their subordinate role in the household, they cannot stop their partners from bringing into or keeping such items in the home. As a result, they end up incarcerated, at times with a heavier sentence than is justified.

D. Women's exposure to violence and conflict

64. Women's lives and liberty are also shaped by their exposure to violence and conflict, which puts them at risk of non-judicial confinement and can lead to their incarceration in a number of ways.

1. Violence in the home and the community

65. Many women experience violence at the hands of family members, caregivers, partners, friends and acquaintances. Domestic and community violence often manifests in the form of home confinement, in which women are prohibited from leaving the home or coerced to remain in a certain location. Kidnapping or abduction also result in severe restriction of their freedom of movement. Sexual violence and sexual harassment are sometimes used as a tool to intimidate and restrict women's access to public spaces and pressure them to stay confined in private/family contexts. In many cases, there is a linkage between women's exposure to violence and their experience of confinement. For example, vulnerability to violence has been a pathway to the indefinite administrative detention of hundreds of women in Jordan in the form of "protective" custody.³⁵

66. The presence of violence in women's lives profoundly shapes them and increases their chances of institutionalization or incarceration. For example, more than 50 per cent of incarcerated women report childhood experiences of emotional, physical or sexual abuse, while such experiences are only reported by about 25 per cent of incarcerated men. Moreover, many girls may be removed from parental care and end up in institutions because of family violence, including psychological, physical and sexual violence.³⁶ Fear of family or community violence against older or widowed women accused of superstitious practices is also the main driver for those women fleeing to the margins and staying confined in "camps" (see paras. 28 and 48 above).

67. Minority women may face higher rates of violence and greater exposure to incarceration. Similarly, violence has been found to play a significant role in the lives of indigenous women, contributing to the likelihood of their involvement with the criminal justice system.

68. Exposure to violence may increase women's contact with the police and thus increase their risk of criminalization. The Working Group has received reports of women calling the police to complain about domestic violence, only to be subsequently arrested and incarcerated on charges such as disorderly conduct, violation of public peace and order, immigration status or miscarriage. Women who face violence may often be reluctant to contact law enforcement agents for fear of further violence or discrimination against them,

³⁵ See Human Rights Watch, "Guests of the governor: administrative detention undermines the rule of law in Jordan" (2009).

³⁶ Family violence is one of the leading causes of children being removed from their families and placed in institutions. See Paulo Sérgio Pinheiro, *World Report on Violence against Children* (2006).

and remain in a cycle of oppression. That may be particularly true for women identified as “criminals” in the first place, such as those who use drugs, are involved in minor aspects of drug trafficking or prostitution/sex work, or are irregular migrants.

69. Violence may also be used as a tool to coerce women to engage in criminal activity for which they are then imprisoned (see A/68/340). For example, in the drug trade, violence is frequently used to coerce women to become involved in drug trafficking networks, where they are used as mules and treated as dispensable by the ringleaders. The Inter-American Commission on Human Rights has documented cases in many countries in the region it covers, where girls exposed to violence, gangs, trafficking and sexual exploitation are also at high risk of interacting with the criminal justice system, leading to their incarceration.

70. Women may also be subject to criminalization and deprivation of liberty when they respond to the violence that they experience by taking forceful measures of self-defence. When they are accused of crimes following violent altercations, their ability to argue self-defence may be impacted by gender stereotypes that paint men as those who have the right to stand and fight, while women are expected to retreat.³⁷ A review of nine diverse legal systems around the world found that most included no legislative provisions allowing women’s exposure to violence to be considered as a ground of self-defence or a mitigating factor in their convictions or sentencing when they were accused of killing their abusers.³⁸ Furthermore, the assessment of proportionality and immediacy in self-defence does not take into account the difference in physical strength between women and men, and the altered perception of immediate harm in the context of long-term domestic violence. Several stakeholders reported to the Working Group that in some States domestic violence against women might be met with impunity, while women who fought back were treated harshly by the justice system.

2. The instrumentalization of women’s deprivation of liberty in times of conflict

71. Just as interpersonal and private violence have differential and discriminatory effects on women’s lives and liberty, so do broader societal violence and armed conflict. Recent armed conflicts have seen both State and non-State actors using women’s deprivation of liberty as a tool to further their ends.³⁹ In situations of conflict, women’s liberty and bodies are instrumentalized in multiple ways leading to deprivation of liberty.

72. Non-State armed groups have engaged in high-profile abductions or detention of women, who have then been subjected to forced marriage or sexual slavery and forced recruitment for combatant or support roles in conflicts (see A/HRC/32/32/Add.2). Such kidnappings and detention are often in part motivated by attempts to impose a social order based on strict gender roles and the subjugation of women.

73. State authorities responding to conflict may detain and confine women in the service of their own cause. Women who are able to escape from non-State armed groups or who are simply suspected of having been involved with them have been held by the military and other State actors in camps, prisons and other detention sites, rather than receiving the services they need. Measures to combat terrorism and corresponding national security measures sometimes profile and target women, in particular those from certain groups, and sometimes even women human rights defenders. Women and girls may also be targeted and detained based on their religion, ethnicity, tribal identity or place of origin. For example, thousands of Yazidi women and girls from northern Iraq were abducted and detained by the

³⁷ See Mary Anne Franks, “Real men advance, real women retreat: stand your ground, battered women’s syndrome, and violence as male privilege”, *University of Miami Law Review*, vol. 68, No. 4 (2014).

³⁸ See Penal Reform International and Linklaters LLP, “Women who kill in response to domestic violence: how do criminal justice systems respond?” (2016).

³⁹ For example, between 2015 and 2017 a number of women and girls were detained by armed groups or government forces in Iraq, Libya, Myanmar, Nigeria, South Sudan and the Syrian Arab Republic for reasons ranging from charges on grounds of national security, counter-terrorism and association of family members with insurgent groups to investigation/intelligence and sexual exploitation.

forces of Islamic State in Iraq and the Levant (ISIL),⁴⁰ while women who escaped areas held by ISIL have been detained in camps in Iraq and the Syrian Arab Republic on suspicion of involvement with or support for ISIL. The Working Group also notes the blanket imprisonment of women in Chad and Nigeria suspected of having ties with Boko Haram owing to area of origin or perceived exposure. Despite the fact that in many cases the women themselves are not suspected of any wrongdoing, they are placed in detention facilities or other forms of confinement for the alleged involvement of family members with opposing forces.

IV. Conclusions and recommendations

A. Conclusions

74. **Deprivation of liberty involves human rights violations and has devastating consequences for women’s lives, putting them at risk of torture, violence and abuse, unsafe and unsanitary conditions, lack of access to health services and further marginalization. It cuts women off from educational and economic opportunities, from their families and friends, and from the possibility of making their own choices and directing the course of their lives as they see fit.**

75. **Around the world, women are deprived of their liberty in many places and contexts. They are confined in prisons and detention facilities, in hospitals and psychiatric institutions and care homes, in workplaces, in private homes and in conflict and humanitarian settings. They are deprived of their liberty by the State, but also by community members, members of their own families, intimate partners, caregivers, employers and criminal or armed groups.**

76. **Deprivation of liberty is deeply gendered. While there are many forms, they are all tied to causes rooted in discrimination against women. Many forms of deprivation of women’s liberty spring from harmful stereotypes that seek to trap women in subjugation or silence, to punish them for perceived moral or sexual deviancy, or to smother them with overprotection. Those stereotypes are far too often enshrined in national laws.**

77. **Women’s deprivation of liberty is also frequently tied up with violence and conflict, and with poverty, be it through lack of resources or lack of opportunity. Such circumstances trap women, depriving them of choice and often putting them in situations that lead to their confinement.**

78. **Those risks are heightened for women who experience intersectional forms of discrimination, such as women with disabilities, indigenous, migrant or older women, women from racial, ethnic, sexual or gender minorities and other marginalized women, all of whom face additional layers of harmful and debilitating stereotypes. They are more exposed to violence, conflict, and economic “unfreedom” than other women.**

79. **Addressing women’s deprivation of liberty is thus not a simple matter of reducing incarceration or institutionalization, or outlawing forced confinement in domestic settings. Those steps are necessary, but they are not sufficient. Ensuring that women enjoy liberty to the full extent and in equal measure with men will require the transformation of societies to root out harmful stereotypes and economic and social inequities.**

⁴⁰ See Independent International Commission of Inquiry on the Syrian Arab Republic, “Detention in the Syrian Arab Republic: a way forward”, (March 2018), para. 19.

B. Recommendations

80. International human rights law has long required that States take appropriate action to modify social and cultural practices based on ideas of the inferiority or superiority of either sex or on stereotyped gender roles. In order to ensure that such stereotypes are not embodied in law, policy and practice or institutionalized, resulting in women's deprivation of liberty, States should:

(a) Modify or eliminate all laws based on stereotyped gender roles, in alignment with international human rights standards, including any laws giving men and society control over women's decisions, mobility and morality;

(b) Put in place mechanisms to provide opportunities for support to all women to exercise their autonomy and agency, eliminate laws that allow women to be arbitrarily stripped of legal capacity and/or placed under guardianship and guarantee respect for their informed consent at all times;

(c) Ban laws and practices policing, targeting, punishing or confining women in relation to consensual sexual or reproductive behaviour or decisions, including sex work/prostitution, termination of pregnancy or expressions of sexuality;

(d) Put an end to practices of protective institutionalization of survivors or those at risk of gender-based violence and women with disabilities;

(e) Promulgate and implement laws prohibiting harmful traditional, cultural, social or religious practices that lead to the confinement of women and girls, including child and forced marriages and the seclusion of menstruating women and widows;

(f) Provide mandatory, recurrent and effective capacity-building, education and training on the elimination of gender bias and the obligations of States regarding international standards for justice and law enforcement officers, medical personnel, legislators and any other actors who may be involved in decision-making regarding women's deprivation of liberty;

(g) Ensure that educational curricula throughout all levels and types of schooling include training on women's human rights norms as the basis for gender-sensitive education;

(h) Promote and support the implementation of awareness programmes to combat gender stereotypes in the family, community and social and formal institutions;

(i) Support and protect women's engagement in public and political life, including the work of women human rights defenders, and eliminate any laws or policy measures designed to criminalize the public roles of women. Put in place quotas or similar measures for the meaningful participation of women in the political and public sphere.

81. Women's lack of access to economic opportunities, resources and services constricts their choices and creates economic insecurity, and often results in their confinement. In order to minimize deprivation of liberty resulting from women's poverty, States should:

(a) Provide universal adequate, accessible and affordable education, health, legal and social services, and expand social protection systems in a manner that does not discriminate on the basis of gender and incorporates an intersectional and a women's human rights perspective;

(b) Eliminate laws and practices that perpetuate discrimination within the family and the community, and institute and intensify efforts to ensure the awareness and accountability of family and community members, including traditional and religious leaders;

(c) Eliminate discriminatory laws that create barriers to women's formal or informal employment and to their enjoyment of economic and social rights. Expressly guarantee women's right to equality in economic and social life in the private and public sectors, with immediate effect and with special measures to accelerate de facto equality;

(d) Eliminate measures that tend to disproportionately penalize or detain those living in poverty, including cash bail systems and debt-related civil convictions;

(e) Promulgate and enforce regulations governing labour conditions, including in situations of domestic work, to ensure that they do not amount to situations of captivity, and take measures to "formalize" all economic sectors and ensure adequate inspection and social security entitlements for workers;

(f) Incorporate laws, policies and effective programmes that will enhance protection from trafficking in persons, irregular migration and contemporary forms of slavery, and establish regular migration channels.

82. Violence and conflict deeply shape women's lives, often contributing to their deprivation of liberty. In order to counteract those effects, States should take legislative, policy and practical steps to ensure an understanding of the forced confinement of women as a form of gender-based violence that must be eliminated at all levels of government and society. States should therefore:

(a) Pass legislation taking into account the experience of gender-based violence as a defence against criminal charges and a mitigation factor in sentencing;

(b) Ensure that measures addressing conflict, crisis, terrorism and national security incorporate a women's human rights focus and do not instrumentalize women's deprivation of liberty for the purposes of pursuing government aims;

(c) Provide effective protection for women and girls from abduction and detention by non-State criminal or armed groups, guarantee non-recurrence and provide gender-sensitive and comprehensive services and adequate restitution to those who have been held captive by such groups.

83. Numerous international human rights law instruments have long placed obligations on States to eliminate discrimination, but multiple and intersecting forms of discrimination persist in trapping women around the world. In order to combat the disproportionate deprivation of liberty of women in situations of marginalization, States should:

(a) Re-evaluate and reform laws and practices that tend to disproportionately or differently target, police and criminalize any particular group of women, and create accountability mechanisms to prevent, mitigate and remedy the discriminatory application of the law;

(b) Provide targeted, adequate and accessible legal and social services (social protection, education, health, rehabilitation) to groups of women who are disproportionately vulnerable to criminalization or institutionalization;

(c) Initiate targeted policy measures and programmes to tackle the disproportionate criminalization and incarceration of racial, indigenous or other marginalized groups;

(d) Institute systems of community support to break the cycle of incarceration or institutionalization of women with intellectual disabilities and mental health concerns;

(e) Incorporate effective approaches in laws, policies and programmes to address multiple and intersectional forms of discrimination;

(f) Incorporate an understanding of intersectional discrimination in any anti-gender bias training conducted for State officials.

84. In addition, in order to address women's deprivation of liberty with all of its root causes, States and other stakeholders should:

(a) Make available effective gender-specific interventions that aim primarily to divert women away from the criminal justice system, integrate into the national system the standards provided in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), and address the underlying factors leading to women coming into contact with the criminal justice system;

(b) Ensure the availability of effective community-based support, services and opportunities for all women, including in rural areas, particularly those related to health, housing, employment, education, childcare and social security, and guarantee the meaningful participation of women in the community;

(c) Develop alternatives to institutionalization for the support and protection of vulnerable women, in particular community-based and family-based alternatives, and repeal all laws allowing involuntary placements and treatments;

(d) Put in place and enhance social services and support systems for women through appropriate investment and technical capacity, monitor non-State providers of services and facilities, including detention and care facilities, for compliance with obligations relating to women's human rights;

(e) Introduce and implement innovative measures to fight gender stereotypes of all forms and at all levels;

(f) Reform drug-related policies, laws and practices in line with international human rights standards and take steps to integrate the International Guidelines on Human Rights and Drug Policy into policies that are relevant to women;

(g) Design appropriate due diligence measures, in line with human rights obligations, to tackle deprivation of liberty by private parties through law reform, legal redress, the institutional framework and other methods.
