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Arbitrary detention

Report of the Working Group on Arbitrary Detention*, **

Summary

In 2020, working in the exceptional circumstances of the global coronavirus disease (COVID-19) pandemic, the Working Group on Arbitrary Detention, under its regular procedure, adopted 92 opinions concerning the detention of 221 persons in 47 countries. It also transmitted 55 urgent appeals to 27 Governments as well as 150 letters of allegation and other letters to 62 Governments and, in two cases, to other actors, concerning at least 651 identified individuals. Some States informed the Working Group of the measures taken to remedy the situations of detainees and, in numerous cases, the detainees were released.

Due to the COVID-19 pandemic, the Working Group was not able to conduct country visits during the reporting period. It looks forward to resuming such visits as soon as the global health context allows and encourages States to respond positively to its requests for visits.

The Working Group continued to formulate deliberations on matters of a general nature to assist States and stakeholders in preventing and addressing cases of arbitrary detention. This included the development of deliberation No. 12 on women deprived of their liberty, which is annexed to the present report.

In the report, the Working Group also examines the following thematic issues: (a) deprivation of liberty of human rights defenders; (b) forcible transfers of individuals and prohibition of arbitrary detention; and (c) the Declaration against Arbitrary Detention in State-to-State Relations.

* The annex is being circulated without formal editing, in the language of submission only.
** Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.

Contents

I. Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. It was entrusted with the investigation of cases of alleged arbitrary deprivation of liberty according to the standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum seekers and immigrants. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 42/22 of 26 September 2019.

2. During the period from 1 January to 31 October 2020, the Working Group was composed of Sètondji Roland Jean-Baptiste Adjovi (Benin), José Antonio Guevara Bermúdez (Mexico), Seong-Phil Hong (Republic of Korea), Elina Steinerte (Latvia) and Leigh Toomey (Australia). As of 1 November 2020, the Working Group was composed of Miriam Estrada-Castillo (Ecuador), Seong-Phil Hong (Republic of Korea), Mumba Malila (Zambia), Elina Steinerte (Latvia) and Leigh Toomey (Australia).

3. Mr. Guevara Bermúdez served as Chair-Rapporteur of the Working Group from April 2019 to April 2020, and Ms. Steinerte and Ms. Toomey as Vice-Chairs. At the eighty-seventh session of the Working Group, in April 2020, Ms. Toomey was elected as Chair-Rapporteur and Ms. Steinerte was re-elected as Vice-Chair.

II. Activities of the Working Group

4. During the period from 1 January to 31 December 2020, the Working Group held its eighty-seventh, eighty-eighth and eighty-ninth sessions. Due to the travel restrictions resulting from the global coronavirus disease (COVID-19) pandemic, the Working Group decided to meet remotely by videoconference. This was solely in response to the global pandemic and under no circumstances replaces its in-person sessional meetings.

5. Due to the global pandemic, the Working Group was unable to conduct country visits during the reporting period. It looks forward to resuming such visits when the global health context allows and encourages States to respond positively to its requests for visits.

6. In order to facilitate outreach and ongoing information-sharing during the pandemic, the Working Group met remotely with States and non-governmental organizations throughout the reporting period, which included a meeting with civil society in December 2020, and during its ninetieth session, to gather information on issues relating to arbitrary detention and to enhance understanding of the Working Group's methods of work.

A. Deliberations

7. The Working Group continued to formulate deliberations on matters of a general nature to assist States and stakeholders in preventing and addressing cases of arbitrary detention.

8. In this respect, the Working Group formulated its deliberation No. 12 on women deprived of their liberty (see annex). In the deliberation, the Working Group considers the gender-specific dimensions of arbitrary detention and provides guidance to assist States and other stakeholders in preventing and addressing arbitrary detention of women in the criminal justice system, immigration detention, administrative detention, health-care situations and certain private settings. The deliberation also recognizes that not all women experience deprivation of liberty in the same manner, and it is therefore necessary to consider the disparate experience of women who already experience disadvantage. The Working Group recalls in particular that women who experience multiple and intersecting forms of discrimination are at higher risk of being deprived of their liberty.

B. Study on arbitrary detention relating to drug policies

9. In its resolution 42/22, the Human Rights Council requested the Working Group to undertake a study on arbitrary detention relating to drug policies. The preparation for the study commenced in 2019, with initial consultations, the development of a questionnaire and a call for inputs from States and other stakeholders on drug policies. A briefing on the study was given at the sixty-third session of the Commission on Narcotic Drugs, in Vienna in March 2020, and consultations were held with the United Nations Office on Drugs and Crime, the International Narcotics Control Board and other stakeholders. On 4 and 5 March 2021, the Working Group held a virtual expert consultation.

10. A report on the study (A/HRC/47/40) was presented by the Working Group to the Human Rights Council on 2 July 2021, in the context of the Council's forty-seventh session. In that study, the Working Group examines how drug policies may result in human rights violations relating to arbitrary detention and makes recommendations. It draws on its own jurisprudence, positions taken by other human rights mechanisms and United Nations entities, and submissions from States and stakeholders.

C. Handling of communications addressed to the Working Group during 2020

1. Communications transmitted to Governments

11. At its eighty-seventh, eighty-eighth and eighty-ninth sessions, the Working Group adopted a total of 92 opinions concerning 221 persons in 47 countries (see the table below).

2. Opinions of the Working Group

12. Pursuant to its methods of work,[1] in addressing its opinions to Governments, the Working Group drew their attention to Commission on Human Rights resolutions 1997/50 and 2003/31 and Human Rights Council resolutions 6/4, 24/7 and 42/22, in which those bodies requested States to take account of the Working Group's opinions and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily detained and to inform the Working Group of the steps they had taken. On the expiry of a 48-hour deadline following transmission of the opinion to the Governments concerned, the opinions were transmitted to the relevant sources.

[1] A/HRC/36/38.

Opinions adopted at the eighty-seventh, eighty-eighth and eighty-ninth sessions of the Working Group

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
1/2020	Cameroon	Yes	Amadou Vamoulké	Detention arbitrary, categories I and III	None
2/2020	Turkey	Yes	Abdulmuttalip Kurt	Detention arbitrary, categories I, II and V	None
3/2020	Colombia	Yes	Ferney Salcedo Gutiérrez, Yulivel Leal Oros, Jesús Leal Salcedo, Miguel Ángel Rincón Santisteban, Carmen Iraida Salcedo Gutiérrez, Josué Eliecer Rincón Duarte, María Teresa Rincón Duarte and Jerónimo Salcedo Betancourt.	Detention arbitrary, categories II, III and V	No actions taken to implement the opinion. (Information from the Government)
4/2020	Cuba	Yes	Aymara Nieto, Eliecer Bandera, Humberto Rico, José Pompa Lopéz, Melkis Faure, Mitzael Díaz and Silverio Portal	Detention arbitrary, categories I, II, III and V	Although Mr. Rico, Mr. Pompa Lopéz and Mr. Portal were released, this was not an implementation of the opinion. (Information from the source)
5/2020	Bahrain	Yes	Ali Isa Ali Al-Tajer and 19 others	Detention arbitrary, categories I and III	None
6/2020	Egypt	No	Ahmed Tarek Ibrahim Abd El-Latif Ziada	Detention arbitrary, categories I and III	None
7/2020	Algeria	No	El Fadel Breica	Detention arbitrary, categories I, II and III	Mr. Breica was released on 10 November 2019 and is currently in another country. No further actions taken to implement the opinion. (Information from the source)
8/2020	Sri Lanka	No	Delankage Sameera Shakthika Sathkumara	Detention arbitrary, categories I, II, III and V	None

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
9/2020	Mozambique	No	Songolo Abwe, Bahome Amisi, Mulenda Amisi, Ababa Anito, Dax Byamungu, Dominique Nepanepa Kahenga, Kibunga Kasindi, Mwenelwata Kitungano, Sikabwe Kiza, Charles Anzuruni M'massa, Sukuma Maenda, Mathias Mafataki Mahano, William Riziki, Amisi Shomari, Kaskil Sumail and Jacque Nsimba Vela	Detention arbitrary, categories I, III and IV	None
10/2020	Russian Federation	No (late)	Aleksandr Solovyev, Vladimir Kulyasov, Denis Timoshin, Andrey Magliv, Valeriy Shalev, Ruslan Korolev, Viktor Malkov, Yevgeniy Dechko, Vyacheslav Osipov, Valeriy Rogozin, Igor Egozaryan, Sergey Melnik, Valentina Vladimirova, Tatyana Galkevich, Tatyana Shamsheva, Olga Silayeva, Aleksandr Bondarchuk and Sergey Yavushkin	Detention arbitrary, category I (Messrs. Shalev, Korolev, Malkov, Rogozin, Egozaryan and Melnik and Mmes. Vladimirova, Galkevich, Shamsheva and Silayeva) Detention arbitrary, categories II, III and V (all 18 individuals)	Some individuals have been released from pretrial detention or house arrest, but the criminal proceedings against them continue and/or they have been convicted. Mr. Malkov died on 26 April 2020 from a health condition. No further actions taken to implement the opinion. (Information from the source)
11/2020	China	Yes	Cheng Yuan, Liu Dazhi and Wu Gejianxiong	Detention arbitrary, categories I, II, III and V	The individuals remain detained. (Information from the source)
12/2020	Israel	No	Mustafa Hassanat	Detention arbitrary, categories I, III and V	None
13/2020	Libya	No	Mustafa Taleb Younes Abdelkhalek Al Darsi	Detention arbitrary, categories I, II, III and V	None
14/2020	Egypt	No (late)	Amal Fathy, Mohamed Lofty and a minor whose name is known to the Working Group	Detention arbitrary, Ms. Fathy (categories I, II and III); detention arbitrary, Mr. Lofty and the minor (category I)	None
15/2020	Viet Nam	Yes	Phan Kim Khanh	Detention arbitrary, categories I, II, III and V	None

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
16/2020	Viet Nam	Yes	Ngô Văn Dũng	Detention arbitrary, categories I, II, III and V	On 31 July 2020, Mr. Dũng was sentenced to five years' imprisonment followed by two years' probation. He remains detained. The request to provide him with compensation is groundless. (Information from the Government) No actions taken to implement the opinion. Mr. Dũng remains detained. (Information from the source)
17/2020	Nicaragua	No	Miguel Mora and Lucía Pineda	Detention arbitrary, categories I, II and III	No actions taken to implement the opinion. (Information from the source)
18/2020	Bolivarian Republic of Venezuela	Yes	Rubén Darío González Rojas	Detention arbitrary, categories I, II, III and V	None
19/2020	El Salvador	No	Imelda Cortez Palacios	Detention arbitrary, categories I, III and V	Ms. Cortez Palacios was released following a not guilty verdict. (Information from the Government)
20/2020	Bolivarian Republic of Venezuela	Yes	Héctor Armando Hernández Da Costa	Detention arbitrary, categories I and III	Mr. Hernández Da Costa remains detained. (Information from the source)

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
21/2020	Nicaragua	No	Amaya Eva Coppens Zamora, Atahualpa Yupanqui Quintero Morán, Derlis Francisco Hernández Flores, Hansel Amaru Quintero Gómez, Ivannia del Carmen Álvarez Martínez, Jesús Adolfo Tefel Amador, Jordán Irene Lanzas Herrera, José Dolores Medina Cabrera Cabrera, María Margarita Hurtado Chamorro, Marvin Samir López Ñamendiz, Melvin Antonio Peralta Centeno, Neyma Elizabeth Hernández Ruiz, Olga Sabrina Valle López, Roberto Andrés Buchting Miranda, Wendy Rebeca Juárez Avilés and Wilfredo Alejandro Brenes Domínguez	Detention arbitrary, categories I, II and III	The 16 individuals were released through an amnesty law, which did not expunge their criminal records. The Government has thus not implemented the opinion. (Information from the source)
22/2020	Hungary	Yes	Saman Ahmed Hamad	Detention arbitrary, categories I, II and IV	Mr. Hamad was kept in the transit zone, in accordance with Hungarian law. He was moved to an open reception centre, which he left for an unknown location, violating his obligation to cooperate and thus withdrawing himself from the procedure. The case is closed and no further actions are necessary to implement the opinion. (Information from the Government) Mr. Hamad has left Hungary and now resides in another country. (Information from the source)
23/2020	Tajikistan and the Russian Federation	No (late replies from both Governments)	Maksud Ibragimov	Detention arbitrary, categories I, II, III and V	None

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
24/2020	Mexico	Yes	Mónica Esparza Castro and Édgar Menchaca Castro	Detention arbitrary, categories I, III and V	Both individuals were acquitted prior to the adoption of the opinion. The prosecutor appealed and the appeal is pending. The torture allegations are being investigated and there is a criminal trial against the agents suspected of being involved. No reparations have been made. (Information from the Government and the source)
25/2020	Burundi	No	Alexis Sebahene	Detention arbitrary, categories I, III and V	None
26/2020	Tunisia	Yes	Moncef Kartas	Detention arbitrary, categories I and III	No actions taken to implement the opinion, as the detention of Mr. Kartas was not arbitrary or contrary to national or international law. (Information from the Government)
27/2020	Nigeria	No	Omoyele Sowore	Detention arbitrary, categories I, II, III and V	None
28/2020	Mexico	Yes	Miguel Pérez Cruz	Detention arbitrary, categories I and III	No actions taken to implement the opinion. (Information from the Government and the source)
29/2020	Turkey	Yes	Akif Oruç	Detention arbitrary, categories I, II, III and V	No actions taken to implement the opinion. The case of Mr. Oruç is pending before the Supreme Court. (Information from the source)
30/2020	Turkey	Yes	Faruk Serdar Köse	Detention arbitrary, categories I, II and V	None

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
31/2020	United Arab Emirates	Yes	Abdullah Hani Abdullah	Detention arbitrary, categories I and III	Mr. Abdullah was arrested in accordance with applicable rules and legal principles in the United Arab Emirates. He was sentenced by means of a final judgment in an enforceable criminal case, in which all procedures were followed in accordance with national law, and he was tried before a competent, fair, independent and impartial court. His ongoing detention is not arbitrary, and no actions are required in order to implement the opinion. (Information from the Government)
32/2020	China	No	He Fangmei	Detention arbitrary, categories I, II, III and V	Ms. He was released on 10 January 2020, and she continued her campaigning. On 9 October 2020, she was detained again and placed in an unknown government-designated location. No compensation or reparations have been made. (Information from the source)
33/2020	United Arab Emirates and Saudi Arabia	United Arab Emirates (no) Saudi Arabia (yes)	Loujain Alhathloul	Detention arbitrary, categories I, II, III and V	Ms. Alhathloul was released on 10 February 2021, but the probationary period and travel ban orders remain in effect. An appeal of her conviction is ongoing. (Information from the source)

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
34/2020	United Arab Emirates	Yes	Abdullah Awad Salim al-Shamsi	Detention arbitrary, categories I and III	Mr. Al-Shamsi remains detained, and his trial is ongoing. Since the beginning of March 2020, all prison visits have been stopped (due to COVID-19) and phone calls have not been allowed. He is vulnerable to COVID-19 due to a serious health condition (Information from the source)
35/2020	Australia	Yes	Jamal Talib Abdulhussein	Detention arbitrary, categories IV and V	Mr. Abdulhussein was granted a temporary protection visa on 9 January 2020, and has been released from immigration detention. (Information from the Government)
36/2020	Viet Nam	No (late)	Đào Quang Thực	Detention arbitrary, categories I, II, III and V	None
37/2020	Myanmar	No	Zayar Lwin, Paing Phyo Min, Zaw Lin Htut, Kay Khine Htun, Paing Ye Thu and Su Yadana Myint	Detention arbitrary, categories I, II, III and V	The individuals are serving their sentences and are in good health. (Information from the Government)
38/2020	United Republic of Tanzania	No	Tito Elia Magoti	Detention arbitrary, categories I, II, III and V	Mr. Magoti was released in January 2021 after pleading guilty and paying a fine. He spent one year in pretrial detention, and no evidence had been presented to court. (Information from the source)
39/2020	Nicaragua	No	Kevin Roberto Solís	Detention arbitrary, categories I and III	No actions taken to implement the opinion. (Information from the source)
40/2020	Burundi	No	Jean Claude Hamenyimana	Detention arbitrary, categories I, III and V	None

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
41/2020	Bahrain	Yes	Husain Ali Hasan Khamis and eight others	Detention arbitrary, categories I and III	The special investigation unit did not receive any complaints about violation of the rights of most of the individuals, but opened its own investigation following the opinion. If it is proven that their rights have been violated as a result of illegal arrest/detention, they will be compensated. Two torture complaints were filed due to lack of evidence. (Information from the Government)
42/2020	Thailand and Viet Nam	Thailand (no) Viet Nam (yes)	Truong Duy Nhat	Detention arbitrary, categories I, II, III and V	Mr. Nhat remains detained. (Information from the source)
43/2020	Kazakhstan	Yes	Serikhzan Bilash	Detention arbitrary, categories I, II and III	Mr. Bilash completed his probation in December 2019, and in late 2020 he left Kazakhstan for another country, where he now resides. On 26 June 2020, article 174 of the Criminal Code was amended to allow judges to impose a fine rather than a restraint on the liberty of individuals found to have violated the provision concerned. (Information from the Government)
44/2020	Bolivarian Republic of Venezuela	Yes	Antonia de la Paz Yolanda Turbay Hernando	Detention arbitrary, categories I and III	Ms. Turbay Hernando was released by presidential pardon on 31 August 2020. (Information from the source)
45/2020	Mexico	No (late)	Brenda Quevedo	Detention arbitrary, category III	No actions taken to implement the opinion. (Information from the Government and the source)

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
46/2020	Benin	No	Ignace Sossou	Detention arbitrary, categories I, II and III	None
47/2020	Turkey, as well as Kosovo[2]	Turkey (yes) Kosovo (no)	Mustafa Erdem, Yusuf Karabina, Kahraman Demirez, Cihan Özkan, Hasan Hüseyin Günakan and Osman Karakaya	Detention arbitrary, categories I, II, III and V	On 24 February 2021, the special prosecutor's office in Kosovo filed charges against a number of officials for the arbitrary detention and illegal transfer of the six individuals. No further actions taken to implement the opinion, including release of the six individuals. (Information from the source)
48/2020	Turkey and Azerbaijan	Yes (both Governments)	Huseyn Abdullayev	Detention arbitrary, categories I and III	Mr. Abdullayev's physical and mental health condition is deteriorating, and he initiated a hunger strike in April 2021 to protest against non-implementation of the opinion. (Information from the source)
49/2020	United States of America	No	Fernando Aguirre-Urbina	Detention arbitrary, categories I, II, III, IV and V	None
50/2020	Cuba	No (late)	José Daniel Ferrer García	Detention arbitrary, categories I, II, III and V	No actions taken to implement the opinion; Mr. García is under house arrest. (Information from the source)

[2] References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
51/2020	Malaysia and Turkey	Yes (both Governments)	Arif Komiş, Ülkü Komiş and four minors	Detention arbitrary, categories I, II, III and V	The arrest and detention of Mr. Komiş and his family were not arbitrary, and in accordance with international law. Hence, no actions taken to implement the opinion. (Information from the Government of Malaysia)
52/2020	Morocco	No (late)	Ali Salem Bujmaa, a.k.a. Ali Saadouni	Detention arbitrary, categories I, II, III and V	No actions taken to implement the opinion (Information from the source)
53/2020	Algeria	No (late)	Messaoud Leftissi	Detention arbitrary, categories I, II and V	Mr. Leftissi has been released since his acquittal by the court of appeal and exonerated of all charges. This decision is subject to appeal before the court of cassation. All legal procedures complied with national laws, and he was guaranteed due process. He did not request compensation for his preventive detention. (Information from the Government)

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
54/2020	Kuwait	Yes	Zuhair Abdulhadi Haj Al Mahmeed	Detention arbitrary, categories I and III	All judicial and legal procedures undertaken in the case of Mr. Al Mahmeed complied with international standards and obligations, including impartiality and neutrality of the judicial authority. (Information from the Government) No actions taken to implement the opinion. Mr. Al Mahmeed contracted COVID-19 in April 2021, and his health continues to deteriorate as he is still not receiving urgent medical care, including physiotherapy prescribed following surgery. (Information from the source)
55/2020	Burundi	No	Ernest Nyabenda and Patrick Nsengiyumva	Detention arbitrary, categories I, III and V	None
56/2020	Burundi	No	Cadeau Bigirumugisha	Detention arbitrary, categories I, III and V	None
57/2020	Bolivarian Republic of Venezuela	Yes	Juan Pablo Saavedra Mejías	Detention arbitrary, categories I and III	None
58/2020	Japan	Yes	Deniz Yengin and Heydar Safari Diman	Detention arbitrary, categories I, II, IV and V	No actions taken to implement the opinion. (Information from the source)
59/2020	Japan	Yes	Carlos Ghosn	Detention arbitrary, categories I and III	None

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
60/2020	Kuwait	Yes	Maria Lazareva	Detention arbitrary, categories I and III	Proceedings conducted against Ms. Lazareva were legally sound and based on orders and oversight by the judiciary, which is neutral and impartial and guarantees the rights of the accused to a fair trial. Complementary information and clarifications provided. (Information from the Government) No actions taken to implement the opinion. The Government has not only ignored the opinion but has continued to pursue spurious cases against Ms. Lazareva, with additional and ongoing breaches of her due process rights. It has also procured an INTERPOL red notice against her. She has remained in the Embassy of the Russian Federation in Kuwait since 11 November 2019. (Information from the source)
61/2020	United Arab Emirates	No	Amina Mohammed Al Abdouli and Maryam Suliman Al Balushi	Detention arbitrary, categories I, II and III	Both women remain detained despite completing their prison sentences in November 2020, and despite the opinion. (Information from the source)
62/2020	Republic of Congo	No	Benoît Faustin Munene	Detention arbitrary, categories I, II, III and V	None
63/2020	Egypt	No	Nour Al-Dien Abd Allah Ali Abdallah	Detention arbitrary, categories I and III	None

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
64/2020	Gabon	Yes	Brice Laccruche Alihanga, Grégory Laccruche Alihanga, Patrichi Christian Tanasa, Julien Engonga Owono and Geaurge Ndemengane Ekoh	Detention arbitrary, categories I and III	No actions taken to implement the opinion. The situation of the five detainees has deteriorated, and the conditions of detention, including complete isolation for more than a year, will soon have irremediable consequences for their physical and mental health. (Information from the source)
65/2020	Cuba	Yes	Roberto de Jesús Quiñones Haces	Detention arbitrary, categories I, II and III	Mr. Quiñones was released after completion of his sentence, and no actions have been taken to implement the opinion. (Information from the source)
66/2020	Turkey	Yes	Levent Kart	Detention arbitrary, categories I, II, III and V	Mr. Kart was released on 17 September 2020 pending appeal. (Information from the source)
67/2020	Turkey	Yes	Ahmet Dinçer Sakaoğlu	Detention arbitrary, categories I, III and V	None
68/2020	Morocco	Yes	Walid El Batal	Detention arbitrary, categories I, II, III and V	Mr. El Batal was subsequently released on 7 June 2021. (Information from the source)
69/2020	Morocco	No (late)	Mourad Zefzafi	Detention arbitrary, categories I, II and III	None
70/2020	Australia	Yes	Mr. Laltu (alias Somrat Morol)	Detention arbitrary, categories II, IV and V	Mr. Laltu remains in immigration detention. He was found not to engage in the protection obligations of Australia and is awaiting the involuntary removal procedure. (Information from the Government)

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
71/2020	Australia	Yes	Mohammad Qais Niazy	Detention arbitrary, categories IV and V	None
72/2020	Australia	Yes	Said Mohamed Elmahdy Agueib Attia Farag	Detention arbitrary, categories II, IV and V	Mr. Farag was released on a final departure visa on 27 August 2020. (Information from the source)
73/2020	Bolivarian Republic of Venezuela	No	Juan Antonio Planchart Márquez	Detention arbitrary, categories I and III	Mr. Planchart Márquez was allowed to undergo medical treatment but remains detained. (Information from the source)
74/2020	Turkey	Yes	Nermin Yasar	Detention arbitrary, categories I, II, III and V	None
75/2020	Qatar	Yes	Muhammad Iqbal	Detention arbitrary, categories I, III and V	All actions taken against Mr. Iqbal were under the supervision of the competent judicial authority and in conformity with national and international laws. He was released on bail on 14 May 2020 until his conviction under an enforceable judgment after a fair trial. (Information from the Government)
76/2020	El Salvador	No[3]	José Aquiles Enrique Rais López	Detention arbitrary, categories I and III	Mr. Rais López was released prior to transmission of the case to the Government, and lives in exile. The arrest warrant against him is enforceable. The opinion has been published on the website of the Ministry of Foreign Affairs. (Information from the Government)

[3] On 18 December 2020, the Government submitted a late response, after the adoption of the opinion.

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
77/2020	Egypt	Yes	Ramy Shaath	Detention arbitrary, categories I, II, III and V	None
78/2020	China	Yes	Kai Li	Detention arbitrary, categories I and III	Mr. Li remains detained. (Information from the source)
79/2020	Egypt	No (late)	Ahmed Yasser Mahmoud Ahmed Hassan	Detention arbitrary, categories I and III	None
80/2020	Egypt	No	Mohamed Adel Fahmy Ali (known as Mohamed Adel)	Detention arbitrary, categories I, II and III	None
81/2020	Viet Nam	Yes	Ho Van Hai	Detention arbitrary, categories I, II, III and V	Mr. Ho, while on probation, was allowed to leave the country. (Information from the source)
82/2020	China	No	Xu Zhiyong	Detention arbitrary, categories I, II, III and V	None
83/2020	Iran (Islamic Republic of)	Yes	Youcef Nadarkhani	Detention arbitrary, categories I, II, III and V	None
84/2020	Cambodia and Turkey	Cambodia (no);[4] Turkey (yes)	Osman Karaca	Detention arbitrary, categories I, III and V	None
85/2020	Honduras	No (late)	José Daniel Márquez Márquez, Kelvin Alejandro Romero Martínez, José Abelino Cedillo, Porfirio Sorto Cedillo, Orbín Nahúm Hernández, Arnold Javier Alemán, Ewer Alexander Cedillo Cruz and Jeremías Martínez Díaz	Detention arbitrary, categories I, II and III	None

[4] On 16 December 2020, the Government submitted a late response, after the adoption of the opinion.

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
86/2020	Saudi Arabia	Yes	Sheikh Mohammad bin Hassan Al Habib	Detention arbitrary, categories I, II, III and V	The health of Mr. Al Habib, who has been serving a 12-year prison sentence since July 2016, has been deteriorating in prison, due to the lack of adequate medical care for health problems that he suffers from as a result of torture during his detention. He has been denied medical treatment by prison authorities since May 2019. (Information from the source)
87/2020	Bahrain	Yes	Ali Mahdi Abdulhusain Mohamad Alaiwi, Hasan Asad Jasim Jasim Nesaif, Habib Hasan Habib Yusuf, Ali Ahmed Ali Ahmed Fakhrawi, Mohamed Ahmed Ali Ahmed Fakhrawi and Nooh Abdulla Hasan Ahmed Hasan Al Amroom	Detention arbitrary, categories I and III	None
88/2020	India and United Arab Emirates	United Arab Emirates (no (late)) India (yes)	Christian James Michel	Detention arbitrary, United Arab Emirates (categories I and III); detention arbitrary, India (category I)	No actions taken by the Government of India to release Mr. Michel. He is risking his life in light of the COVID-19 outbreak. (Information from the source)
89/2020	Tajikistan	No	Daler Sharipov	Detention arbitrary, categories I, II, III and V	Mr. Sharipov was released on 28 January 2021 after completing his one-year sentence. No further actions taken to implement the opinion. (Information from the source)

Opinion No.	*Countries and areas*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
90/2020	Lebanon	No	Hassan Al Dika	Detention arbitrary, categories I and III	In relation to the death in detention of Mr. Al Dika, the Government confirms that he suffered from several medical conditions and died on 11 May 2019. His conditions of detention complied with national and international standards. The report of the forensic doctor was falsified, and Mr. Al Dika did not die of after-effects of torture. (Information from the Government)
91/2020	India	No	Safoora Zargar	Detention arbitrary, categories I, II and V	None
92/2020	Saudi Arabia	Yes	Mohammed Essam Al-Faraj	Detention arbitrary, categories I, II, III and V	None

3. Follow-up procedure

13. The table above shows information received by the Working Group as at 30 June 2021 pursuant to the follow-up procedure adopted by the Working Group at its seventy-sixth session, held in August 2016.

14. The Working Group thanks the sources and the Governments for their responses in the context of its follow-up procedure and invites all parties to cooperate and provide such responses. It notes, however, that these responses do not necessarily imply the implementation of its opinions. The Working Group encourages sources and Governments to provide comprehensive information on the implementation of its opinions, including on the release of individuals who have been the subject of its opinions, as well as other information, such as on the payment of compensation and/or reparations, the investigation of alleged violations and any other changes in legislation or practices, in accordance with the recommendations made.

4. Release of subjects of the Working Group's opinions

15. The Working Group notes with appreciation the information received during the reporting period on the release of the following subjects of its opinions:

- Mohamed Merza Ali Moosa (opinion No. 59/2019, Bahrain) – released following an amnesty, and imposition of an alternative sentence to work for a charitable fund
- Carlos Marrón Colmenares (opinion No. 80/2019, Bolivarian Republic of Venezuela) – released by court order on 7 January 2020
- Four minors (opinion No. 65/2019, Egypt) – three were released following acquittals and the fourth one received a three-year prison sentence and was released as he had already served more time in prison
- José Leyes Justiniano (opinion No. 61/2019, Plurinational State of Bolivia) – released by a judge who found due process violations
- Amaya Eva Coppens Zamora (opinions No. 43/2019 and No. 21/2020, Nicaragua) – following her conditional release in June 2019 through an amnesty law, she was rearrested on unrelated charges, was released again, and has left the country
- Two minors (opinion No. 73/2019, Bahrain) – released pending trial and subsequently convicted and sentenced to one year on probation
- Huyen Thu Thi Tran (opinion No. 2/2019, Australia) – released on a bridging visa with her 2-year-old minor child
- Jamal Talib Abdulhussein (opinion No. 35/2020, Australia) – granted a temporary protection visa and released from immigration detention
- Said Mohamed Elmahdy Agueib Attia Farag (opinion No. 72/2020, Australia) – released on a final determination visa
- Levent Kart (opinion No. 66/2020, Turkey) – released pending appeal
- Ignace Sossou (opinion No. 46/2020, Benin) – released at the end of his sentence, which was reduced on appeal
- Josiel Guía Piloto (opinion No. 63/2019, Cuba) – conditional release
- Saman Ahmed Hamad (opinion No. 22/2020, Hungary) – was moved from the transit zone to an open reception centre
- Roberto Eugenio Marrero Borjas (opinion No. 75/2019, Bolivarian Republic of Venezuela) – released from detention and able to travel internationally to reunite with his family
- Carlos Miguel Aristimuño de Gamas (opinion No. 81/2019, Bolivarian Republic of Venezuela) – released in September 2020
- Antonia de la Paz Yolanda Turbay Hernando (opinion No. 44/2020, Bolivarian Republic of Venezuela) – released by presidential pardon on 31 August 2020

- Chayapha Chokepornbudsri (opinion No. 3/2018, Thailand) – released following reduction of her sentence
- Humberto Rico and Silverio Portal (opinion No. 4/2020, Cuba) – Mr. Rico was released in July 2019 following a presidential pardon and Mr. Portal was released on 1 December 2020 on health grounds
- Imelda Cortez Palacios (opinion No. 19/2020, El Salvador) – released following a verdict finding her not guilty
- Sixteen individuals (opinion No. 21/2020, Nicaragua) – all released through an amnesty law, which did not expunge their criminal record
- Monica Esparza and Edgar Menchaca (opinion No. 24/2020, Mexico) – released prior to the adoption of the opinion, after being found innocent by the court
- Tito Elia Magoti (opinion No. 38/2020, United Republic of Tanzania) – released after pleading guilty and paying a fine
- Ho Van Hai (opinion No. 81/2020, Viet Nam) – while on probation was allowed to leave the country
- Evelyn Beatriz Hernández Cruz and Sara del Rosario Rogel García (opinion No. 68/2019, El Salvador) – Ms. Hernández was conditionally released and subsequently acquitted and Ms. del Rosario was conditionally released
- Messaoud Leftissi (opinion No. 53/2020, Algeria) – released following acquittal by the court of appeal and exonerated of all charges
- Walid El Batal (opinion No. 68/2020, Morocco) – released following reduction of sentence

16. The Working Group expresses its gratitude to those Governments that released detainees who had been subject of its opinions. However, it regrets that various States have not cooperated in implementing the opinions and urges those States to do so as a matter of urgency. The Working Group recalls that the continuous detention of those individuals is a continued violation of their right to liberty under article 9 of the Universal Declaration of Human Rights and, for States parties, under article 9 of the International Covenant on Civil and Political Rights.

5. Reactions from Governments concerning previous opinions

17. During the reporting period, the Working Group received several reactions from Governments concerning its previous opinions.

18. On 17 January 2020, the Government of Cambodia rejected the findings of the Working Group in its opinion No. 9/2018 concerning Kem Sokha.

19. On 8 May 2020, the Government of Viet Nam opposed opinion No. 45/2019, on the grounds of the Working Group's findings and judgments being biased and not taking into account the official information provided.

20. In a note verbale dated 8 September 2020, the Government of the United Republic of Tanzania noted that it had already provided comprehensive and sufficient explanations in respect of the case of Tito Elia Magoti (opinion No. 38/2020) through its response to a joint communication (AL TZA 1/2020) from special procedures.

21. On 11 September 2020, the Government of Kuwait replied to opinion No. 82/2019, recalling that it had informed the Working Group that Waleed Antoine Moubarak was not incarcerated in Kuwait and had left the country. The Government noted with surprise that the Working Group had issued an opinion on arbitrary detention about a person who was not on its territory.

22. The Government of Kuwait raised an objection to opinion No. 54/2020 and expressed concern that the Working Group had not taken into account the information provided by the Government but had only relied on the information from the source in its opinion. The Government also provided complementary information and clarifications.

23. In relation to opinions No. 35/2020 and No. 70/2020, the Government of Australia stated that it had always engaged in good faith with the Working Group. However, the Government respectfully disagreed with the recommendations set out in the opinions.

24. On 30 November 2020, the Government of Viet Nam opposed opinion No. 16/2020 and expressed its regrets that the information provided by Viet Nam concerning Ngô Văn Dũng had not been considered objectively. The arrest, investigation, prosecution and trial of Mr. Dũng had been necessary and had been conducted in accordance with Vietnamese and international laws.

25. The Government of Morocco opposed opinion No. 68/2020 on the grounds of use of politically biased language and terminology. The Government noted that this went beyond the strict mandate entrusted to the Working Group, and that the comments from Morocco had not been taken into account.

26. The Government of Japan raised an objection to opinion No. 59/2020 and pointed out that it contained factual errors. The Government expressed its intention to continue providing clear explanations to facilitate correct understanding of the criminal justice system of Japan.

27. The Government of Japan also raised an objection to opinion No. 58/2020. The Government noted that it was based on factual errors regarding the cases of Mr. Diman and Mr. Yengin as well as on a clear misunderstanding of the immigration control and residency management system in Japan.

28. The Government of the Russian Federation reiterated its disagreement with opinions No. 10/2020 and No. 23/2020 and insisted on the need for these opinions to be reviewed (see paras. 29–30 below).

6. Requests for review of adopted opinions

29. The Working Group considered the requests for review of the following opinions:

- Opinion No. 31/2018, concerning Mohamed Al-Bambary (Morocco)
- Opinion No. 58/2018, concerning Ahmed Aliouat (Morocco)
- Opinion No. 60/2018, concerning Mbarek Daoudi (Morocco)
- Opinion No. 22/2019, concerning Ahmad Khaled Mohammed Al Hossan (Saudi Arabia)
- Opinion No. 23/2019, concerning Laaroussi Ndor (Morocco)
- Opinion No. 67/2019, concerning a group of students (Morocco)
- Opinion No. 78/2019, concerning Mounir Benabdellah (Morocco)
- Opinion No. 10/2020, concerning 18 individuals (Russian Federation)
- Opinion No. 23/2020, concerning Maksud Ibragimov (Tajikistan and Russian Federation)

30. After examining the requests for review, the Working Group decided to maintain its opinions on the basis that none of the requests met the criteria outlined in paragraph 21 of its methods of work.

7. Reprisals against subjects of the opinions of the Working Group

31. The Working Group notes with grave concern that it continues to receive information, including in the context of its follow-up procedure, about reprisals suffered by individuals who have been the subject of an urgent appeal or an opinion or whose cases have given effect to a recommendation of the Working Group.

32. Between 1 January and 31 December 2020, the Working Group received allegations of reprisals against:

- Walid El Batal (opinion No. 68/2020, Morocco)
- Aziz El Ouahidi, Elkantawi Elbeur, Mohammed Dadda and Abdelmoula El Hafidi (opinion No. 67/2019, Morocco)

33. In its resolutions 12/2 and 24/24, the Human Rights Council called upon Governments to prevent and refrain from all acts of intimidation or reprisal against those who sought to cooperate or had cooperated with the United Nations, its representatives or its human rights mechanisms, or who had provided testimony or information to them. The Working Group encourages Member States to take all measures possible to prevent reprisals.

8. Urgent appeals

34. During the period from 1 January to 31 December 2020, the Working Group sent 55 urgent appeals to 27 Governments and 150 allegation letters and other letters to 62 Governments and, in two cases, to other actors, concerning at least 651 identified individuals.

35. The list of countries concerned by urgent appeals is as follows: Albania (2), Algeria (1), Bahrain (1), Belarus (1), Cameroon (3), Canada (1), China (4), Egypt (4), India (1), Iran (Islamic Republic of) (11), Iraq (3), Malaysia (1), Mauritania (1), Mexico (1), Myanmar (1), Nigeria (2), Panama (1), Philippines (1), Russian Federation (1), Saudi Arabia (2), Turkey (3), Uganda (2), Ukraine (1), United Arab Emirates (2), United States of America (1), Venezuela (Bolivarian Republic of) (2), Viet Nam (1).[5]

36. In conformity with paragraphs 22 to 24 of its methods of work, the Working Group, without prejudging whether a detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported and appealed to them, often jointly with other special procedure mandate holders, to take the measures necessary to ensure that the detained persons' rights to life, liberty and physical and psychological integrity were respected.

37. When an appeal made reference to the critical state of health of certain persons or to particular circumstances, such as a failure to execute a court order for release or to give effect to a previous opinion of the Working Group seeking the release of the person, the Working Group requested that all measures necessary for the immediate release of the detained person be taken. In accordance with Human Rights Council resolution 5/2, the Working Group integrated into its methods of work the prescriptions of the Code of Conduct for Special Procedure Mandate Holders of the Human Rights Council relating to urgent appeals and applies them.

38. During the period under review, the Working Group also sent 150 letters of allegation and other letters to two other actors and to 62 States, namely: Algeria (2), Azerbaijan (1), Bahrain (1), Bangladesh (2), Belarus (5), Bolivia (Plurinational State of) (2), Burundi (2), Cambodia (3 allegation letters and 1 other letter), Chad (1), Chile (1), China (7 allegation letters and 2 other letters), Colombia (4), Comoros (1), Côte d'Ivoire (2), Cuba (1), Democratic Republic of the Congo (1), Egypt (9 allegation letters and 1 other letter), El Salvador (1), Ethiopia (1), France (1 other letter), Guinea (1), India (5 allegation letters and 1 other letter), Indonesia (3), Iran (Islamic Republic of) (6), Iraq (2), Israel (3), Jordan (2), Lao People's Democratic Republic (2), Libya (1), Madagascar (2), Malawi (2), Mexico (6), Montenegro (1), Morocco (2), Myanmar (2), Niger (1), Nigeria (1), Pakistan (3), Panama (1), Peru (1), Philippines (1 allegation letter and 1 other letter), Qatar (1), Russian Federation (5), Rwanda (1), Saudi Arabia (2 allegation letters and 1 other letter), Serbia (1), Syrian Arab Republic (1), Tajikistan (1), Tanzania (United Republic of) (1), Thailand (1), Turkey (5 allegation letters and 1 other letter), Turkmenistan (2), Uganda (2), Ukraine (1), United Arab Emirates (1 allegation letter and 1 other letter), United Kingdom of Great Britain and Northern Ireland (1 other letter), United States of America (7), Uzbekistan (1), Venezuela (Bolivarian Republic of) (3), Viet Nam (4), Zambia (1) and Zimbabwe (1).

39. The Working Group wishes to thank those Governments that responded to its appeals and that took steps to provide it with information on the situation of the individuals concerned, especially the Governments that released such individuals. The Working Group recalls that, in paragraph 4 (f) of its resolution 5/1, the Human Rights Council requested all States to cooperate and engage fully with the United Nations human rights mechanisms.

[5] The full text of urgent appeals will be available from www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

D. Country visits

1. Requests for visits

40. During 2020, the Working Group sent reminders of its earlier requests to visit the Syrian Arab Republic (22 October 2020) and Libya (22 October 2020).

2. Responses of Governments to requests for country visits

41. In a note verbale dated 6 March 2020, the Permanent Mission of Turkey replied that the Working Group was invited to visit Turkey from 23 to 27 November 2020, for no longer than one week (five business days) in accordance with its usual practice. In a note verbale dated 2 September 2020, the Permanent Mission advised that, due to the COVID-19 pandemic, the visit of the Working Group was postponed until 2021. The Government noted that the Working Group was invited to visit Turkey for nine days (five business days and two weekends before and after) in 2021.

42. In a letter dated 24 March 2020, the Permanent Mission of Australia stated that the Government requested the Working Group to defer its visit to Australia scheduled for 25 May to 5 June 2020 on account of the COVID-19 pandemic. The Government of Australia remained committed to facilitating this visit at a mutually convenient time, and stated that it would work with the Working Group to reschedule the visit once the pandemic had passed.

43. In a note verbale dated 10 December 2020, the Permanent Mission of Canada expressed its readiness to host a visit by the Working Group once circumstances permitted.

44. In a note verbale dated 15 December 2020, the Permanent Mission of Libya conveyed the approval of the Government of Libya of the Working Group's visit request, noting that the Government would like the Working Group to suggest dates and provide details about the visit in order to coordinate with the authorities concerned.

III. Thematic issues

45. During the reporting period, the Working Group considered thematic issues raised in its jurisprudence and practice.

A. Deprivation of liberty of human rights defenders

46. In December 1998, the General Assembly adopted by consensus the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).[6] Recognizing its importance, the Working Group urged States to implement its principles "to demonstrate a real and sincere commitment to respect for human rights".[7] At that time, the Working Group had received several communications involving "repressive measures" taken against individuals, and expressed its concern that human rights defenders were frequently at serious risk of detention.[8]

47. While good practices continue to give effect to the Declaration on Human Rights Defenders,[9] human rights defenders remain vulnerable to arbitrary deprivation of liberty. In 2020, approximately 28 per cent of opinions adopted by the Working Group involved the detention of human rights defenders.[10] In all these cases, the Working Group found that human rights defenders had been arbitrarily detained due to their activities in support of human rights. This represents an alarming targeting of civil society members, activists, journalists, bloggers, those advocating against deficiencies in governance, and other dissenting voices. In many cases, human rights defenders were subjected to enforced

[6] General Assembly resolution 53/144, annex.
[7] E/CN.4/2000/4, executive summary, and paras. 65–66 and 69.
[8] Ibid.
[9] See, for example, A/HRC/31/55.
[10] Opinions adopted in 2020 are listed in sect. C above.

disappearance,[11] unexplained death in custody,[12] torture and ill-treatment,[13] intimidation, harassment and threats to their security and to their family members,[14] as well as travel bans, asset freezing and forfeiture, removal of nationality, and placement on terrorist lists.[15] Lawyers representing them also suffered reprisals through criminal charges, office raids, surveillance, and removal from the case,[16] contrary to the duty of States to ensure that lawyers are able to perform their functions without interference.[17]

48. The Working Group observed with concern attempts to silence human rights defenders by sentencing them to lengthy imprisonment terms.[18] Several human rights defenders were detained under vague and overly broad national security and anti-terrorism provisions, giving the authorities wide discretion to criminalize their peaceful activities.[19] Others were charged with public order offences that allegedly occurred during peaceful protests or gatherings.[20] Some of the human rights defenders had been previously targeted by the authorities[21] or were members of a group, such as environmental defenders, whose work had been repeatedly criminalized by States,[22] suggesting that their detention was based on discriminatory grounds such as their "political or other opinion" or "status as a human rights defender".[23] As the Working Group has consistently stated, detaining individuals on the basis of their activities as human rights defenders violates their right to equality before the law and equal protection of the law under articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant.[24] The Working Group also notes that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination, and it has found that human rights defenders are a protected group entitled to equal protection of the law under article 26 of the Covenant, falling within category V of the Working Group.[25]

49. Information received by the Working Group also suggests that human rights defenders who belong to marginalized groups themselves, or who seek to protect the rights of other marginalized people, are at significant risk of detention. Women human rights defenders have been arrested and subjected to gendered risks, including threats to publicize fabricated sexual images, denial of female hygiene products while in custody, death threats to a mother and her children, verbal attacks for believing in feminism, and virginity testing, suggesting detention on the discriminatory basis of their gender. This treatment highlights the additional

[11] See, for example, opinions No. 82/2020, No. 77/2020, No. 52/2020, No. 50/2020, No. 42/2020, No. 33/2020, No. 32/2020, No. 16/2020 and No. 11/2020.

[12] See opinion No. 36/2020.

[13] See, for example, opinions No. 85/2020, No. 68/2020, No. 52/2020, No. 38/2020, No. 33/2020, No. 21/2020, No. 7/2020 and No. 4/2020.

[14] See, for example, opinions No. 77/2020, No. 43/2020, No. 32/2020, No. 14/2020 and No. 11/2020.

[15] See opinions No. 77/2020 and No. 43/2020.

[16] See opinions No. 43/2020 and No. 42/2020. See also opinions No. 17/2019, No. 83/2018 and No. 34/2017.

[17] United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9; Basic Principles on the Role of Lawyers, principles 16–22; and A/HRC/45/16, para. 54.

[18] See, for example, opinions No. 42/2020, No. 36/2020 and No. 15/2020.

[19] See, for example, opinions No. 91/2020 (inflammatory speech); No. 89/2020 (arousing national, racial, local or religious hostility); No. 82/2020 and No. 11/2020 (subversion of State power); No. 81/2020 and No. 15/2020 (propaganda against the State); No. 80/2020 (spreading false news); No. 43/2020 (inciting social discord); No. 42/2020 (abuse of power); No. 32/2020 (picking quarrels and provoking trouble); and No. 16/2020 (disruption of security).

[20] See, for example, opinions No. 21/2020, No. 4/2020 and No. 3/2020.

[21] See, for example, opinions No. 50/2020 (detention over 100 times); No. 42/2020 (prior sentence for criticizing the authorities); No. 21/2020 (prior Working Group opinion that the defenders had been arbitrarily detained); No. 18/2020 (persecution for over seven years for defence of labour rights); No. 16/2020 (prior arrest for similar activities); and No. 4/2020 (arrest without charge at least 130 times).

[22] See, for example, opinions No. 16/2020 (other members of an NGO arrested at the same time); and No. 3/2020 (repeated criminalization of environmental defenders).

[23] See opinion No. 45/2016; and A/HRC/36/37, para. 49.

[24] See, for example, opinions No. 50/2020, No. 42/2020, No. 38/2020, No. 33/2020, No. 32/2020 and No. 27/2020.

[25] See, for example, opinion No. 81/2020. See also opinion No. 45/2016.

risks faced by women human rights defenders when detained. [26] Other human rights defenders have been detained for advocacy to remove a ban on women driving, seeking to change restrictive rules on male guardianship, calling for an end to sexual harassment, speaking out against the stoning of women for adultery, promoting free hygiene products for schoolgirls, attending a meeting on International Women's Day, and protecting women and children's rights and their education.[27] Similarly, human rights defenders who sought to protect the rights of children with disabilities, of persons living with communicable diseases, and of LGBTIQ+ persons, have been detained and punished for their work.[28]

50. The arbitrary detention of human rights defenders is a serious human rights violation that occurs worldwide and must be urgently addressed by States. In some States, the detention of human rights defenders and other individuals is widespread, prompting the Working Group to warn that systematic violation of the right to freedom from arbitrary arrest and detention may constitute a serious violation of international law.[29] Human rights defenders play a vital role in reducing the incidence of arbitrary deprivation of liberty through monitoring places of detention, advocacy for change in laws and practices, provision of advice on implementing human rights standards, and awareness-raising on the right to liberty.[30]

B. Forcible transfers of individuals and prohibition of arbitrary detention

51. During the reporting period, the Working Group noted a pattern in cases brought under the regular communications procedure [31] as well as under the urgent communications procedure[32] involving attempts to forcibly remove, extradite or deport an individual from one State to another, effectively circumventing the extradition process required by the rule of law and safeguards against arbitrary detention.[33]

52. Noting that such cases amount to close to 10 per cent of the Working Group's jurisprudence under the regular communications procedure during the reporting period, the Working Group wishes to clarify the international human rights law which must be observed in such situations.

53. These cases have involved various allegations, including extradition proceedings which have either been protracted and not fully completed[34] or unsuccessful[35] but which have nevertheless led to a forcible removal of the victim from the jurisdiction. In some cases, the authorities have not initiated extradition proceedings; instead, national agents detained the victim at the request of the foreign authorities[36] or handed over the victim(s) to agents of a foreign Government.[37] The victims in these cases have been forcibly transferred to airports where they would be bundled up into the cargo compartment of a plane and removed from the country;[38] detentions have been carried out in the middle of the night, executed by a large

[26] See opinions No. 33/2020, No. 24/2019, No. 21/2019, No. 61/2018, No. 57/2017, No. 50/2017, No. 48/2017 and No. 1/2016.

[27] See opinions No. 33/2020, No. 14/2020, No. 33/2019, No. 83/2018, No. 57/2017, No. 48/2017 and No. 1/2016.

[28] See opinions No. 32/2020, No. 11/2020, No. 57/2017 and No. 14/2017.

[29] See, for example, opinions No. 82/2020, No. 80/2020, No. 42/2020, No. 36/2020, No. 33/2020, No. 32/2020, No. 18/2020, No. 16/2020, No. 15/2020, No. 14/2020 and No. 11/2020.

[30] A/HRC/45/16/Add.2, para. 87.

[31] See opinions No. 23/2020, No. 33/2020, No. 42/2020, No. 47/2020, No. 48/2020, No. 51/2020, No. 84/2020 and No. 88/2020.

[32] See, inter alia, ALB 1/2020, ALB 2/2020 and TUR 3/2020; see also AZE 1/2019, KSV 1/2018, TUR 6/2018 and GAB 2/2018. These communications are available from https://spcommreports.ohchr.org/Tmsearch/TMDocuments.

[33] The Working Group notes that the Working Group on Enforced or Involuntary Disappearances is also examining this matter.

[34] See, for example, opinion No. 88/2020.

[35] See, for example, opinion No. 23/2020.

[36] See, for example, opinion No. 84/2020.

[37] See, for example, opinions No. 47/2020 and No. 42/2020.

[38] See, for example, opinion No. 23/2020.

number of masked officers;[39] victims have been prevented from notifying their family members and lawyers of their whereabouts,[40] and have been subjected to extensive interrogations and forced to sign documents.[41] Additionally, victims have been held incommunicado[42] and even forcibly disappeared[43] prior to and/or after their forcible transfer to the other State. In some cases, such forced transfers have concerned a large number of victims transferred in coordinated operations,[44] while other cases have involved families with children, including minors.[45] In other cases, the extradition requests have been approved by the extraditing State as a de facto swap or the capture and return to that State of a high-profile detainee.[46]

54. When considering these cases, the Working Group has consistently recalled that international law regarding extradition provides procedures that must be observed by countries in returning individuals to face criminal proceedings in another country to ensure that their right to a fair trial is protected.[47] While the Working Group does not dispute the right of each State to deport aliens who pose threats to its national security,[48] this does not place such aliens outside the protection of the law.[49] Article 13 of the Covenant obliges States to ensure that aliens lawfully in its territory are expelled only in pursuance of a decision reached in accordance with the law, to allow them to submit reasons against the expulsion and have the case reviewed by, and be represented before, a competent authority.[50] This is also required by article 9 of the Universal Declaration of Human Rights.[51] Involuntary expulsion to a foreign State without a hearing by judicial authorities cannot be in conformity with due process.

55. The Working Group underlines that the right to challenge the legality of detention before a court, as required by articles 3, 8 and 9 of the Universal Declaration of Human Rights and articles 2 (3) and 9 (1) and (4) of the Covenant, as well as principles 11, 32 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, belongs to everyone.[52] Equally, the right to be notified of the reasons for the arrest or detention and to be promptly presented before a judicial authority belongs to everyone.[53] Forcible transfers which fail to respect the fundamental requirements of due process can never have a legal basis and will therefore always fall under category I of the Working Group.

56. The Working Group also notes that such cases have involved denial of the right to legal counsel, which is procedurally inherent in the right to liberty and security of person and the right to prohibition of arbitrary detention, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant, as well as principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers. It recalls that persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including

[39] See, for example, opinion No. 51/2020.
[40] See, for example, opinion No. 47/2020.
[41] See, for example, opinion No. 88/2020.
[42] See, for example, opinions No. 23/2020 and No. 84/2020. See also A/HRC/13/42.
[43] See, for example, opinions No. 33/2020 and No. 42/2020.
[44] See, for example, opinion No. 47/2020.
[45] See, for example, opinion No. 51/2020. See also opinion No. 11/2018.
[46] See, for example, opinion No. 88/2020.
[47] See opinions No. 42/2020, para. 60; No. 33/2020, para. 63; No. 23/2020, para. 58; No. 10/2019, para. 71; and No. 11/2018, para. 53.
[48] Human Rights Committee, *V.M.R.B. v. Canada*, communication No. 236/1987; and Human Rights Committee, *J.R.C. v. Costa Rica*, communication No. 296/1988.
[49] *Alzery v. Sweden* (CCPR/C/88/D/1416/2005).
[50] See opinion No. 23/2020.
[51] See opinion No. 47/2020.
[52] See also the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.
[53] See, for example, opinion No. 51/2020.

immediately after the moment of apprehension.[54] The Working Group reiterates that access to legal counsel from the outset of detention applies to everyone, including foreign nationals, and is an essential safeguard in ensuring that the detainee can challenge the legality of his or her detention.[55]

57. The Working Group further observes the denial of consular assistance in such cases, and, noting the limited availability of remedies for individuals in the international sphere, recalls[56] that consular protection is invaluable for foreign nationals who are disadvantaged by their lack of familiarity with local laws, customs and languages.

58. The Working Group reiterates that the right to be informed of the right to consular assistance without delay under article 36 (1) (b) of the Vienna Convention on Consular Relations applies to all detained foreign nationals. This and other violations of the rights guaranteed under article 36 (1) of the Vienna Convention constitute grave violations of the rights to due process and to a fair trial under articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 of the Covenant, as well as principle 16 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.[57]

59. Furthermore, the Working Group notes that the cases of forcible transfer have involved complete disregard for the fundamental principle of non-refoulement. The Working Group recalls that individuals should not be expelled to another country when there are substantial grounds for believing that their life or freedom would be at risk[58] or that they would be in danger of torture or ill-treatment.[59] The risk of arbitrary detention in the receiving State, [60] or in a third-party transit State, must be among the elements taken into consideration.

60. The Working Group recalls that the State which forcibly removes an individual from its jurisdiction cannot absolve itself from responsibility over what happens to that person in the jurisdiction to which he or she has been forcibly removed. It has therefore consistently held that the removing State is fully responsible for the human rights violations suffered by the individual in the receiving State. The Working Group calls upon all States to refrain from forcible transfers of individuals circumventing due process established by international human rights law and disregarding the safeguards against arbitrary detention.

C. Declaration against Arbitrary Detention in State-to-State Relations

61. The Working Group welcomes the initiative of Canada in launching the Declaration against Arbitrary Detention in State-to-State Relations[61] and its Partnership Action Plan to advance the Declaration, endorsed so far by 63 States. The Working Group recalls its grave

[54] Opinion No. 84/2020, para. 43. See also Human Rights Committee, general comment No. 32 (2007), para. 34; and the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, principle 9 and guideline 8.

[55] Opinion No. 81/2020, para. 81; see also A/HRC/45/16, paras. 50–53.

[56] Opinions No. 84/2020, No. 88/2020 and No. 47/2020.

[57] See General Assembly resolutions 72/149, para. 32; 72/179, para. 4 (k); 73/175, para. 7 (b); 74/166, para. 17 (g); 74/167, para. 13; and 74/168, para. 6 (j); as well as Human Rights Council resolutions 42/24, para. 5; and 40/20, para. 2 (j). See also rule 62 (1) of United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); art. 10 of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live; and the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, guideline 21.

[58] A/HRC/4/40, paras. 44–45.

[59] See opinions No. 23/2020, No. 51/2020 and No. 84/2020.

[60] See opinion No. 42/2020.

[61] Available at www.international.gc.ca/news-nouvelles/assets/pdfs/arbitrary_detention-detention_arbitraire-declaration-en.pdf.

concern about the detention of foreign nationals and its recommendations for the proper and prompt consular assistance as an essential safeguard against arbitrary detention.[62]

62. The Declaration against Arbitrary Detention in State-to-State Relations seeks to further the absolute prohibition of arbitrary detention as envisaged in article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant, premised on the universal[63] and customary nature of this prohibition as non-derogable.[64] The worldwide prohibition of arbitrary detention is a clear testament to its universally binding nature under customary international law[65] making any derogations impermissible.[66]

63. The Declaration against Arbitrary Detention in State-to-State Relations was launched on 15 February 2021 in Ottawa; this was followed by the presentation of its Partnership Action Plan, announced on 5 May 2021, to advance its dissemination and implementation. Its aims and purposes relate closely to the concerns expressed by the Working Group in the past.[67] Therefore, the Working Group commends this initiative born out of the prevalence of instances where foreign nationals are detained in a country in order to gain leverage in relations with the States of their nationality, and it stands ready, within the remits of its mandate, to support the Partnership Action Plan and engage with all endorsing States.

IV. Conclusions

64. **In 2020, the Working Group continued its work, in the extraordinary circumstances of the global pandemic, in addressing the large number of submissions received, including through its regular communications procedure. Adoption of opinions was set as a priority, resulting in the adoption of a total of 92 opinions, concerning 221 persons in 47 countries.**

65. **The Working Group notes with concern the response rate from States under its regular communications procedure, where States provided a timely response to the Working Group's communications and requests for information in approximately 53 per cent of the cases in which it adopted an opinion in 2020.**

66. **The Working Group has taken note of an increased response rate in the context of its follow-up procedure, both from sources and Governments, as compared to the previous year, with responses having been received in approximately 58 per cent of cases in 2020. Regrettably, an increased response rate does not necessarily imply increased implementation of the opinions.**

67. **While the Working Group continues to respond to as many requests for its action as possible and to process cases in a timely and efficient manner in accordance with paragraph 15 of Human Rights Council resolution 42/22, it continues to face an ongoing backlog of cases.**

68. **Throughout the reporting period, the Working Group continued to explore various thematic issues to assist stakeholders in preventing arbitrary detention. This included formulating a deliberation, elaborating on thematic topics in the present report and completing the study on arbitrary detention relating to drug policies.**

[62] See, for example, opinions No. 89/2017, No. 45/2017, No. 7/2017, No. 56/2016, No. 53/2016 and No. 28/2016. See also A/HRC/39/45, paras. 50–58

[63] American Convention on Human Rights, art. 7; African Charter on Human and Peoples' Rights, art. 6; Arab Charter on Human Rights, art. 14; and Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 5. See also Human Rights Committee, general comment No. 35 (2014), para. 2.

[64] E/CN.4/2002/77, para. 60 (a); and A/HRC/42/39/Add.1, para. 65.

[65] A/HRC/22/44.

[66] Ibid., paras. 43–50.

[67] A/HRC/39/45, paras. 50–58; and revised deliberation No. 5 (A/HRC/39/45, annex).

V. Recommendations

69. **The Working Group calls upon States to increase their cooperation in responding to regular and other communications, by reporting through the follow-up procedure on the implementation of the Working Group's opinions (including on the provision of appropriate remedies and reparations to victims of arbitrary detention), and by responding positively to requests for country visits.**

70. **The Working Group encourages States to give full effect to the Declaration on Human Rights Defenders by ensuring that human rights defenders are not deprived of their liberty as a result of their activities. This requires putting an end to practices that silence human rights defenders for their work, such as lengthy imprisonment terms, detention under vague and overly broad laws, and the repeated targeting of those who protect the rights of others, particularly defenders who act on behalf of, or belong to, marginalized groups.**

71. **The Working Group also encourages States to afford all due process guarantees, and especially the right to legal representation and the right to challenge the legality of detention, to all those who are to be expelled or extradited from their jurisdiction, and to ensure that any such expulsions or extraditions do not result in arbitrary deprivation of liberty.**

72. **While reiterating its serious concerns at the detention of foreign nationals in a State in circumstances where their foreign nationality has served as a reason for their deprivation of liberty, the Working Group welcomes the adoption of the Declaration against Arbitrary Detention in State-to-State Relations and calls upon all States to endorse the Declaration and to take the necessary measures to implement it in practice along with its Partnership Action Plan.**

73. **The Working Group calls upon States to continue efforts to close the implementation gap between international standards and the realities encountered by women deprived of their liberty, by incorporating the guidance provided in its deliberation No. 12 into national laws, policies and practices. Priority must be given to alternatives to detention for women, ensuring that women are not detained on discriminatory grounds, providing dedicated and appropriate detention facilities for female detainees, and addressing specific areas of concern identified in deliberation No. 12 in all detention contexts.**

Annex

Deliberation No. 12 on women deprived of their liberty

I. Introduction

1. With the recent 10th anniversary of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the 'Bangkok Rules'), the Working Group is of the view that it is an opportune time to consider and reflect upon the unique challenges that face women[1] deprived of their liberty.

2. The Bangkok Rules seek to address the gender-specific needs of women in contact with the criminal justice system, both in relation to non-custodial alternatives to detention for women offenders and the conditions of detention for women prisoners.

3. Regrettably, there remains a significant implementation gap between the norms contained in such international standards[2] and the lived experience of women deprived of their liberty. The Working Group remains concerned that women continue to be arbitrarily deprived of their liberty in violation of their human rights, particularly in circumstances where they are detained directly or indirectly because of their sex or gender, or where their gender-specific needs are not taken into account.

4. Although there has been increased engagement by women with the Working Group's mandate in recent years,[3] women continue to be underrepresented in the opinions of the Working Group. As of 2019, only 8 per cent of the individuals whose situations have been considered in the Working Group's opinions since its establishment were identifiably women. The Working Group urges women and other stakeholders to continue bringing situations involving the arbitrary deprivation of liberty of women to the attention of the Working Group as appropriate. The Working Group is conscious of the different challenges experienced by women deprived of their liberty and that such detention may occur in different settings, be it the criminal justice context or healthcare or other settings. The Working Group will continue to devote attention to the various contexts in which women are detained during its country visits.

5. The present deliberation considers the gender-specific dimensions of arbitrary detention and provides guidance to assist States and other stakeholders to prevent and address arbitrary detention of women in the criminal justice system, immigration detention, administrative detention, healthcare situations and certain private settings.

6. This deliberation recognizes that not all women experience deprivation of liberty in the same manner and it is therefore necessary to consider the disparate experience of women who already experience disadvantage, including women with disabilities, older women, indigenous women, women affected by extreme poverty, homeless women, women sex workers, women who use drugs, non-national women, including migrants, asylum seekers and refugees, lesbian, bisexual, transgender and gender diverse women and intersex persons,[4] women human rights defenders and activists and women belonging to national or ethnic, cultural, religious or linguistic minorities, amongst others. In particular, the Working Group

[1] For the purposes of this Deliberation, references to women should be read to include women and girls.

[2] See also the United Nations Standard Minimum Rules for the Treatment of Prisoners (the 'Nelson Mandela Rules'), A/RES/70/175, rules 11 (a), 28, 45 (2), 48 (2), 58 (2), 81; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), A/RES/40/33, rule 26.4.

[3] A/HRC/45/16, para. 49.

[4] A/HRC/36/37, para. 46; A/HRC/30/37, annex, para. 8; Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies (A/HRC/45/16, annex II), para. 27; Human Rights Committee, general comment No. 35, para. 3.

recalls that women who experience multiple and intersecting forms of discrimination are at higher risk of being deprived of their liberty.[5]

II. Alternatives to detention

7. While women constitute a minority of the prison population, there has been a considerable growth in the female prison population worldwide,[6] at a significantly disproportionate rate to that of men. In the last twenty years, the number of women and girls in prison has increased by approximately 53 per cent, while the male population has increased by approximately 20 per cent.

8. According to international human rights law, personal liberty is the principle, and detention should be the exception rather than the rule.[7] States should consider gender-sensitive alternatives to detention for women,[8] and make those alternatives available to women on an equal basis with men.[9] The right to challenge the legality of detention, including the right to seek alternatives to detention, belongs equally to women in all settings where women are deprived of their liberty. In order to make this right a reality, it is essential that women are informed of and afforded their right to legal assistance of their choice at any time during their detention, including immediately after their apprehension.[10]

9. States should ensure the availability of non-custodial measures at all stages of the criminal justice process, including diversion, pretrial and sentencing alternatives. The right to equality before the law requires that judicial practices be gender-sensitive and not blind to contextual factors that may be relevant to a woman's offending, including any history of gender-based violence, any caregiving responsibilities that women may have and other compounding vulnerabilities.[11] Non-custodial sentences for pregnant women and women with dependent children should be given priority where appropriate, with the best interests of the child as a primary consideration.[12] Alternatives to detention must also be made available on a non-discriminatory basis so that, for example, electronic monitoring devices (such as bracelets or tagging) are publicly funded and available to all women regardless of their ability to pay for such alternatives.[13]

10. States must also consider alternatives to detention in the context of immigration detention. This may include measures such as reporting at regular intervals to the authorities, community-based solutions, release on bail or other securities, or stay in open centres or at a designated place.[14] States must ensure that any such measures are not in themselves discriminatory, and are not combined with conditions that make release impracticable or inaccessible for women migrants, refugees or asylum seekers,[15] such as excessive bond amounts.[16] Similarly, alternatives to detention, particularly the provision of care in the community, should be prioritized for women with disabilities, including psychosocial, intellectual and other disabilities, rather than institutional confinement.[17]

[5] A/HRC/41/33, para. 16.

[6] It has been estimated that women represent between 2 and 9 per cent of the total prison population worldwide, see A/68/340, para. 1; Roy Walmsley, World Female Imprisonment List (Institute for Criminal Policy Research, 4th edn, 2017), p. 2.

[7] A/HRC/27/48/Add.5, para. 79; A/HRC/19/57, paras. 48–58.

[8] Bangkok Rules, rules 57–63; Committee on the Elimination of Discrimination against Women, General recommendation No. 33, para. 48.

[9] Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders 1980, A/CONF.87/14/Rev.1, Resolution. 9, Specific needs of women prisoners, para. 2.

[10] A/HRC/30/37, annex, paras. 12–15, 67–71.

[11] Bangkok Rules, rules 57–63.

[12] Convention on the Rights of the Child, art. 3 (1); Bangkok Rules, rules 64; UN Guidelines for the Alternative Care of Children, A/RES/64/142, para. 48; Human Rights Council Resolution 10/2, para. 13. See also Nelson Mandela Rules, rule 29.

[13] A/HRC/39/45/Add.1, para. 38; A/HRC/45/16, para. 58.

[14] Revised deliberation No. 5 on deprivation of liberty of migrants (A/HRC/39/45, annex), para. 17.

[15] Ibid, para. 17; A/HRC/36/37/Add.2, paras. 28, 30.

[16] A/HRC/36/37/Add.2, para. 28.

[17] A/HRC/39/45/Add.2, paras. 48–50, 60–64, 86(c), 89; A/HRC/41/33, paras. 44, 80(d), 83(d).

11. States should consider, in particular, measures to ensure that detention does not result in the unnecessary separation of women from their children,[18] as this may violate the right to protection of the family[19] and the rights of children not to be separated from their parents against their will.[20]

III. Deprivation of liberty of women on discriminatory grounds

12. The Working Group regards deprivation of liberty as arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. [21] These prohibited grounds of discrimination are non-exhaustive.[22]

13. Accordingly, the arrest or detention of women on the basis of their sex or gender is prima facie discriminatory, in violation of articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1), 3 and 26 of the International Covenant on Civil and Political Rights (the 'Covenant'), and therefore constitutes arbitrary detention.[23]

14. As women often experience multiple and intersecting forms of discrimination[24] they may be particularly vulnerable to being arrested or detained on the basis of discriminatory grounds.[25] States must address and take into account the situation of women who face particular discrimination which may lead to their arbitrary detention, including, but not limited to, girls; women with disabilities, including psychosocial and intellectual disabilities; lesbian, bisexual, transgender women and intersex people; non-nationals, including migrants regardless of their migration status, refugees and asylum seekers, internally displaced women, stateless women and trafficked women or women at risk of being trafficked; women accused or convicted of a crime; women who have or are suspected to have engaged in the preparation, commission or instigation of acts of terrorism; women drug users; women with dementia; women human rights defenders and activists; older women; women living with HIV/AIDS and other serious communicable or chronic diseases; indigenous women; sex workers; minorities as based on national or ethnic, cultural, religious and linguistic identity, and women who are targeted for violating traditional gender stereotypes and norms (e.g. for honour-related offences).[26]

15. In determining whether a woman has been arbitrarily detained on the basis of discriminatory grounds, relevant factors to consider may include whether:

(a) the deprivation of liberty was part of a pattern of persecution against the detained woman (e.g. a woman was targeted on multiple occasions through previous detention, acts of violence or threats);[27]

(b) other persons with similarly distinguishing characteristics have also been persecuted;

[18] Bangkok Rules, rule 58; Opinion No. 75/2017, paras. 58, 63.
[19] International Covenant on Civil and Political Rights, art. 23; International Covenant on Economic, Social and Cultural Rights, art. 10.
[20] Convention on the Rights of the Child, art. 9; A/HRC/20/24, para. 40.
[21] A/HRC/36/38, para. 8 (e).
[22] The Working Group may determine that an individual or group has been deprived of their liberty on the grounds of discrimination on the basis of "any other status"; see, e.g. Opinion No. 45/2016, para. 44.
[23] See, e.g. Opinions No. 33/2020; No. 61/2018; No. 1/2016.
[24] See, e.g. Committee on the Elimination of Discrimination against Women, General recommendation No. 33, para. 8.
[25] See, e.g. Opinion No. 1/2016, para. 38.
[26] A/HRC/30/37, annex, para. 8; A/HRC/36/37, para. 46.
[27] See, e.g. Opinion No. 61/2018, para. 72.

(c) the authorities have made statements to, or conducted themselves toward, the detained woman in a manner that indicates a discriminatory attitude (e.g. female detainees threatened with rape or forced to undergo virginity testing);[28]

(d) the context suggests that the authorities have detained a woman on discriminatory grounds or to prevent them from exercising their human rights (e.g. women human rights defenders detained after expressing their political opinions);[29] and

(e) the alleged conduct for which the woman is detained is only a criminal offence for members of her group (e.g. criminalization of abortion).[30]

16. The prohibition of detention on discriminatory grounds includes both *de jure* and *de facto* discrimination.

17. Women must not be deprived of their liberty on the basis of laws which are *de jure* discriminatory, such as laws which solely or disproportionately affect women, including laws which directly target women in relation to their sex or gender, or which are based upon traditional gender stereotypes and norms.[31] Further, laws which criminalize forms of behaviour that are not criminalized or punished as harshly if they are performed by men or forms of behaviour that can be performed only by women are prima facie discriminatory.[32] This includes offences related to the exercise of reproductive rights, such as abortion, and certain sexual and/or "honour"-related offences such as adultery and prostitution.[33] In some circumstances, detention pursuant to discriminatory laws may constitute arbitrary detention on the grounds that the law violates international human rights standards and consequently the detention lacks a legal basis.[34]

18. States must urgently review their legislative frameworks and amend or repeal any such laws that lead to the discriminatory deprivation of liberty of women.[35]

19. States must ensure that women are not subject to *de facto* discrimination resulting in the deprivation of their liberty. Laws, policies and practices must not be applied in such a manner so as to result in or have the effect of women being deprived of their liberty directly or indirectly because of their sex or gender.[36] Accordingly States should review legislation, charging practices, arrest procedures and profiling practices to ensure that they do not discriminate against women. For example, ostensibly gender-neutral laws must not be applied or enforced in a manner which disproportionately impacts women,[37] or which targets or profiles particular women because of their sex, gender or other protected characteristics.[38] In addition, States must take steps to eliminate gender stereotyping of women in the criminal justice system, and ensure that women are not detained on the basis of non-conformity with gender stereotypes or due to harmful and patriarchal cultural norms.[39]

[28] See, e.g. Opinion No. 1/2016, para. 37.
[29] See, e.g. Opinion No. 24/2015, para. 44.
[30] See, e.g. Opinions No. 19/2020, para. 73; No. 68/2019, para. 115.
[31] Committee on the Elimination of Discrimination against Women, General recommendation No. 33, paras. 21–22.
[32] Ibid, paras. 47, 51 (l).
[33] See infra paras. 66–68.
[34] A/HRC/36/38, para. 8 (a); see Opinion No. 42/2012, para. 29 (even when the arrest and detention of a person is carried out in conformity with national legislation, the Working Group is mandated to ensure that the detention is also consistent with international human rights law); see generally Opinions No. 4/2019, para. 49; No. 69/2019, para. 21; No. 40/2018, para. 45; No. 1/2018, paras. 60, 65; No. 43/2017, para. 34; No. 14/2017, para. 49; Human Rights Committee, General comment No. 35, paras. 11–12.
[35] Convention on the Elimination of All Forms of Discrimination against Women, art. 2; Committee on the Elimination of Discrimination against Women, General recommendation No. 33, para. 21.
[36] Committee on the Elimination of Discrimination against Women, General recommendation No. 28, para. 5.
[37] See, e.g. A/HRC/45/16/Add.2, para. 43.
[38] See, e.g. Opinion No. 61/2018, para. 72.
[39] Committee on the Elimination of Discrimination against Women, General recommendation No. 33, paras. 7, 8, 26.

20. The prohibition of non-discrimination requires States to take positive measures in order to achieve the substantive equality of women.[40] In addition, States must take steps to provide additional protection to women who may be at risk of arbitrary deprivation of their liberty. A failure by a State to take such measures may itself constitute discrimination, leading to arbitrary deprivation of liberty.

IV. Conditions of detention

21. The Working Group urges all States to implement full observance of the Bangkok Rules and the Nelson Mandela Rules. To this end, States must ensure that dedicated and appropriate detention facilities are available to accommodate female detainees, including pre-trial detention facilities and prisons for convicted women.

22. Poor, and often inhumane, conditions of detention have been reported around the world affecting both women and men, including overcrowding, unsanitary conditions, lack of food and water, inadequate healthcare and limited contact with family and support networks. The Working Group considers that in certain circumstances, conditions of detention may severely and adversely affect the ability of women to challenge the legality of their detention and to participate in their own defence, in violation of the right to the equality of arms and to a fair trial.[41] Moreover, such detention conditions are contrary to international human rights law and raise issues of torture or cruel, inhuman or degrading treatment or punishment.[42]

23. The Working Group recognizes that women experience additional and different obstacles relating to conditions of detention based on their sex or gender. In this regard, a number of recurring issues of concern regarding the conditions of detention of women have come to the attention of the Working Group, including:

(a) Torture or cruel, inhuman or degrading treatment of female detainees,[43] including rape and sexual assault (and threats thereof) during interrogation and detention;[44]

(b) Lack of dedicated detention facilities for female detainees[45] and failure to provide separate facilities for female and male detainees;[46]

(c) Separation of women and children in immigration facilities;[47]

[40] Convention on the Elimination of All Forms of Discrimination against Women, art. 2; Committee on the Elimination of Discrimination against Women, General recommendation No. 28, paras. 9, 16, 24.

[41] Universal Declaration of Human Rights, arts. 10, 11 (1); International Covenant on Civil and Political Rights, arts. 9, 14; see Opinions No. 74/2020, para. 74 (ill-treatment, including detention in an overcrowded cell, sleep deprivation, lack of clean drinking water and lack of access to a shower); No. 61/2020, para. 84 (physical and psychological suffering); No. 52/2018, para. 79 (j) (overcrowded, unhygienic and inhuman conditions); No. 47/2017, para. 28 (torture, including beatings and rape); No. 29/2017, para. 63 (severe beating and being brought to court on a stretcher); E/CN.4/2004/3/Add.3, para. 33.

[42] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 1 (1), 16 (1). See generally CAT/OP/27/1.

[43] Nelson Mandela Rules, rule 1; Universal Declaration of Human Rights, art. 5; International Covenant on Civil and Political Rights, art. 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 2 (1), 16 (1); see generally CAT/OP/27/1; Opinions No. 61/2020, para. 84; No. 33/2020, para. 90; No. 21/2019, para. 44.

[44] Opinions No. 61/2020, para. 82; No. 33/2020, para. 90; No. 31/2019, para. 38; No. 21/2019, para. 29; No. 33/2017, para. 90; No. 1/2016, para. 37. See further, A/68/340, paras. 34–38; CEDAW/C/ETH/CO/8, paras. 55–56; CAT/OP/27/1, para. 25.

[45] A/HRC/42/39/Add.1, paras. 47–50; CAT/OP/27/1, paras. 29, 39.

[46] Nelson Mandela Rules, rule 11 (a); Opinion No. 21/2019, para. 48. See CEDAW/C/ETH/CO/8, paras. 55–56; CAT/OP/27/1, para. 43.

[47] Bangkok Rules, rules 52, 58; UN News, ‘Children separated at border, suffering alarming and prolonged effects: UN rights experts’, 2018, <news.un.org/en/story/2018/10/1023712>.

(d) Failure to respect the hygiene needs of women, including inadequate facilities that do not protect women's privacy,[48] and failure to provide personal hygiene items;[49]

(e) Inadequate mental and physical health care,[50] including failure to consider women's specific health needs and failure to provide adequate prenatal and postnatal care and treatment to women and children;[51]

(f) Searches that are used to harass, intimidate or unnecessarily intrude upon women's privacy and/or violate their dignity or physical autonomy, integrity or security;[52] and

(g) Failures to protect women from, and investigate, harassment and abuse from staff and detainees.[53]

V. Particular areas of concern

Intersectionality and causes of detention of women

24. Women are at risk of arbitrary detention not solely due to their sex and gender, but also due to discrimination inherently linked to other intersecting factors, which may increase their likelihood of coming into contact with the criminal justice system and which can affect the likelihood and length of their incarceration.[54]

25. The disproportionate incarceration of women for crimes related to poverty, such as theft, fraud, inability to pay debts and other offences related to homelessness or poor living conditions,[55] constitutes discrimination on the basis of economic condition or any other status. States must repeal or amend any laws, policies or practices which result in the discriminatory detention of women living in poverty,[56] and ensure that women living in poverty are not profiled or targeted for detention.

26. Women's poverty may also result in a lack of due process and procedural safeguards which may violate the right to fair trial. States must ensure that women without adequate means are able to access effective legal representation at no cost.[57] In addition, women must not be imprisoned in pre-trial detention solely by reason of an inability to post bail, in particular in relation to low-level offences,[58] due to an inability to pay a fine,[59] or inability to

[48] Nelson Mandela Rules, rules 15–18; Bangkok Rules, rule 5; A/HRC/36/37/Add.1, para. 43; Opinion No. 61/2020, para. 83; A/68/340, para. 42.

[49] Bangkok Rules, rule 5; Opinion No. 57/2017, para. 48; Joint Amicus Curiae Submission by the Working Group on Discrimination against Women and Girls and the Working Group on Arbitrary Detention on the case of *Joy Moses & 5 Ors v The Minister, FCT & 13 Ors* (Federal High Court of Nigeria), p. 6; A/HRC/22/44/Add.2, para. 96; A/HRC/42/47/Add.1, para. 46; CEDAW/C/MDA/CO/6, paras. 40–41; CAT/OP/27/1, para. 28; AL EGY 16/2020.

[50] International Covenant on Civil and Political Rights, art. 10 (1); Nelson Mandela Rules, rules 24–35; Bangkok Rules, rules 10–18; Opinions No. 61/2020, para. 92; No. 21/2019, para. 48; No. 48/2017, para. 51; A/HRC/36/37/Add.1, para. 43. See also CEDAW/C/BLR/CO/8, para. 44; CEDAW/C/GBR/CO/8, paras. 57–58.

[51] Nelson Mandela Rules, rule 28; Bangkok Rules, rule 48; Opinion No. 35/2016, paras. 19–20; A/68/340, paras. 44–50; CEDAW/C/KHM/CO/6, paras. 44–45; CAT/OP/27/1, para. 28; AL EGY 16/2020.

[52] Nelson Mandela Rules, rules 51–52; Bangkok Rules, rules 19–21; Opinion No. 61/2020, para. 83; CEDAW/C/49/D/23/2009, para. 2.7; A/68/340, para. 43; CAT/OP/27/1, para. 27; AL EGY 16/2020.

[53] Opinion No. 61/2020, para. 22; CEDAW/C/BLR/CO/8, para. 44; CEDAW/C/ZWE/CO/6, paras. 45–46.

[54] A/HRC/39/45/Add.2, para. 66; A/HRC/41/33, paras. 34, 51–53.

[55] A/HRC/39/45/Add.2, paras. 60–64, 89(a), 90(a); A/HRC/41/33, para. 52.

[56] A/HRC/41/33, para. 81 (d).

[57] International Covenant on Civil and Political Rights, art. 14 (3) (d); Human Rights Committee, General comment No. 32, para. 10; A/HRC/30/37, annex, paras. 12–15, 67–61; Opinion No. 57/2012, para. 22.

[58] Committee on the Elimination of Discrimination against Women, General recommendation No. 33, paras. 47 (d), 51 (p).

[59] See, e.g. Opinion No. 10/2010.

pay a bond in relation to administrative or immigration detention.[60] In particular, States should implement measures to ensure that women's income and capacity to pay should be taken into account in setting bail, bonds and fines, with such amounts limited to that which is necessary to secure the woman's appearance or to protect the community.[61] Additionally, the lower social and educational status of women may in some cases lead to the violation of their fair trial rights (e.g. women may be less likely to understand the charges or the legal procedure, or less likely to be properly consulted by defence counsel owing to their status in society or through having a male family member acting on their behalf).

27. The Working Group is concerned by the discriminatory application of public order offences such as loitering, vagrancy, public nuisance and public indecency, which are often applied to women experiencing poverty[62] and women sex workers.[63] To the extent that such laws are so vague or broad so as to breach the principle of legal certainty, the detention of women under such laws may lack a legal basis, and therefore constitute arbitrary detention.[64]

28. In this connection, women sex workers are routinely targeted by law enforcement and subject to arbitrary arrest and detention, which is ultimately premised upon the social control of women's morality and sexuality.[65] The direct criminalization of sex work, or the indirect targeting of sex workers for public order offences such as vagrancy, is discriminatory and a violation of international law.[66] States must repeal laws which directly or effectively criminalize sex work, and cease any practices which target, arrest and detain women in relation to sex work.[67]

29. Criminal and administrative detention as a result of drug control laws and policies disproportionately affects women[68] and can constitute arbitrary detention.[69] Women have high rates of imprisonment for drug related offences, with approximately 35 per cent of women in prison incarcerated for drug offences in comparison to only 19 per cent of male prisoners.[70] The causes of women's interaction with the criminal justice system in relation to drug offences are complex, and are often linked to other factors such as poverty and coercion,[71] and may also reflect systemic gender inequality in society more broadly.

Detention of women in relation to reproductive health

30. The Working Group remains deeply concerned regarding the continued practice of detaining women in relation to the exercise of their fundamental reproductive rights.

31. The criminalization of forms of behaviour that can only be performed by women is prima facie discriminatory, and therefore laws which criminalize conduct related to the consequences of a lack of access to and enjoyment of the highest attainable standard of health,

[60] A/HRC/36/37/Add.2, paras. 51–53, 93 (a).
[61] A/HRC/36/37/Add.2, para. 93 (a); E/CN.4/2002/77, para. 60 (b) and (c).
[62] A/HRC/39/45/Add.2, paras. 60–64, 89 (a), 90 (a).
[63] Joint Amicus Curiae Submission by the Working Group on Discrimination against Women and Girls and the Working Group on Arbitrary Detention on the case of *Joy Moses & 5 Ors v The Minister, FCT & 13 Ors* (Federal High Court of Nigeria), p. 8; A/HRC/41/33, para. 36.
[64] Joint Amicus Curiae Submission by the Working Group on Discrimination against Women and Girls and the Working Group on Arbitrary Detention on the case of *Joy Moses & 5 Ors v The Minister, FCT & 13 Ors* (Federal High Court of Nigeria), para. 12.
[65] Ibid, p. 8.
[66] Ibid, pp. 8–10; A/HRC/39/45/Add.2, paras. 64, 90(a); Committee on the Elimination of Discrimination against Women, General recommendation No. 35, para. 29 (c) (i).
[67] Joint Amicus Curiae Submission by the Working Group on Discrimination against Women and Girls and the Working Group on Arbitrary Detention on the case of *Joy Moses & 5 Ors v The Minister, FCT & 13 Ors* (Federal High Court of Nigeria), pp.18–19; A/HRC/41/33, para. 80 (c).
[68] A/HRC/41/33, para. 32.
[69] A/HRC/30/36, paras. 57–62.
[70] UNODC, 'Women and drugs: Drug use, drug supply and their consequences', 2018, p. 9.
[71] A/68/340, paras. 10–11.

or that criminalize the exercise of women's reproductive rights must be considered as prima facie discriminatory.[72]

32. Many States continue to prohibit or severely restrict women's access to safe services for the termination of pregnancy, exposing women to criminal liability and associated detention for seeking or obtaining abortions, with no exceptions or allowance for extenuating circumstances.[73] Such laws reflect a form of gender stereotyping, instrumentalizing women's bodies, and in effect penalizing women for conduct which contravenes socialized gender roles and expectations.[74]

33. Laws which criminalize or severely restrict women's access to abortion are not only prima facie discriminatory, but may also constitute gender-based violence[75] and may violate a number of other provisions of international human rights law, including a woman's right to life[76] and the prohibition against torture or cruel, inhuman or degrading treatment.[77]

34. The Working Group is particularly concerned about the practice, in some States and regions, of criminalizing women who suffer obstetric emergencies.[78] Laws which criminalize miscarriages and other pregnancy complications which result in the death of the foetus are prima facie discriminatory and reflect systemic gender discrimination in which women are often expected to place the potential life resulting from their pregnancy above their own life.[79] The detention of women in these circumstances is unnecessary, disproportionate and serves no legitimate purpose.[80] Obstetric emergencies should be treated as a medical emergency with appropriate physical and mental healthcare provided to women as a matter of urgency.

35. The detention of women in relation to obstetric emergencies also reflects structural problems surrounding women's ability to access and enjoy the highest attainable standard of health. In particular, restrictive abortion laws and policies disproportionately impact upon marginalized and disadvantaged women, particularly women living in poverty,[81] reflecting deep discrimination against economically disadvantaged women who are unable to access necessary healthcare, including reproductive healthcare.[82]

36. In addition, the detention of women in these circumstances is often accompanied by a lack of due process,[83] with women suffering systemic violations of their procedural rights such as a lack of effective legal assistance,[84] the irregular collection of evidence, such as the practice of extracting confessions from women seeking emergency care,[85] and the assessment of evidence through a gendered lens based on stereotypes concerning women's role in society.[86]

37. The Working Group is also concerned about other laws, policies and practices which result in the detention of pregnant women, or women who have just given birth. Pregnant

[72] Committee on the Elimination of Discrimination against Women, General recommendation No. 33, paras. 47(a) and 51(l); Opinions No. 19/2020, para. 73; No. 68/2019, para. 115.

[73] A/68/340, paras. 13–15.

[74] A/HRC/31/57, para. 42; A/HRC/32/44, para. 79.

[75] Committee on the Elimination of Discrimination against Women, General recommendation No. 35, para. 18.

[76] Human Rights Committee, General comment No. 36, para. 8; Committee on Economic, Social and Cultural Rights, General comment No. 22, para. 10.

[77] Committee on Economic, Social and Cultural Rights, General comment No. 22, para. 10; Committee on the Elimination of Discrimination against Women, General recommendation No. 35, para. 18; A/HRC/31/57, paras. 14, 43–44.

[78] Opinions No. 19/2020; No. 68/2019; E/C.12/SLV/CO/3-5, para. 22; CEDAW/C/SLAV/CO/8-9, para. 37 (b)

[79] Opinion No. 68/2019, para. 110.

[80] Ibid, para. 114.

[81] Opinion No. 68/2019, paras. 100, 114; OHCHR, 'Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the end of his mission to El Salvador', 2017, <www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22412&LangID=E>.

[82] A/HRC/32/44, para. 80; Opinion No. 68/2019, para. 114.

[83] CCPR/C/SLV/CO/7, para. 16; Opinion No. 68/2019, paras. 86–97.

[84] A/HRC/17/26/Add.2, para. 68.

[85] A/HRC/22/53, para. 46.

[86] Opinion No. 68/2019, para. 102

women must not be shackled or otherwise restrained during transfers to hospitals, gynaecological examinations and birth.[87] Laws, policies and practices which result in the post-delivery detention of women and their new-born children in public and private health-care facilities due to their inability to pay their medical bills[88] are prima facie discriminatory and may constitute an arbitrary deprivation of liberty. In addition, civil laws which allow for the confinement and involuntary treatment of pregnant women suspected of substance abuse are also prima facie discriminatory in that a woman's pregnancy, and therefore her gender, is the factor leading to the deprivation of liberty.[89] Any confinement of women in these circumstances must take place voluntarily and be accompanied by sufficient due process guarantees.[90]

38. Finally, States must ensure that women's rights to sexual and reproductive health are respected and ensured during any periods of detention. Women must not be subject to forced or coerced sterilization whilst in detention, including in administrative detention or detention in health-care facilities,[91] and must not be detained for the purpose of forcibly administering such services.

Detention of LGBTIQ+ persons

39. Lesbian, bisexual, transgender and queer women and intersex persons continue to be subject to arbitrary arrests and detention solely by reason of their sexual orientation or gender identity or expression. In addition, when deprived of their liberty, LGBTIQ+ persons are at significant risk of violence, sexual abuse and other violations of their human rights.

40. The arrest or detention of individuals based on discriminatory grounds, including on the basis of their actual or perceived sexual orientation or gender identity, is per se arbitrary under international law and in violation of articles 2 (1), 3 and 26 of the Covenant and articles 2 and 7 of the Universal Declaration of Human Rights.[92]

41. The criminalization of sexual relations between consenting adults, or of a person's gender identity and expression, such as laws prohibiting cross-dressing or imitating persons of the opposite sex,[93] is prima facie discriminatory and constitutes an arbitrary interference with the privacy of individuals in violation of article 17 of the Covenant and article 12 of the Universal Declaration of Human Rights.[94] Accordingly, the arrest and detention of LGBTIQ+ persons on the basis of such laws is arbitrary not only as it constitutes a violation of international law on the grounds of discrimination based on sexual orientation or gender identity,[95] but also because there is no legal basis for such detention as such laws violate States' obligations under the Covenant and the Universal Declaration of Human Rights.[96]

42. In addition, the arrest and detention of LGBTIQ+ persons on the basis of their sexual orientation or gender identity, such as in relation to morality, debauchery, crimes against the order of nature, public or grave scandal, or indecent act offences[97] are similarly discriminatory and in violation of international law.[98]

[87] Bangkok Rules, rule 24; Nelson Mandela Rules, rule 48 (2); CAT/C/USA/CO/2, para. 33; A/74/137, para. 22.

[88] A/74/137, para. 23; CAT/C/KEN/CO/2, para. 27; WHO/RHR/14.23.

[89] A/HRC/36/37/Add.2, paras. 72–74.

[90] Ibid, para. 94 (b).

[91] CAT/C/KEN/CO/2, para. 27; CAT/C/NAM/CO/2, paras. 34–35.

[92] Opinions No. 14/2017; No. 25/2009; No. 42/2008; No. 22/2006; No. 7/2002; CCPR/C/50/D/488/1992.

[93] A/HRC/29/23, paras. 15, 44.

[94] CCPR/C/50/D/488/1992; A/HRC/45/16/Add.2, para. 45; Opinion No. 14/2017, para. 47.

[95] A/HRC/36/38, para. 8(b) and (e); Opinion No. 14/2017, para. 50.

[96] A/HRC/36/38, para. 8(a); Opinion No. 14/2017, para. 49. See generally International Commission of Jurists, Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity (2007), principles 7–10.

[97] A/HRC/29/23, para. 44.

[98] Opinion No. 7/2002, para. 28; A/HRC/19/41, para. 47.

43. States must urgently review any such criminal laws and amend or repeal any provisions which discriminate against the LGBTIQ+ community to bring them into line with international standards.[99]

44. Practices such as "reparative therapies" or "conversion therapies", as well as other forms of intrusive and irreversible treatments, continue to be forcibly administered upon LGBTIQ+ persons without their consent and in violation of their human rights.[100] LGBTIQ+ persons must not be detained for the purposes of forcibly administering such therapies, both in private and public facilities such as hospitals, psychiatric institutions, specialized camps, places of worship or in the home.[101]

45. LGBTIQ+ persons are particularly vulnerable to discrimination, violence and torture and ill-treatment contrary to international human rights law when deprived of their liberty.[102] The Working Group is concerned by ongoing reports of disproportionate and systemic gender-based violence and abuse against LGBTIQ+ persons in detention, particularly the significantly higher prevalence of sexual assault against LGBTIQ+ persons, including the "corrective rape" of lesbian detainees.[103] To the extent that these conditions contravene the prohibition of torture or cruel, inhuman or degrading treatment and are employed with a purpose to punish, coerce a confession or to further discriminate against LGBTIQ+ persons, the detention of those persons is arbitrary.[104]

46. States must take measures in order to protect the rights of LGBTIQ+ persons in detention, and to address their specific and unique needs, including establishing appropriate gender-specific conditions of detention.[105]

47. Transgender women should not be automatically placed in male prisons, noting their increased risk of sexual assault and rape.[106] The facilities in which LGBTIQ+ persons are placed should be determined on a case-by-case basis, having due regard to each individual's gender identity and expression,[107] and in accordance with the provisions of the Bangkok Rules.

Detention of non-nationals, including migrants, asylum seekers and refugees

48. The Working Group reiterates that States are obliged to respect and ensure the rights, including the right to personal liberty, of everyone within their territory or subject to their jurisdiction regardless of nationality or statelessness.[108] Accordingly, States have an obligation to ensure that non-national women, including migrants, asylum seekers and refugees are not arbitrarily deprived of their liberty within their territory or subject to their power or effective control. This includes the administrative detention of women non-nationals in immigration detention, whether in recognized or non-recognized centres.

49. Any deprivation of liberty in the context of migration must meet the standards set out in article 9 of the Covenant. In particular, administrative detention of women migrants must be an exceptional measure of last resort, applied for the shortest period and only if less restrictive alternatives have been considered and found inadequate to meet legitimate purposes.[109]

[99] A/HRC/45/16/Add.2. para. 45; A/HRC/29/23, para. 15.
[100] A/HRC/22/53, para. 88; A/HRC/40/60, para. 54.
[101] A/HRC/41/33, para. 35.
[102] See, e.g. CAT/OP/C/57/4, paras. 60–67; A/HRC/31/57, para. 13.
[103] A/HRC/29/23, paras. 34–38; A/HRC/31/57, para. 35; CAT/C/CRI/CO/2, para. 11; CEDAW/C/MOZ/CO/3-5, paras. 41(c), 42(e); A/HRC/19/41, para. 35.
[104] See, e.g. Opinion No. 25/2009, paras. 28, 31.
[105] Bangkok Rules, rules 40–42; A/HRC/31/57, para. 70(a); A/HRC/45/16/Add.1, para. 52.
[106] CAT/OP/C/57/4, para. 76; A/HRC/17/26/Add.2, para. 29.
[107] Nelson Mandela Rules, rule 7 (a); A/HRC/31/57, para. 70(s); CAT/OP/C/57/4, para. 76.
[108] Human Rights Committee, General comment No. 31, para. 10; Human Rights Committee, General comment No. 35, para. 3.
[109] Revised deliberation No. 5 on deprivation of liberty of migrants (A/HRC/39/45, annex), para. 12; OHCHR, 'Recommended Principles and Guidelines on Human Rights at International Borders', Guideline 8.1.

50. Detention in the course of migration proceedings must be justified as reasonable, necessary and proportionate in the light of the circumstances specific to the individual case.[110] Accordingly, the detention of migrant women must only take place in the context of an effective individualized assessment of the necessity of detention,[111] and States must seriously consider alternatives to detention.[112]

51. The detention of women non-nationals who are pregnant or are nursing shall be avoided.[113] Where migrant women are accompanied by their children, States must consider alternatives to detention for the entire family unit in each individual case,[114] particularly because children cannot be detained by reason of their parent's migration status,[115] and should not be separated from their parents.[116]

52. The Working Group is particularly concerned that women asylum seekers and refugees are routinely deprived of their liberty for extended periods pending the resolution of their claims. The prolonged administrative custody of women asylum seekers, immigrants or refugees without the possibility of administrative or judicial review or remedy constitutes arbitrary detention.[117]

53. Particularly given the prolonged nature of immigration detention, the Working Group reiterates the obligations of States to ensure that conditions in immigration detention address the gender-specific needs of women detainees.[118] In particular, women non-nationals should be separated from men, unless they are part of a family unit.[119]

Women human rights defenders

54. Human rights defenders are often deprived of their liberty as a result of the exercise of their fundamental rights under articles 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 18, 19, 21, 22 and 25 (1) of the Covenant. Further, it is recalled that human rights defenders fall within their own protected class for the purposes of determining whether an individual has been detained on a discriminatory ground for the purposes of Category V.[120]

55. The Working Group is gravely concerned by the frequent complaints it receives in relation to women human rights defenders, including women's rights activists.[121] It is clear

[110] Revised deliberation No. 5 on deprivation of liberty of migrants (A/HRC/39/45, annex), para. 14.

[111] A/HRC/36/37/Add.2, para. 29.

[112] Revised deliberation No. 5 on deprivation of liberty of migrants (A/HRC/39/45, annex), para. 16; Human Rights Committee, General comment no. 35, para. 45; Opinion No. 2/2019. para. 79.

[113] Revised deliberation No. 5 on deprivation of liberty of migrants (A/HRC/39/45, annex), para. 41; Committee on the Elimination of Discrimination against Women, General recommendation No. 32, para. 34; A/HRC/20/24, paras. 36, 49.

[114] Revised deliberation No. 5 on deprivation of liberty of migrants (A/HRC/39/45, annex), para. 40; Committee on the Elimination of Discrimination against Women, General recommendation No. 32, para. 49.

[115] Revised deliberation No. 5 on deprivation of liberty of migrants (A/HRC/39/45, annex), para. 40; principle 21, para. 46; Opinion No. 2/2019, para. 105.

[116] A/HRC/36/37/Add.2, paras. 43–46, 92 (j).

[117] A/HRC/36/38, para. 8(d).

[118] Bangkok Rules, rule 1; A/HRC/20/24, para. 37; Committee on the Elimination of Discrimination against Women, General recommendation No. 32, para. 34.

[119] Revised deliberation No. 5 on deprivation of liberty of migrants (A/HRC/39/45, annex), para. 42; Committee on the Elimination of Discrimination against Women, General recommendation No. 32, para. 34.

[120] International Covenant on Civil and Political Rights, art. 26; Opinion No. 45/2016, para. 44. See also UNGA Res 53/144 (adopting the Declaration on Human Rights Defenders) and UNGA Res 68/181.

[121] See, e.g. Opinions No. 33/2020, paras. 4–5, 11 (women's rights activist, charged, among other things, with "participating in demanding women's rights"); No. 14/2020, para. 4 (arbitrary detention of a women's rights advocate); No. 57/2017, para. 4 (arbitrary detention of an activist for women's and LGBTIQ+ rights); No. 48/2017, paras. 4, 47 (woman human rights defender verbally attacked by the judge for her beliefs in feminism and human rights); No. 1/2016, para. 4 (activist for the rights of Kurdish women); For targeting of girl human rights defenders, see, e.g. A/HRC/40/60, paras. 59–60; UA ISR 1/2018.

that in many cases women are targeted because of their activities as human rights defenders, including peaceful advocacy, demonstrations and other forms of activism.[122]

56. The Working Group is of the view that women human rights defenders face risks that are gendered and intersectional.[123] Indeed, numerous complaints received by the Working Group allege that women human rights defenders have been subjected to harassment,[124] sexist attacks,[125] torture and threats of sexual assault,[126] demands to undergo virginity testing,[127] institutionalization or threats thereof,[128] and public shaming.[129] The Working Group reiterates that States must ensure that women human rights defenders can perform their important role in accordance with international human rights law, including ensuring that they are not subject to excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts.[130]

Women in political and public life

57. The Working Group is concerned about complaints of arbitrary deprivation of liberty it has received relating to women's participation in political and public life, including the targeting of women who hold public office or seek to do so and women who have been publicly critical of the Government or who are members of opposition groups.[131] In these circumstances, arbitrary deprivation of liberty is not only a direct attack on the full participation by women in political and public life and their enjoyment of their human rights, but may also discourage the participation of women in public discourse more broadly and marginalize their voices.

58. The right to participate in public affairs is provided for in article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant.[132] These rights are furthered by the rights to freedom of expression, peaceful assembly and association under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19, 21 and 22 of the Covenant. In this regard, the Working Group recalls that criticism of Government is permissible in a democratic society and protected by the freedom of opinion and expression.[133]

59. When a woman is arrested and detained as the consequence of the exercise of the aforementioned rights, or when a woman is detained on the basis of discriminatory grounds such as sex, gender or political or other opinion, her deprivation of liberty may be considered arbitrary by the Working Group, including under categories II and V of its Methods of Work.

[122] See, e.g. Opinions No. 9/2019 (9 year sentence for peaceful advocacy and activism); No. 83/2018 (7 year sentence for, among other things, social media posts and participation in peaceful assemblies); No. 61/2018 (arrested for working to investigate extrajudicial killings in the Philippines); No. 75/2017 (9 year sentence for posting information on the Internet critical of government policies on human rights issues); No. 57/2017 (arrested for social media posts); No. 1/2016 (Kurdish women's rights activist sentenced to life imprisonment).

[123] See A/HRC/40/60, para. 35.

[124] Opinions No. 61/2018, para. 71; No. 75/2017, para. 55; No. 48/2017, para. 49.

[125] Opinions No. 61/2018, para. 72; No. 50/2017, para. 7.

[126] Opinions No. 33/2020, para. 90; No. 78/2017, para. 39; No. 1/2016, paras. 37, 40, 42.

[127] Opinion No. 1/2016, para. 42.

[128] Opinion No. 57/2017, paras. 14, 68. See also A/HRC/40/60, paras. 54–55; CAT/C/KAZ/CO/3, para. 19.

[129] See, e.g. regarding threats to release altered images showing sexual activity: Opinions No. 61/2018, paras. 13–14, 29; No. 1/2016, para. 6. See generally A/HRC/40/60, paras. 37–39.

[130] See UNGA Res 68/181, para. 8.

[131] Opinions No. 24/2019; No. 61/2018; No. 50/2017; No. 24/2015. See also A/68/340, para. 28. For a description of some of the ways that women are involved in political life, see A/73/301, para. 10.

[132] Convention on the Elimination of All Forms of Discrimination against Women, art. 7 specifically requires States Parties to take appropriate measures to eliminate discrimination against women in political and public life.

[133] See Human Rights Committee, General comment No. 34, para. 38.

Deprivation of liberty by private actors

60. The Working Group has affirmed on a number of occasions that it will consider deprivation of liberty in all its forms, not only for the purpose of criminal proceedings, but also under administrative and other fields of law.[134] The Working Group wishes to recall that the deprivation of personal liberty occurs when a person is being held without his or her free consent, including under house arrest.[135] Deprivation of liberty may also arise from the conduct of private actors.

61. States not only have a duty to ensure that anyone acting on their behalf, such as State authorities and its agents, do not infringe the right to personal liberty; they also have a positive obligation to protect everyone in their territory or under their jurisdiction from violations of this right by private parties, as well as obligations to investigate and punish such violations and ensure that victims have access to effective remedies.[136] The Working Group urges States to ensure that the right to personal liberty of all women is respected in relation to the conduct of both State and non-State actors.

62. Guardianship laws, customs and social practices that prevent women from leaving their family homes without the permission of a guardian may result in de facto deprivation of liberty by their families.[137] This is a breach of both articles 12 and 26 of the Covenant and articles 7 and 13 of the Universal Declaration of Human Rights, and amounts to discrimination on the basis of sex or gender. The Working Group calls upon States to abolish systems of guardianship immediately.

63. Migrant women who are prevented from leaving the residences where they are employed as domestic workers are subjected to de facto deprivation of liberty.[138] The Working Group has received credible reports of employers withholding employees' documents (including passports) and salaries, to ensure that they would not leave. Employers have reportedly resorted to false accusations of absconding as a way of exerting control over their workers which in turn may lead to the arrest and detention of the worker by State authorities.[139] The Working Group calls upon States to ensure that all migrants are free to leave the homes of their employers if they choose to do so.

64. Women who are subject to trafficking, slavery and slavery-like practices are the subject of numerous human rights violations by private actors,[140] including deprivation of liberty as guaranteed by article 9 of the Covenant and article 3 of the Universal Declaration of Human Rights.

65. The Working Group recalls that when private actors are empowered or authorized by a State to exercise powers of arrest or detention, the State remains responsible for the actions of the private actors under international human rights law.[141]

Deprivation of liberty related to "honour"

66. The arrest and detention of women pursuant to laws and policies that are gender-neutral may violate the right to equality and non-discrimination where they are

[134] See, e.g. Opinion No. 38/2020, para. 36 referring to A/HRC/30/37, annex, para. 47. See also Human Rights Committee, General comment No. 35, para. 5; Committee on the Elimination of Discrimination against Women, General recommendation No. 35, paras. 24–26; A/HRC/41/33, para. 10.

[135] See A/HRC/30/37, para. 9.

[136] Human Rights Committee, General comment No. 31, paras. 8, 15, 18; Human Rights Committee, General comment No. 35, para. 7; A/HRC/45/16/Add.2, paras. 79–84.

[137] See, e.g. A/HRC/45/16/Add.2, paras. 80, 82, 84; AL SAU 4/2019.

[138] A/HRC/45/16/Add.2, paras. 81–84; A/HRC/44/57/Add.1, para. 29; International Labour Organization, 'Intertwined: A study of employers of migrant domestic workers in Lebanon', 2016, pp. 33–35.

[139] A/HRC/45/16/Add.2, para. 81.

[140] See, e.g. Universal Declaration of Human Rights, arts. 4, 5, 13; International Covenant on Civil and Political Rights, arts. 7, 8, 12. See further, OHCHR, 'Abolishing Slavery and its Contemporary Forms', 2002, pp. 3–9.

[141] Human Rights Committee, General comment No. 35, para. 8; International Law Commission, Responsibility of States for Internationally Wrongful Acts, ch II.

disproportionately applied to women or where they result in harsher sentences for women than men. This includes "honour"-related offences such as adultery or extramarital sexual relations.[142] Moreover, "honour"-related offences found in a State's criminal law may amount to a violation of international human rights law if they are not gender-neutral and specifically discriminate against or target women. The Working Group considers that laws and policies falling into either of these categories, that is, all "honour-based" offences, must be decriminalized.

67. The detention of women in relation to "honour"-based offences which are not criminalized in a State's criminal laws lacks a legal basis and amounts to arbitrary detention.[143]

68. States should ensure that evidentiary rules and procedures do not in practice discriminate against women.[144] Laws and corroboration requirements that are influenced by gender stereotypes or that disproportionately burden women in proving their innocence in the context of "honour"-related offences may be discriminatory and amount to a denial of the presumption of innocence.[145] Women who are the victims of criminal acts such as rape (whether or not proven to the requisite standard in a criminal trial) must not be charged and detained in relation to such acts on the basis that they have perpetrated an "honour"-related offence.[146]

Protective custody

69. Detention of women in administrative detention or so-called "protective custody" for the purposes of their protection will amount to arbitrary detention and may amount to torture or ill-treatment.[147] This includes detention to protect women from gender-based violence including in relation to "honour"-based crimes, as well as detention that seeks to ensure that a woman will testify against an offender in court. States are required to take measures to ensure the protection and safety of women and should do so using measures that do not jeopardize women's liberty.

70. In exceptional cases, temporary measures involving custody to protect a woman may be applied but only when necessary and expressly requested by the woman concerned and, in all cases, subject to supervision by judicial or other competent authorities.[148] Such protective measures shall not be continued against the will of the woman concerned. The release of a woman shall not be made conditional upon the consent of a male relative and/or a guarantor.[149]

Shelters, rehabilitation centres and medical facilities

71. The Working Group observes that arbitrary detention can occur in health-care settings, such as psychiatric hospitals and other institutions where individuals may be deprived of their liberty.[150]

72. While homes and shelters provide vital social care to vulnerable groups, particularly women and children facing domestic violence, efforts must be made by States to ensure that

[142] A/HRC/41/33, para. 31; A/HRC/45/16/Add.2, para. 43. The emerging criminalisation of women participating in social media is also of concern, see AL EGY 12/2020.

[143] Universal Declaration of Human Rights, art. 11 (2); International Covenant on Civil and Political Rights, arts. 9 (1), 15 (1); see, e.g. United Nations Assistance Mission in Afghanistan, 'In Search of Justice for Crimes of Violence Against Women and Girls', 2020, p. 13.

[144] Committee on the Elimination of Discrimination against Women, General recommendation No. 35, para. 29 (c)–(d).

[145] Universal Declaration of Human Rights, art. 11 (1); International Covenant on Civil and Political Rights, art. 14 (2).

[146] A/68/340, paras. 16–18; CEDAW/C/BLR/CO/8, para. 26.

[147] A/HRC/27/48, paras. 78–79; A/HRC/31/57, para. 24; E/CN.4/2003/75, paras. 90–91; E/CN.4/2003/8, para. 65; A/HRC/41/33, para. 45; CEDAW/C/JOR/CO/6, paras. 33–34.

[148] International Covenant on Civil and Political Rights, art. 9 (1) and (4); Bangkok Rules, rule 59.

[149] A/HRC/20/16/Add.1, para. 28; CEDAW/C/SAU/CO/3-4, paras. 61–62; AL SAU 4/2019.

[150] Opinion No. 70/2018, para. 37.

residents in such facilities are able to leave if they wish, including through regular monitoring of the facilities and support in reintegrating into the community.[151]

73. The Working Group is concerned about the detention of women in rehabilitation centres, treatment programmes and psychiatric hospitals for reasons relating to the breaching of societal norms.[152] The health-care system can never be used as a pretext for depriving women of their liberty in circumstances relating to the exercise of their fundamental rights and freedoms.[153]

74. The Working Group reiterates that deprivation of women's liberty on the basis of actual or perceived disability is discriminatory and contrary to international law.[154] The Working Group has received information on mental health laws which authorize involuntary hospitalization based on an actual or perceived psychosocial disability, and mental health treatment without obtaining the free and informed consent of the persons concerned or providing the appropriate support to enable them to exercise their legal capacity. This form of confinement is justified using criteria such as danger to the confined person or others and/or the need for care and treatment, which is inherently discriminatory since it is based on the person's actual or perceived impairment.[155] The Working Group is concerned about cases where women have been subjected to prolonged periods of detention in psychiatric institutions in violation of their human rights. In some cases, they are subjected to "voluntary hospitalization", but without their informed consent to treatment and without the ability to leave at any time.

75. The voluntary institutionalization of women with psychosocial disabilities needs to take into account their vulnerable position and their likely diminished capability to challenge their detention. If a woman does not have legal assistance of her own or of her family's choosing, effective legal assistance through a defence lawyer is to be assigned to act on her behalf and the necessity of continued institutionalization is to be reviewed regularly at reasonable intervals by a court or a competent independent body in adversarial proceedings and without automatically following the expert opinion of the institution where the woman is held.[156] Where detention is based on consent given by a woman's legal guardian, the woman should have the possibility of challenging the appointed guardian.[157] A woman is to be released if the grounds for hospitalization no longer exist. Involuntary institutionalization of women with psychosocial disabilities and forced treatment is prohibited.[158]

COVID-19 and public health emergencies

76. The Working Group stresses that States should ensure that measures taken in relation to the COVID-19 pandemic take into account their specific impacts on women in detention. Pregnant women and women who are breastfeeding should be treated as particularly vulnerable.[159]

77. States should urgently review existing cases of deprivation of liberty of women in all detention settings to determine whether the detention is still justified as necessary and

[151] A/HRC/42/39/Add.1, paras. 81, 88, 94 (b); A/HRC/39/45/Add.2, para. 89 (b).
[152] CEDAW/C/KWT/CO/3-4, para. 42; A/HRC/41/33, para. 47; A/68/340, para. 22.
[153] See, e.g. Opinion No. 57/2017, para. 68. See also A/HRC/40/60, paras. 54–55; CEDAW/C/BLR/CO/8, paras. 16–17.
[154] Convention on the Rights of Persons with Disabilities, art. 14; A/HRC/36/37/Add.1, paras. 36–37; A/HRC/30/37, annex, para. 103.
[155] A/HRC/36/37/Add.2, para. 75.
[156] A/HRC/36/37/Add.2, para. 76; A/HRC/30/37, annex, para. 105; Opinion No. 70/2018, para. 49.
[157] Opinion No. 70/2018, paras. 46–48. See Convention on the Rights of Persons with Disabilities, art. 12.
[158] A/HRC/30/37, annex, para. 103.
[159] Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies (A/HRC/45/16, annex II), para. 15.

proportionate in the prevailing context of the COVID-19 pandemic.[160] In doing so, States should consider all alternative measures to custody.

78. Where custody cannot be avoided, States must ensure that women are held in conditions that are sanitary and that necessary protection measures are undertaken to ensure the safety and wellbeing of women detainees, including physical distancing, provision of protective items and quarantining of persons showing symptoms.[161] States should ensure that women in detention have access to COVID-19 testing and vaccines. States should ensure that preventative healthcare including screening for breast and gynaecological cancer continue to be provided to women in detention or are resumed when safe to do. Specific efforts to mitigate negative mental health impacts of COVID-19 measures for women in detention should also be undertaken.[162]

79. States should ensure that changes to detention regimes, including isolation and limits to contact with the outside world, do not unduly impact women. This includes measures that prevent women in detention from accessing items and supplemental food ordinarily provided by family and support networks on which they rely.[163]

80. The Working Group notes that emerging research has linked lockdown measures with significant increases in reports of gender-based violence.[164] States should ensure that any COVID-19 measures that impose restrictions on movement amounting to deprivation of liberty[165] do not deter, prohibit or punish women from taking steps to escape gender-based violence. Moreover, States should take proactive steps to ensure that measures are in place to support victims of violence during the COVID-19 pandemic, including access to resources, hotlines and a sufficient number of shelters throughout the State.

Impacts on women of deprivation of liberty of partners and family members

81. States should recognize that women are particularly affected by the arbitrary detention of partners and family members. Arbitrary detention of partners and family members may lead to women assuming additional caregiving responsibilities, facing stigma or discrimination within their communities and experiencing financial hardship.

82. Women must be able to support and seek justice for detained partners or family members without placing their security or liberty at risk.[166] They should be able to visit persons in detention facilities without being subjected to unnecessary invasive and humiliating searches, or to sexual violence such as rape.[167]

[160] Ibid, para. 13; Committee on the Elimination of Discrimination against Women, 'Guidance Note on CEDAW and COVID-19', para. 7, <tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/STA/9156&Lang=en>.

[161] UA USA 34/2020.

[162] OHCHR, 'Leading human rights experts call for overdue implementation of the UN Bangkok Rules a decade after they were adopted', 2020, <www.ohchr.org/Documents/Issues/Women/SR/BangkokRules-leaders-statement_EN.pdf >.

[163] Ibid.

[164] UN Women, 'From insights to action: Gender equality in the wake of COVID-19', p. 10; European Commission, '2021 report on gender equality in the EU', pp. 4–6.

[165] The Working Group has previously noted that mandatory quarantine in a given premise, including in a person's own residence that the quarantined person may not leave for any reason, is a measure of de facto deprivation of liberty, see Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies (A/HRC/45/16, annex II), para. 8.

[166] See, e.g. Opinion No. 21/2019, para. 17 (10 women and 3 girls were arbitrarily detained and tortured for peacefully demonstrating against the detention of political opponents, some of whom were their relatives).

[167] See, e.g. Opinion No. 73/2019, para. 95. See also A/HRC/22/44/Add.2, para. 72; A/HRC/31/57/Add.4, paras. 37–41. Such searches are likely to be contrary to Nelson Mandela Rules, rules 52 and 60.

83. Women should not be deprived of their liberty or subjected to violence during the arrest and detention of a partner or family member.[168]

84. Women must not be made the subject of threats, especially of sexual violence, in order to induce a detained partner or family member to make a confession.[169]

Consequences of arbitrary deprivation of liberty

85. Arbitrary deprivation of liberty can have long-lasting, harmful impacts on women's lives and on those of their families. These may include stigma and social alienation, deterioration of mental and physical health, loss of parental rights, breakup of the family unit, loss of income, and challenges obtaining employment and housing.[170]

86. States should ensure that women in detention are provided with gender-specific rehabilitation, treatment, vocational training and educational opportunities in order to equip them for successful reintegration into society.[171]

[*Adopted on 12 May 2021*]

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[168] Opinions No. 31/2019, paras. 8–9, 38 (woman detained and tortured after refusing to become an informant in exchange for the release of her son); No. 18/2011, paras. 4, 5, 19 (arrest and detention of wife and close family members to induce detainee's surrender and as reprisals for demanding a fair trial and basic human rights).

[169] Opinions No. 33/2017, paras. 90–91 (threats made during interrogation to rape mothers and sisters of detainees); No. 29/2016, para. 20 (threat of rape of family members); No. 14/2016, paras. 10, 12, 13 (threat to arrest family members and place children in social care).

[170] See, A/68/340, paras. 66–80.

[171] See among others, Bangkok Rules, rule 46.