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人权理事会

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议程项目 3

促进和保护所有人权——公民权利、政治权利、
经济、社会及文化权利，包括发展权

任意拘留

任意拘留问题工作组的报告^{*, **}

概要

2020 年，在 2019 全球冠状病毒病(COVID-19)大流行的特殊情况下，任意拘留问题工作组根据其常规程序通过了关于在 47 个国家拘留 221 人的 92 条意见。工作组还向 27 个国家政府发出了 55 项紧急呼吁，并向 62 个国家政府转发了 150 封指控信和其他信件，在两个案件中，还向其他行为体转发了涉及至少 651 名已确认人员的信件。一些国家向工作组通报了为补救被拘留者情况而采取的措施，在许多情况下，被拘留者已被释放。

由于 COVID-19 大流行，工作组在本报告所述期间未能进行国家访问。它期待着在全球卫生环境允许的情况下尽快恢复这种访问，并鼓励各国对其访问请求作出积极回应。

工作组继续就一般性问题进行审议，以协助各国和利益攸关方预防和处理任意拘留案件。其中包括制定关于被剥夺自由的妇女的第 12 号审议意见发展情况，该审议意见载于本报告附件。

在报告中，工作组还审查了下列专题问题：(a) 剥夺人权维护者的自由；(b) 强行移交个人和禁止任意拘留；和(c) 《反对在国与国关系中任意拘留的宣言》。

* 附件未经正式编辑，原文照发。

** 因提交方无法控制的情况，经协议，本报告迟于标准发布日期发布。



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一. 导言

1. 任意拘留问题工作组系人权委员会第 1991/42 号决议设立。该工作组受命根据《世界人权宣言》和有关国家接受的相关国际文书中规定的标准，调查所指称的任意剥夺自由情况。委员会第 1997/50 号决议澄清并扩大了工作组的任务范围，列入了对寻求庇护者和移民的行政拘留问题。根据大会第 60/251 号决议和人权理事会第 1/102 号决定，人权理事会承担了人权委员会的任务。理事会最近在 2019 年 9 月 26 日第 42/22 号决议中将工作组的任期延长了三年。

2. 在 2020 年 1 月 1 日至 10 月 31 日期间，工作组由塞东吉·罗兰·让-巴蒂斯特·阿兆维(贝宁)、何塞·安东尼奥·盖瓦拉·贝穆德斯(墨西哥)、洪晟弼(大韩民国)、埃利娜·施泰纳特(拉脱维亚)和利·图米(澳大利亚)组成。截至 2020 年 11 月 1 日，工作组由米莉亚·埃斯特拉达-卡斯蒂略(厄瓜多尔)、洪晟弼(大韩民国)、蒙巴·马利拉(赞比亚)、埃利娜·施泰纳特(拉脱维亚)和利·图米(澳大利亚)组成。

3. 盖瓦拉·贝穆德斯先生于 2019 年 4 月至 2020 年 4 月担任工作组主席兼报告员，施泰纳特女士和图米女士担任副主席。在 2020 年 4 月工作组第八十七届会议上，图米女士当选为主席兼报告员，施泰纳特女士再次当选为副主席。

二. 工作组的活动

4. 在 2020 年 1 月 1 日至 12 月 31 日期间，工作组举行了第八十七届、第八十八届和第八十九届会议。由于全球冠状病毒病(COVID-19)大流行造成旅行限制，工作组决定通过视频会议远程开会。这完全是为了应对这次全球疫情，在任何情况下都不能取代工作组面对面的会期会议。

5. 由于全球疫情，工作组无法在本报告所述期间进行国家访问。工作组期待在全球卫生背景允许情况下恢复此类访问，并鼓励各国积极回应工作组访问请求。

6. 为便利疫情期间的对外联系和持续的信息共享，工作组在整个报告所述期间与各国和非政府组织举行了远程会议，其中包括在 2020 年 12 月与民间社会举行的一次会议，并在第九十届会议期间举行了远程会议，以便收集有关任意拘留问题的信息，增进对工作组工作方法的了解。

A. 审议意见

7. 工作组继续就一般性问题拟定审议意见，以协助各国和利益攸关方预防和处理任意拘留案件。

8. 在这方面，工作组拟定了关于被剥夺自由的妇女的第 12 号审议意见(见附件)。在审议意见中，工作组审议了任意拘留的性别层面，并提供指导，协助各国和其他利益攸关方防止和解决在刑事司法系统、移民拘留、行政拘留、保健情况和某些私人环境中任意拘留妇女的问题。审议意见还认识到，并非所有妇女都以同样的方式被剥夺自由，因此有必要考虑已经处于不利地位的妇女的不同经历。工作组特别回顾，遭受多种交叉形式歧视的妇女被剥夺自由的风险更高。

B. 关于与禁毒政策有关的任意拘留问题的研究

9. 人权理事会第 42/22 号决议请工作组研究与禁毒政策有关的任意拘留问题。这项研究的准备工作始于 2019 年，初步磋商、编制调查问卷，并呼吁各国和其他利益攸关方就禁毒政策提供投入。在 2020 年 3 月于维也纳举行的麻醉药品委员会第六十三届会议上介绍了这项研究的情况，并与联合国毒品和犯罪问题办公室、国际麻醉品管制局和其他利益攸关方进行了磋商。2021 年 3 月 4 日和 5 日，工作组举行了虚拟专家协商会。

10. 工作组于 2021 年 7 月 2 日向人权理事会第四十七届会议提交了研究报告 (A/HRC/47/40)。在这项研究中，工作组审查了禁毒政策可能如何导致与任意拘留有关的侵犯人权行为，并提出了建议。它借鉴了自己的判例、其他人权机制和联合国实体采取的立场以及各国和利益攸关方提交的材料。

C. 2020 年期间提交工作组的来文处理情况

1. 向各国政府发送的信函

11. 工作组第八十七、八十八和八十九届会议共通过了 92 项意见，涉及 47 个国家的 221 人(见下表)。

2. 工作组的意见

12. 根据其工作方法，在向各国政府提出意见时，工作组提请它们注意人权委员会第 1997/50 号和第 2003/31 号决议以及人权理事会第 6/4、24/7 和 42/22 号决议，这些决议要求各国考虑工作组的意见，并在必要时采取适当步骤，纠正被任意拘留者的状况，同时向工作组通报它们所采取的步骤。¹ 在向有关政府转交意见后的 48 小时期限届满时，意见转交给相关来文方。

¹ A/HRC/36/38.

工作组第八十七、八十八和八十九届会议通过的意见

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
1/2020	喀麦隆	有	Amadou Vamoulké	任意拘留，第一类和第三类	无
2/2020	土耳其	有	Abdulmuttalip Kurt	任意拘留，第一、第二和第五类	无
3/2020	哥伦比亚	有	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 和 Jerónimo Salcedo Betancourt	任意拘留，第二、第三和第五类	没有采取任何行动来执行这一意见。(政府提供的信息)
4/2020	古巴	有	Aymara Nieto、Eliecer Bandera、Humberto Rico、JoséPompa Lopéz、Melkis Faure、Mitzael Díaz 和 Silverio Portal	任意拘留，第一、第二、第三和第五类	虽然 Rico 先生、Pompa Lopéz 先生和 Portal 先生获释，但这并不是执行了该意见。(来文方提供的信息)
5/2020	巴林	有	Ali Isa Ali Al-Tajer 和其他 19 人	任意拘留，第一类和第三类	无
6/2020	埃及	无	Ahmed Tarek Ibrahim Abd El-Latif Ziada	任意拘留，第一类和第三类	无
7/2020	阿尔及利亚	无	El Fadel Breica	任意拘留，第一、第二和第三类	Breica 先生于 2019 年 11 月 10 日获释，目前在另一个国家。没有采取进一步行动来执行这一意见。(来文方提供的信息)
8/2020	斯里兰卡	无	Delankage Sameera Shakthika Sathkumara	任意拘留，第一、第二、第三和第五类	无

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
9/2020	莫桑比克	无	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 和 Jacque Nsimba Vela	任意拘留，第一、第三和第四类	无
10/2020	俄罗斯联邦	无(逾期)	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 和 Sergey Yavushkin	任意拘留，第一类 (Shalev、Korolev、Malkov、Rogozin、Egozaryan 和 Melnik 先生，以及 Vladimirova、Galkevich、Shamsheva 和 Silayeva 女士) 任意拘留，第二、第三和第五类(全部 18 人)	一些人已从审前拘留或软禁中获释，但针对他们的刑事诉讼仍在继续和(或)他们已被定罪。Malkov 先生于 2020 年 4 月 26 日因健康问题去世。没有采取进一步的行动来执行这一意见。(来文方提供的信息)
11/2020	中国	有	程渊、刘大志和吴葛健雄	任意拘留，第一、第二、第三和第五类	这些人仍被拘留。 (来文方提供的信息)
12/2020	以色列	无	Mustafa Hassanat	任意拘留，第一、第三和第五类	无
13/2020	利比亚	无	Mustafa Taleb Younes Abdelkhalek Al Darsi	任意拘留，第一、第二、第三和第五类	无

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
14/2020	埃及	无(逾期)	Amal Fathy、Mohamed Lofty 和一名为工作组所知的未成年人	任意拘留，Fathy 女士(第一类、第二类和第三类)；任意拘留，Lofty 先生和未成年人(第一类)	无
15/2020	越南	有	Phan Kim Khanh	任意拘留，第一、第二、第三和第五类	无
16/2020	越南	有	Ngô Văn Dũng	任意拘留，第一、第二、第三和第五类	2020 年 7 月 31 日，Dũng 先生被判处五年监禁和两年缓刑。他仍被拘留。向他提供赔偿的要求是没有根据的。(政府提供的信息) 没有采取任何行动来执行这一意见。Dũng 先生仍被拘留。(来文方提供的信息)
17/2020	尼加拉瓜	无	Miguel Mora 和 Lucía Pineda	任意拘留，第一、第二和第三类	没有采取任何行动来执行这一意见。(来文方提供的信息)
18/2020	委内瑞拉玻利瓦尔共和国	有	Rubén Darío González Rojas	任意拘留，第一、第二、第三和第五类	无
19/2020	萨尔瓦多	无	Imelda Cortez Palacios	任意拘留，第一、第三和第五类	Cortez Palacios 女士在无罪判决后获释。(政府提供的信息)
20/2020	委内瑞拉玻利瓦尔共和国	有	Héctor Armando Hernández Da Costa	任意拘留，第一类和第三类	Hernández Da Costa 先生仍被拘留。(来文方提供的信息)

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
21/2020	尼加拉瓜	无	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 和 Wilfredo Alejandro Brenes Domínguez	任意拘留，第一、第二和第三类	这 16 人是通过大赦法获释的，大赦法并没有消除他们的犯罪记录。因此，政府并没有执行这项意见。(来文方提供的信息)
22/2020	匈牙利	有	Saman Ahmed Hamad	任意拘留，第一、第二和第四类	<p>根据匈牙利法律，Hamad 先生被关押在过境区。他被转移到一个开放的接待中心，他离开该中心去了一个未知的地点，违反了他的合作义务，因此退出了程序。此案已经结案，没有必要采取进一步行动来执行这一意见。(政府提供的信息)</p> <p>Hamad 先生已经离开匈牙利，目前居住在另一个国家。(来文方提供的信息)</p>
23/2020	塔吉克斯坦和俄罗斯联邦	无(两国政府迟交答复)	Maksud Ibragimov	任意拘留，第一、第二、第三和第五类	无

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
24/2020	墨西哥	有	Mónica Esparza Castro 和 Édgar Menchaca Castro	任意拘留，第一、第三和第五类	这两个人在意见通过之前都被无罪释放。检察官提出上诉，上诉正在审理中。酷刑指控正在调查中，并对涉嫌参与其中的特工进行刑事审判。目前还没有做出任何赔偿。(政府和来文方提供的信息)
25/2020	布隆迪	无	Alexis Sebahene	任意拘留，第一、第三和第五类	无
26/2020	突尼斯	有	Moncef Kartas	任意拘留，第一类和第三类	没有采取任何行动落实这一意见，因为拘留 Kartas 先生并不是任意的，也不违反国内法或国际法。(政府提供的信息)
27/2020	尼日利亚	无	Omoyele Sowore	任意拘留，第一、第二、第三和第五类	无
28/2020	墨西哥	有	Miguel Pérez Cruz	任意拘留，第一类和第三类	没有采取任何行动来落实这一意见。(政府和来文方提供的信息)
29/2020	土耳其	有	Akif Oruç	任意拘留，第一、第二、第三和第五类	没有采取任何行动来执行这一意见。Oruç 先生的案件正在最高法院待决。(来文方提供的信息)
30/2020	土耳其	有	Faruk Serdar Köse	任意拘留，第一、第二和第五类	无
31/2020	阿拉伯联合酋长国	有	Abdullah Hani Abdullah	任意拘留，第一类和第三类	Abdullah 先生是根据阿拉伯联合酋长国的适用规则和法律原则被捕的。他在一个可执行的刑事案件中以终审判决的方式被判刑，所有程序都是按照国家法律进行的，他在一个有管辖权的、公平、独立和公正的法院受审。他目前的拘留不是任意的，不需要采取任何行动来执行这一意见。(政府提供的信息)

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
32/2020	中国	无	何方美	任意拘留，第一、第二、第三和第五类	何女士于 2020 年 1 月 10 日获释，她继续开展宣传活动。2020 年 10 月 9 日，她再次被拘留，并被安置在一个未知的政府指定地点。目前还没有赔偿或补偿。 (来文方提供的信息)
33/2020	阿拉伯联合酋长国和沙特阿拉伯	阿联酋(无) 沙特阿拉伯(有)	Loujain Alhathloul	任意拘留，第一、第二、第三和第五类	Alhathloul 女士于 2021 年 2 月 10 日获释，但假释期和旅行禁令仍然有效。对她定罪的上訴正在进行中。 (来文方提供的信息)
34/2020	阿拉伯联合酋长国	有	Abdullah Awad Salim al-Shamsi	任意拘留，第一类和第三类	Al-Shamsi 先生仍被拘留，对他的审判仍在进行中。从 2020 年 3 月初开始，停止所有探监(因 COVID-19)，不允许打电话。由于健康状况严重，他很容易感染 COVID-19。 (来文方提供的信息)
35/2020	澳大利亚	有	Jamal Talib Abdulhussein	任意拘留，第四类和第五类	Abdulhussein 于 2020 年 1 月 9 日获得临时保护签证，并已从移民拘留中获释。(政府提供的信息)
36/2020	越南	无(逾期)	Đào Quang Thục	任意拘留，第一、第二、第三和第五类	无
37/2020	缅甸	无	Zayar Lwin、Paing Phyo Min、Zaw Lin Htut、Kay Khine Htun、Paing Ye Thu 和 Su Yadana Myint	任意拘留，第一、第二、第三和第五类	这些人正在服刑，健康状况良好。 (政府提供的信息)
38/2020	坦桑尼亚联合共和国	无	Tito Elia Magoti	任意拘留，第一、第二、第三和第五类	Magoti 先生在认罪并支付罚款后于 2021 年 1 月获释。他在审前拘留了一年，没有证据提交给法庭。 (来文方提供的信息)

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
39/2020	尼加拉瓜	无	Kevin Roberto Solís	任意拘留，第一类和第三类	没有采取任何行动来执行这一意见。(来文方提供的信息)
40/2020	布隆迪	无	Jean Claude Hamenyimana	任意拘留，第一、第三和第五类	无
41/2020	巴林	有	Husain Ali Hasan Khamis 和其他八人	任意拘留，第一类和第三类	特别调查组没有收到任何关于侵犯这些人中大多数个人权利的投诉，但根据意见启动了自己的调查。如果证明他们的权利因非法逮捕/拘留而受到侵犯，他们将得到赔偿。由于缺乏证据，提出了两起酷刑投诉。(政府提供的信息)
42/2020	泰国和越南	泰国(无) 越南(有)	Truong Duy Nhat	任意拘留，第一、第二、第三和第五类	Nhat 先生仍被拘留。(来文方提供的信息)
43/2020	哈萨克斯坦	有	Serikhzan Bilash	任意拘留，第一、第二和第三类	Bilash 先生于 2019 年 12 月结束缓刑，2020 年底离开哈萨克斯坦前往另一个国家，目前居住在该国。2020 年 6 月 26 日，修订了《刑法》第 174 条的规定，允许法官对被发现违反有关规定的个人处以罚款，而不是限制其自由。(政府提供的信息)
44/2020	委内瑞拉玻利瓦尔共和国	有	Antonia de la Paz Yolanda Turbay Hernando	任意拘留，第一类和第三类	Turbay Hernando 女士于 2020 年 8 月 31 日获总统赦免。(来文方提供的信息)
45/2020	墨西哥	无(逾期)	Brenda Quevedo	任意拘留，第三类	没有采取任何行动来执行这一意见。(政府和来文方提供的信息)
46/2020	贝宁	无	Ignace Sossou	任意拘留，第一、第二和第三类	无

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
47/2020	土耳其和科索沃 ²	土耳其(有) 科索沃(无)	Mustafa Erdem、Yusuf Karabina、Kahraman Demirez、Cihan Özkan、Hasan Hüseyin Günakan 和 Osman Karakaya	任意拘留，第一、第二、第三和第五类	2021 年 2 月 24 日，科索沃特别检察官办公室对一些官员提出指控，指控他们任意拘留和非法转移这 6 人。没有采取进一步的行动来执行这一意见，包括释放这六名个人。(来文方提供的信息)
48/2020	土耳其和阿塞拜疆	有(两国政府)	Huseyn Abdullayev	任意拘留，第一类和第三类	Abdullayev 先生的身心健康状况正在恶化，他在 2021 年 4 月发起绝食抗议，抗议该意见没有得到执行。(来文方提供的信息)
49/2020	美利坚合众国	无	Fernando Aguirre-Urbina	任意拘留，第一、第二、第三、第四和第五类	无
50/2020	古巴	无(逾期)	José Daniel Ferrer García	任意拘留，第一、第二、第三和第五类	没有采取任何行动来执行这一意见；García 先生目前被软禁在家中。(来文方提供的信息)
51/2020	马来西亚和土耳其	有(两国政府)	Arif Komiş、Ülkü Komiş 和四名未成年人	任意拘留，第一、第二、第三和第五类	逮捕和拘留 Komiş 先生及其家人不是任意的，并且符合国际法。因此，没有采取任何行动来执行这一意见。(马来西亚政府提供的信息)
52/2020	摩洛哥	无(逾期)	Ali Salem Bujmaa，又名 Ali Saadouni	任意拘留，第一、第二、第三和第五类	未采取任何行动执行这一意见。(来文方提供的信息)

² 应从安全理事会第 1244(1999)号决议的角度理解提到科索沃的内容。

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
53/2020	阿尔及利亚	无(逾期)	Messaoud Leftissi	任意拘留，第一、第二和第五类	自上诉法院宣判 Leftissi 先生无罪后，他已被释放，并免除了所有指控。这一判决可向最高上诉法院上诉。所有的法律程序都符合国家法律，他得到了正当程序的保障。他没有要求对他的审前羁押进行赔偿。(政府提供的信息)
54/2020	科威特	有	Zuair Abdulhadi Haj Al Mahmeed	任意拘留，第一类和第三类	在 Al Mahmeed 先生案中采取的所有司法和法律程序都符合国际标准和义务，包括司法当局的公正性和中立性。(政府提供的信息) 没有采取任何行动来落实这一意见。Al Mahmeed 先生于 2021 年 4 月感染 COVID-19，他的健康状况继续恶化，因为他仍然得不到紧急医疗服务，包括手术后医生开出的理疗方案。(来文方提供的信息)
55/2020	布隆迪	无	Ernest Nyabenda 和 Patrick Nsengiyumva	任意拘留，第一、第三和第五类	无
56/2020	布隆迪	无	Cadeau Bigirumugisha	任意拘留，第一、第三和第五类	无
57/2020	委内瑞拉玻利瓦尔共和国	有	Juan Pablo Saavedra Mejías	任意拘留，第一类和第三类	无
58/2020	日本	有	Deniz Yengin 和 Heydar Safari Diman	任意拘留，第一、第二、第四和第五类	没有采取任何行动来执行这一意见。(来文方提供的信息)
59/2020	日本	有	Carlos Ghosn	任意拘留，第一类和第三类	无

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
60/2020	科威特	有	Maria Lazareva	任意拘留，第一类和第三类	对 Lazareva 女士进行的诉讼在法律上是健全的，并基于司法机构的命令和监督，司法机构是中立和公正的，并保障被告获得公平审判的权利。提供的补充信息和澄清。 (政府提供的信息)
					没有采取任何行动来落实这一意见。政府不仅无视这一意见，而且继续对 Lazareva 女士提起虚假案件，还不断侵犯她的正当程序权。政府还获得了国际刑警组织对她的红色通告。自 2019 年 11 月 11 日以来，她一直住在俄罗斯联邦驻科威特大使馆。(来文方提供的信息)
61/2020	阿拉伯联合酋长国	无	Amina Mohammed Al Abdouli 和 Maryam Suliman Al Balushi	任意拘留，第一、第二和第三类	这两名妇女尽管在 2020 年 11 月完成了刑期，而且尽管有这种意见，但仍被拘留。(来文方提供的信息)
62/2020	刚果共和国	无	Benoît Faustin Munene	任意拘留，第一、第二、第三和第五类	无
63/2020	埃及	无	Nour Al-Dien Abd Allah Ali Abdallah	任意拘留，第一类和第三类	无
64/2020	加蓬	有	Brice Laccruche Alihanga、Grégory Laccruche Alihanga、Patrichi Christian Tanasa、Julien Engonga Owono 和 Geaurge Ndemengane Ekoh	任意拘留，第一类和第三类	没有采取任何行动来执行这一意见。这 5 名在押人员的情况已经恶化，拘留条件，包括一年多的完全隔离，很快就会给他们的身心健康带来无法弥补的后果。 (来文方提供的信息)
65/2020	古巴	有	Roberto de Jesús Quiñones Haces	任意拘留，第一、第二和第三类	Quiñones 先生在服刑结束后获释，目前还没有采取任何行动来执行这一意见。(来文方提供的信息)

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
66/2020	土耳其	有	Levent Kart	任意拘留，第一、第二、第三和第五类	Kart 先生于 2020 年 9 月 17 日获释，等待上诉。(来文方提供的信息)
67/2020	土耳其	有	Ahmet Dinçer Sakaoğlu	任意拘留，第一、第三和第五类	无
68/2020	摩洛哥	有	Walid El Batal	任意拘留，第一、第二、第三和第五类	El Batal 先生后来于 2021 年 6 月 7 日获释。(来文方提供的信息)
69/2020	摩洛哥	无(逾期)	Mourad Zefzafi	任意拘留，第一、第二和第三类	无
70/2020	澳大利亚	有	Laltu 先生(别名 Somrat Morol)	任意拘留，第二、第四和第五类	Laltu 目前仍被移民拘留。他被发现没有履行澳大利亚的保护义务，正在等待非自愿遣送程序。(政府提供的信息)
71/2020	澳大利亚	有	Mohammad Qais Niazy	任意拘留，第四类和第五类	无
72/2020	澳大利亚	有	Said Mohamed Elmahdy Agueib Attia Farag	任意拘留，第二、第四和第五类	Farag 先生于 2020 年 8 月 27 日持最终离境签证获释。(来文方提供的信息)
73/2020	委内瑞拉玻利瓦尔共和国	无	Juan Antonio Planchart Márquez	任意拘留，第一类和第三类	Planchart Márquez 先生被允许接受治疗，但仍被拘留。(来文方提供的信息)
74/2020	土耳其	有	Nermin Yasar	任意拘留，第一、第二、第三和第五类	无
75/2020	卡塔尔	有	Muhammad Iqbal	任意拘留，第一、第三和第五类	对 Iqbal 先生采取的所有行动都在主管司法当局的监督下，符合国内法和国际法。他于 2020 年 5 月 14 日获得保释，直到经过公平审判后根据可执行的判决被定罪。(政府提供的信息)

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
76/2020	萨尔瓦多	无 ³	José Aquiles Enrique Rais López	任意拘留，第一类和第三类	在该案件转交政府之前，Rais López 先生获释，目前流亡海外。对他的逮捕令是可以执行的。该意见已刊登在外交部网站上。 (政府提供的信息)
77/2020	埃及	有	Ramy Shaath	任意拘留，第一、第二、第三和第五类	无
78/2020	中国	有	李凯	任意拘留，第一类和第三类	李先生仍被拘留。 (来文方提供的信息)
79/2020	埃及	无(逾期)	Ahmed Yasser Mahmoud Ahmed Hassan	任意拘留，第一类和第三类	无
80/2020	埃及	无	Mohamed Adel Fahmy Ali (又名 Mohamed Adel)	任意拘留，第一、第二和第三类	无
81/2020	越南	有	Ho Van Hai	任意拘留，第一、第二、第三和第五类	Ho 先生在缓刑期间获准离境。 (来文方提供的信息)
82/2020	中国	无	许志永	任意拘留，第一、第二、第三和第五类	无
83/2020	伊朗伊斯兰共和国	有	Youcef Nadarkhani	任意拘留，第一、第二、第三和第五类	无
84/2020	柬埔寨和土耳其	柬埔寨(无)； ⁴ 土耳其(有)	Osman Karaca	任意拘留，第一、第三和第五类	无

³ 2020 年 12 月 18 日，该国政府在这项意见通过后迟交了答复。

⁴ 2020 年 12 月 16 日，柬埔寨政府在这项意见通过后迟交了答复。

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
85/2020	洪都拉斯	无(逾期)	José Daniel Márquez Márquez、Kelvin Alejandro Romero Martínez、José Abelino Cedillo、Porfirio Sorto Cedillo、Orbín Nahúm Hernández、Arnold Javier Alemán、Ewer Alexander Cedillo Cruz 和 Jeremías Martínez Díaz	任意拘留，第一、第二和第三类	无
86/2020	沙特阿拉伯	有	Sheikh Mohammad bin Hassan Al Habib	任意拘留，第一、第二、第三和第五类	Al Habib 先生自 2016 年 7 月以来一直在服 12 年徒刑，他在狱中的健康状况一直在恶化，原因是他在被拘留期间因遭受酷刑而患上的健康问题得不到足够的医疗照顾。自 2019 年 5 月以来，他一直被监狱当局拒绝接受治疗。(来文方提供的信息)
87/2020	巴林	有	Ali Mahdi Abdulhusain Mohamad Alaiwi、Hasan Asad Jasim Jasim Nesaif、Habib Hasan Habib Yusuf、Ali Ahmed Ali Ahmed Fakhrawi、Mohamed Ahmed Ali Ahmed Fakhrawi 和 Nooh Abdulla Hasan Ahmed Hasan Al Amroom	任意拘留，第一类和第三类	无
88/2020	印度和阿拉伯联合酋长国	阿联酋 (无(逾期)) 印度(有)	Christian James Michel	任意拘留，阿拉伯联合酋长国(第一类和第三类)；任意拘留，印度(第一类)	印度政府没有采取任何行动释放 Michel 先生。鉴于 COVID-19 的暴发，他的生命有危险。(来文方提供的信息)
89/2020	塔吉克斯坦	无	Daler Sharipov	任意拘留，第一、第二、第三和第五类	Sharipov 先生在服完一年刑期后于 2021 年 1 月 28 日获释。没有采取进一步的行动来执行这一意见。(来文方提供的信息)

意见编号	国家或地区	政府的回复	当事人	意见	收到的后续信息
90/2020	黎巴嫩	无	Hassan Al Dika	任意拘留，第一类和第三类	关于 Al Dika 先生在拘留期间死亡一事，政府证实，他患有多种疾病，于 2019 年 5 月 11 日死亡。他的拘留条件符合国家和国际标准。法医的报告是伪造的，Al Dika 先生没有死于酷刑的后遗症。 (政府提供的信息)
91/2020	印度	无	Safoora Zargar	任意拘留，第一、第二和第五类	无
92/2020	沙特阿拉伯	有	Mohammed Essam Al-Faraj	任意拘留，第一、第二、第三和第五类	无

3. 后续程序

13. 上表显示了工作组根据其 2016 年 8 月举行的第七十六届会议通过的后续程序，截至 2021 年 6 月 30 日收到的信息。

14. 工作组感谢来文方和各国政府在其后续程序中作出的答复，并请所有各方合作，提供此类答复。然而，工作组指出，这些答复并不一定意味着执行其意见。工作组鼓励来文方和各国政府提供全面信息，说明其意见的执行情况，包括关于释放作为其意见对象的个人的情况，以及其他资料，如赔偿和(或)赔偿金的支付、对指称的侵犯人权行为的调查以及根据所提建议对立法或做法的任何其他改变。

4. 工作组意见当事人获释情况

15. 工作组赞赏地注意到在本报告所述期间收到的关于释放下列工作组意见当事人的情况说明：

- Mohamed Merza Ali Moosa(第 59/2019 号意见，巴林)——在大赦后获释，并被判处为慈善基金工作的替代判决
- Carlos Marrón Colmenares(第 80/2019 号意见，委内瑞拉玻利瓦尔共和国)——法院命令于 2020 年 1 月 7 日释放
- 四名未成年人(第 65/2019 号意见，埃及)——三人在无罪释放后获释，第四人被判处三年监禁，并因已服刑时间较长而获释
- José Leyes Justiniano(第 61/2019 号意见，多民族玻利维亚国)——法官裁定此案违反正当程序而获得释放
- Amaya Eva Coppens Zamora(第 43/2019 号和第 21/2020 号意见，尼加拉瓜)——2019 年 6 月通过大赦法有条件释放后，她因与此案无关的指控再次被捕，后来再次获释，并已离开该国
- 两名未成年人(第 73/2019 号意见，巴林)——获释候审，随后被判有罪并被判处一年缓刑
- Huyen Thu Thi Tran(第 2/2019 号意见，澳大利亚)——与她 2 岁的未成年孩子持过渡签证获释
- Jamal Talib Abdulhussein(第 35/2020 号意见，澳大利亚)——发放临时保护签证并从移民拘留中释放
- Said Mohamed Elmahdy Agueib Attia Farag(第 72/2020 号意见，澳大利亚)——持最终裁定签证获释
- Levent Kart(第 66/2020 号意见，土耳其)——获释等待上诉
- Ignace Sossou(第 46/2020 号意见，贝宁)——刑期结束后获释，上诉时减刑
- Josiel Guía Piloto(第 63/2019 年意见，古巴)——有条件释放

- Saman Ahmed Hamad(第 22/2020 号意见, 匈牙利)——从过境区移至开放式接待中心
- Roberto Eugenio Marrero Borjas(第 75/2019 号意见, 委内瑞拉玻利瓦尔共和国)——获释, 并能够出国旅行与家人团聚
- Carlos Miguel Aristimuño de Gamas(第 81/2019 年意见, 委内瑞拉玻利瓦尔共和国)——2020 年 9 月获释
- Antonia de la Paz Yolanda Turbay Hernando(第 44/2020 号意见, 委内瑞拉玻利瓦尔共和国)——2020 年 8 月 31 日总统赦免释放
- Chayapha Chokepornbusri(第 3/2018 号意见, 泰国)——减刑后获释
- Humberto Rico 和 Silverio Portal(第 4/2020 号意见, 古巴)——Rico 先生在总统赦免后于 2019 年 7 月获释, Portal 先生因健康原因于 2020 年 12 月 1 日获释
- Imelda Cortez Palacios(第 19/2020 号意见, 萨尔瓦多)——在宣判无罪后获释
- 16 人(第 21/2020 号意见, 尼加拉瓜)是通过大赦法获释的, 但大赦法并没有消除他们的犯罪记录。
- Monica Esparza 和 Edgar Menchaca(第 24/2020 号意见, 墨西哥)——在意见通过前, 被法院认定无罪后获释
- Tito Elia Magoti(第 38/2020 号意见, 坦桑尼亚联合共和国)——认罪并支付罚款后获释
- Ho Van Hai(第 81/2020 号意见, 越南)——缓刑期间获准离境
- Evelyn Beatriz Hernández Cruz 和 Sara del Rosario Rogel García(第 68/2019 号意见, 萨尔瓦多)——Hernández 女士获得有条件释放, 随后无罪释放, del Rosario 女士获得有条件释放
- Messaoud Leftissi(第 53/2020 号意见, 阿尔及利亚)——上诉法院宣判无罪并免除所有指控后获释
- Walid El Batal(第 68/2020 号意见, 摩洛哥)——减刑后获释

16. 工作组对释放了其意见所涉被拘留者的政府表示感谢。然而, 它感到遗憾的是, 有些国家没有合作执行这些意见, 并敦促这些国家作为紧急事项加以执行。工作组回顾, 根据《世界人权宣言》第九条和《公民及政治权利国际公约》第九条(对缔约国而言), 继续拘留这些人是对其自由权的继续侵犯。

5. 各国政府对以前意见作出的反应

17. 在本报告所述期间, 工作组收到了各国政府对其以前意见的一些反应。

18. 2020 年 1 月 17 日,柬埔寨政府拒绝了工作组关于 Kem Sokha 的第 9/2018 号意见中的结论。

19. 2020 年 5 月 8 日,越南政府反对第 45/2019 号意见,理由是工作组的调查结果和判断有偏见,没有考虑到所提供的官方信息。

20. 坦桑尼亚联合共和国政府在 2020 年 9 月 8 日的普通照会中指出,它已通过答复特别程序的联合来文(AL TZA 1/2020),就 Tito Elia Magoti 案(第 38/2020 号意见)提供了全面和充分的解释。

21. 2020 年 9 月 11 日,科威特政府答复第 82/2019 号意见,回顾它已通知工作组, Waleed Antoine Moubarak 没有被关押在科威特,已经离开该国。该国政府惊讶地注意到,工作组就任意拘留一名不在其领土上的人发表了意见。

22. 科威特政府对第 54/2020 号意见提出异议,并表示关切的是,工作组没有考虑到该国政府提供的信息,而只是依赖其认为的来文方提供的信息。政府还提供了补充信息和澄清。

23. 关于第 35/2020 号和第 70/2020 号意见,澳大利亚政府表示,它一贯真诚地与工作组进行接触。不过,政府对意见所载的建议,深表不同意。

24. 2020 年 11 月 30 日,越南政府反对第 16/2020 号意见,并对越南提供的关于 Ngô Văn Dũng 的信息未予客观审议表示遗憾。逮捕、调查、起诉和审判 Dũng 先生是必要的,而且是根据越南法律和国际法进行的。

25. 摩洛哥政府反对第 68/2020 号意见,理由是使用带有政治偏见的语言和术语。该国政府指出,这超出了赋予工作组的严格任务范围,摩洛哥的意见没有得到考虑。

26. 日本政府对第 59/2020 号意见提出异议,并指出该意见存在事实错误。该国政府表示打算继续提供明确的解释,以促进对日本刑事司法制度的正确理解。

27. 日本政府还对第 58/2020 号意见提出反对。该国政府指出,其依据是关于 Diman 先生和 Yengin 先生案件的事实错误,以及对日本移民管制和居留管理制度的明显误解。

28. 俄罗斯联邦政府重申不同意第 10/2020 号和第 23/2020 号意见,并坚持需要审查这些意见(见下文第 29-30 段)。

6. 对通过的意见的复审请求

29. 工作组审议了对以下意见的复审请求:

- 关于 Mohamed Al-Bamary(摩洛哥)的第 31/2018 号意见,
- 关于 Ahmed Aliouat(摩洛哥)的第 58/2018 号意见,
- 关于 Mbarek Daoudi(摩洛哥)的第 60/2018 号意见,

- 关于 Ahmad Khaled Mohammed Al Hossan(沙特阿拉伯)的第 22/2019 号意见,
- 关于 Laaroussi Ndor(摩洛哥)的第 23/2019 号意见,
- 关于一群学生(摩洛哥)的第 67/2019 号意见,
- 关于 Mounir Benabdellah(摩洛哥)的第 78/2019 号意见,
- 关于 18 名个人(俄罗斯联邦)的第 10/2020 号意见,
- 关于 Maksud Ibragimov(塔吉克斯坦和俄罗斯联邦)的第 23/2020 号意见,

30. 在审查了复审请求之后,工作组决定维持其意见,因为没有一项请求符合其工作方法第 21 段概述的标准。

7. 对工作组意见当事人的报复

31. 工作组严重关切地注意到,它继续收到信息,包括在后续程序中收到的信息,内容涉及作为紧急呼吁或意见当事人或工作组因其案件而提出建议的个人遭受报复。

32. 在 2020 年 1 月 1 日至 12 月 31 日期间,工作组收到了关于以下人员遭到报复的指称:

- Walid El Batal(第 68/2020 号意见,摩洛哥)
- Aziz El Ouahidi、Elkantawi Elbeur、Mohammed Dadda 和 Abdelmoula El Hafidi (第 67/2019 号意见,摩洛哥)

33. 人权理事会第 12/2 号和第 24/24 号决议呼吁各国政府防止和避免对那些寻求与联合国、联合国代表或其人权机制合作,或向他们提供证词或信息的人采取一切恐吓或报复行动。工作组鼓励会员国采取一切可能的措施防止报复。

8. 紧急呼吁:

34. 在 2020 年 1 月 1 日至 12 月 31 日期间,工作组向 27 个国家政府发出了 55 份紧急呼吁,向 62 个国家政府发出了 150 封指控信和其他信件,在两个案件中,还向其他行为体发出了涉及至少 651 名确认身份的个人的紧急呼吁。

35. 紧急呼吁涉及的国家名单如下:阿尔巴尼亚(2)、阿尔及利亚(1)、巴林(1)、白俄罗斯(1)、喀麦隆(3)、加拿大(1)、中国(4)、埃及(4)、印度(1)、伊朗伊斯兰共和国(11)、伊拉克(3)、马来西亚(1)、毛里塔尼亚(1)、墨西哥(1)、缅甸(1)、尼日利亚(2)、巴拿马(1)、菲律宾(1)、俄罗斯联邦(1)、沙特阿拉伯(2)、土耳其(3)、乌干达(2)、乌克兰(1)、阿拉伯联合酋长国(2)、美利坚合众国(1)、委内瑞拉玻利瓦尔共和国(2)、越南(1)。⁵

⁵ 紧急呼吁的全文可查阅 www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx。

36. 根据其工作方法第 22 至 24 段,工作组在不预先判断拘留是否是任意拘留的情况下,提请有关各国政府注意所报告的具体案件,并呼吁它们通常与其他特别程序任务负责人共同采取必要措施,确保被拘留者的生命权、自由权和身心健康权得到尊重。

37. 当呼吁提到某些人的健康状况危急或特殊情况时,如未执行法院释放令或未能执行工作组先前寻求释放相关人士的意见,工作组要求采取一切必要措施立即释放被拘留者。根据人权理事会第 5/2 号决议,工作组将《人权理事会特别程序任务负责人行为守则》中有关紧急呼吁的规定纳入其工作方法,并予以适用。

38. 在本报告所述期间,工作组还向另外两个行为体和 62 个国家发出了 150 封指控信和其他信,即:阿尔及利亚(2)、阿塞拜疆(1)、巴林(1)、孟加拉国(2)、白俄罗斯(5)、多民族玻利维亚国(2)、布隆迪(2)、柬埔寨(3 封指控信和 1 封其他信)、乍得(1)、智利(1)、中国(7 封指控信和 2 封其他信)、哥伦比亚(4)、科摩罗(1)、科特迪瓦(2)、古巴(1)、刚果民主共和国(1)、埃及(9 封指控信和 1 封其他信件)、萨尔瓦多(1)、埃塞俄比亚(1)、法国(1 封其他信件)、几内亚(1)、印度(5 封指控信和 1 封其他信件)、印度尼西亚(3)、伊朗伊斯兰共和国(6)、伊拉克(2)、以色列(3)、约旦(2)、老挝人民民主共和国(2)、利比亚(1)、马达加斯加(2)、马拉维(2)、墨西哥(6)、黑山(1)、摩洛哥(2)、缅甸(2)、尼日尔(1)、尼日利亚(1)、巴基斯坦(3)、巴拿马(1)、秘鲁(1)、菲律宾(1 封指控信和 1 封其他信)、卡塔尔(1)、俄罗斯联邦(5)、卢旺达(1)、沙特阿拉伯(2 封指控信和 1 封其他信)、塞尔维亚(1)、阿拉伯叙利亚共和国(1)、塔吉克斯坦(1)、坦桑尼亚联合共和国(1)、泰国(1)、土耳其(5 封指控信和 1 封其他信)、土库曼斯坦(2)、乌干达(2)、乌克兰(1)、阿拉伯联合酋长国(1 封指控信和 1 封其他信函)、大不列颠及北爱尔兰联合王国(1 封其他信函)、美利坚合众国(7)、乌兹别克斯坦(1)、委内瑞拉玻利瓦尔共和国(3)、越南(4)、赞比亚(1)和津巴布韦(1)。

39. 工作组对响应其呼吁并采取步骤向其提供有关个人情况信息的政府表示感谢,特别是释放这些个人的政府。工作组回顾,人权理事会在其第 5/1 号决议第 4(f)段中请所有国家与联合国人权机制合作并充分参与。

D. 国家访问

1. 访问请求

40. 在 2020 年期间,工作组提醒注意其早先提出的访问阿拉伯叙利亚共和国(2020 年 10 月 22 日)和利比亚(2020 年 10 月 22 日)的请求。

2. 各国政府对国家访问请求的回应

41. 土耳其常驻代表团在 2020 年 3 月 6 日的普通照会中答复说,按照惯例,工作组应邀于 2020 年 11 月 23 日至 27 日访问土耳其,访问时间不超过一周(五个工作日)。土耳其常驻代表团在 2020 年 9 月 2 日的普通照会中通知说,由于 COVID-19 大流行,工作组的访问推迟到 2021 年。该国政府注意到,工作组应邀于 2021 年访问土耳其九天(前后五个工作日和两个周末)。

42. 澳大利亚常驻代表团在 2020 年 3 月 24 日的信中表示, 由于 COVID-19 大流行, 该国政府要求工作组将原定于 2020 年 5 月 25 日对澳大利亚的访问推迟到 6 月 5 日。澳大利亚政府仍然致力于在双方都方便的时间为这次访问提供便利, 并表示将与工作组合作, 在疫情过去后重新安排访问时间。

43. 加拿大常驻代表团在 2020 年 12 月 10 日的普通照会中表示, 一旦情况允许, 愿意接待工作组访问。

44. 在 2020 年 12 月 15 日的普通照会中, 利比亚常驻代表团转达利比亚政府批准工作组的访问请求, 并指出, 政府希望工作组建议访问日期并提供访问细节, 以便与有关当局协调。

三. 专题问题

45. 在本报告所述期间, 工作组审议了其判例和实践中提出的专题问题。

A. 剥夺人权维护者的自由

46. 1998 年 12 月, 大会协商一致通过了《个人、群体和社会机构在促进和保护普遍公认的人权和基本自由方面的权利和义务宣言》(《人权维护者宣言》)。⁶ 工作组认识到该《宣言》的重要性, 敦促各国执行其原则, “以表明对尊重人权的真实和真诚承诺”。⁷ 当时, 工作组收到了几份涉及对个人采取“镇压措施”的来文, 并对人权维护者经常面临被拘留的严重风险表示关切。⁸

47. 虽然良好做法继续使《人权维护者宣言》生效, 但人权维护者仍然容易受到任意剥夺自由的伤害。⁹ 2020 年, 工作组通过的意见中约有 28% 涉及拘留人权维护者。¹⁰ 在所有这些案件中, 工作组发现, 人权维护者因其支持人权的活动而被任意拘留。这是针对公民社会成员、活动人士、记者、博主、那些反对治理缺陷的人以及其他发出异议声音的人士, 令人震惊。在许多情况下, 人权维护者遭到强迫失踪、¹¹ 在拘留期间不明原因的死亡、¹² 酷刑和虐待、¹³ 恐吓、骚扰和对其安全及其家人的威胁,¹⁴ 以及旅行禁令、资产冻结和没收、取消国

⁶ 大会第 53/144 号决议, 附件。

⁷ E/CN.4/2000/4, 执行摘要, 以及第 65-66 和 69 段。

⁸ 同上。

⁹ 例如见 A/HRC/31/55。

¹⁰ 2020 年通过的意见列在上文 C 节。

¹¹ 例如, 见第 82/2020 号、第 77/2020 号、第 52/2020 号、第 50/2020 号、第 42/2020 号、第 33/2020 号、第 32/2020 号、第 16/2020 号和第 11/2020 号意见。

¹² 见第 36/2020 号意见。

¹³ 例如, 见第 85/2020 号、第 68/2020 号、第 52/2020 号、第 38/2020 号、第 33/2020 号、第 21/2020 号、第 7/2020 号和第 4/2020 号意见。

¹⁴ 例如, 见第 77/2020 号、第 43/2020 号、第 32/2020 号、第 14/2020 号和第 11/2020 号意见。

籍以及被列入恐怖分子名单。¹⁵ 代表他们的律师还受到刑事指控、突击搜查办公室、监视和从案件中除名的报复，¹⁶ 这违背了各国确保律师能够不受干涉地履行职责的义务。¹⁷

48. 工作组关切地注意到，有些国家企图通过判处人权维护者长期监禁来使他们保持沉默。¹⁸ 几名人权维护者根据模糊和过于宽泛的国家安全和反恐条款被拘留，赋予当局广泛的自由裁量权，可以将他们的和平活动定为刑事犯罪。¹⁹ 其他人则被控违反公共秩序，据称这些罪行发生在和平抗议或集会期间。²⁰ 一些人权维护者以前曾是当局的目标，²¹ 或者是环境维护者等团体的成员，这些团体的工作一再被一些国家定为刑事犯罪，²² 这表明拘留他们是基于歧视性理由，例如他们的“政治或其他见解”或“人权维护者身份”。²³ 正如工作组一贯指出，根据个人作为人权维护者的活动拘留他们违反了他们根据《世界人权宣言》第二条和第七条以及《公约》第二条第一款和第二十六条享有法律面前平等和法律平等保护的权力。²⁴ 工作组还注意到，在以歧视为由构成违反国际法的情况下，剥夺自由是任意的，工作组认为，人权维护者是根据《公约》第二十六条享有平等法律保护的受保护群体，属于工作组第五类。²⁵

49. 工作组收到的信息还表明，本身属于边缘化群体或寻求保护其他边缘化人群权利的人权维护者面临被拘留的重大风险。妇女人权维护者被逮捕，并面临性别风险，包括威胁公布捏造的性图像，在拘留期间拒绝提供妇女卫生用品，对母亲及其孩子发出死亡威胁，因信仰女权主义而进行口头攻击，以及童贞测试，暗示基于性别的歧视而被拘留。这种待遇突出了妇女人权维护者在被拘留

¹⁵ 见第 77/2020 号和第 43/2020 号意见。

¹⁶ 见第 43/2020 号和第 42/2020 号意见。另见第 17/2019 号、第 83/2018 号和第 34/2017 号意见。

¹⁷ 见《联合国与任何被剥夺自由者向法院提起诉讼的权利有关的补救措施和程序的基本原则和准则》，原则 9；《关于律师作用的基本原则》，原则 16-22；以及 A/HRC/45/16，第 54 段。

¹⁸ 例如，见第 42/2020 号、第 36/2020 号和第 15/2020 号意见。

¹⁹ 例如，见第 91/2020 号意见(煽动性言论)；第 89/2020 号意见(引起民族、种族、地方或宗教敌意)；第 82/2020 号和第 11/2020 号意见(颠覆国家政权)；第 81/2020 号和第 15/2020 号意见(反国家宣传)；第 80/2020 号意见(散布虚假消息)；第 43/2020 号意见(煽动社会不和谐)；第 42/2020 号意见(滥用职权)；第 32/2020 号意见(寻衅滋事)；以及第 16/2020 号意见(破坏安全)。

²⁰ 例如，见第 21/2020 号、第 4/2020 号和第 3/2020 号意见。

²¹ 例如，见第 50/2020 号意见(拘留 100 次以上)；第 42/2020 号意见(先前因批评当局而判刑)；第 21/2020 号意见(工作组先前认为维护者被任意拘留)；第 18/2020 号意见(因维护劳工权利而遭受七年以上迫害)；第 16/2020 号意见(因类似活动事先被捕)；以及第 4/2020 号意见(未经指控逮捕至少 130 次)。

²² 例如，见第 16/2020 号意见(同时逮捕一个非政府组织的其他成员)；以及第 3/2020 号意见(反复将环境维护者定为刑事犯罪)。

²³ 见第 45/2016 号意见；以及 A/HRC/36/37，第 49 段。

²⁴ 例如，见第 50/2020 号、第 42/2020 号、第 38/2020 号、第 33/2020 号、第 32/2020 号和第 27/2020 号意见。

²⁵ 例如，见第 81/2020 号意见；也见第 45/2016 号意见。

时面临的额外风险。²⁶ 其他人权维护者被拘留的原因是：倡导取消禁止妇女驾车的禁令，寻求改变男性监护的限制性规定，呼吁结束性骚扰，公开反对用石头砸死通奸妇女，推广女学生免费卫生用品，参加国际妇女节的会议，保护妇女和儿童的权利及其教育。²⁷ 同样，寻求保护残疾儿童、传染病患者以及男女同性恋、双性恋、跨性别者、间性者和性别奇异者+人员权利的人权维护者也因其工作而被拘留和惩罚。²⁸

50. 任意拘留人权维护者是世界各地发生的严重侵犯人权行为，各国必须紧急处理。在一些国家，对人权维护者和其他个人的拘留很普遍，促使工作组警告说，系统侵犯免于任意逮捕和拘留的权利可能构成严重违反国际法。²⁹ 人权维护者通过监测拘留场所、倡导改变法律和做法、就落实人权标准提供咨询以及提高对自由权的认识，在减少任意剥夺自由的发生率方面发挥了至关重要的作用。³⁰

B. 强行移交个人和禁止任意拘留

51. 在本报告所述期间，工作组注意到在正常来文程序³¹ 和紧急来文程序³² 下提起的案件中有一种模式，涉及企图将个人从一个国家强行带走、引渡或驱逐到另一个国家，有效地规避了法治和防止任意拘留保障措施所要求的引渡程序。³³

52. 工作组注意到，在本报告所述期间，此类案件相当于工作组在正常来文程序下的判例的近 10%，因此工作组希望澄清在这种情况下必须遵守的国际人权法。

53. 这些案件涉及各种指控，包括引渡程序，这些程序或是旷日持久，没有完全完成，³⁴ 或是没有成功，³⁵ 但仍导致将受害者强行驱逐出司法管辖区。在某些情况下，当局没有启动引渡程序；取而代之的是，国家特工应外国当局的要求拘留

²⁶ 见第 33/2020 号、第 24/2019 号、第 21/2019 号、第 61/2018 号、第 57/2017 号、第 50/2017 号、第 48/2017 号和第 1/2016 号意见。

²⁷ 见第 33/2020 号、第 14/2020 号、第 33/2019 号、第 83/2018 号、第 57/2017 号、第 48/2017 号和第 1/2016 号意见。

²⁸ 见第 32/2020 号、第 11/2020 号、第 57/2017 号和第 14/2017 号意见。

²⁹ 例如，见第 82/2020 号、第 80/2020 号、第 42/2020 号、第 36/2020 号、第 33/2020 号、第 32/2020 号、第 18/2020 号、第 16/2020 号、第 15/2020 号、第 14/2020 号和第 11/2020 号意见。

³⁰ A/HRC/45/16/Add.2，第 87 段。

³¹ 见第 23/2020 号、第 33/2020 号、第 42/2020 号、第 47/2020 号、第 48/2020 号、第 51/2020 号、第 84/2020 号和第 88/2020 号意见。

³² 除其他外，见 ALB 1/2020、ALB 2/2020 和 TUR 3/2020；另见 AZE 1/2019、KSV 1/2018、TUR 6/2018 和 GAB 2/2018。所有此类来文均可查阅：<https://spcommreports.ohchr.org/Tmsearch/TMDocuments>。

³³ 工作组注意到，强迫或非自愿失踪问题工作组也在审查这一事项。

³⁴ 例如，见第 88/2020 号意见。

³⁵ 例如，见第 23/2020 号意见。

受害者³⁶ 或将受害者移交给外国政府特工。³⁷ 这些案件中的受害者被强行转移到机场,在那里他们将被捆绑在飞机的货舱里并被驱逐出境;³⁸ 拘留在半夜进行,由大量蒙面警察执行;³⁹ 受害者被阻止通知家人和律师其下落,⁴⁰ 还受到广泛审讯并被迫签署文件。⁴¹ 此外,受害者在被强行转移到另一国之前和(或)之后被单独关押,⁴² 甚至被强行失踪。⁴³ 在某些情况下,这种强迫转移涉及在协调行动中转移的大量受害者,⁴⁴ 而其他情况涉及有儿童的家庭,包括未成年人。⁴⁵ 在其他情况下,引渡请求已得到引渡国的批准,认为这是事实上的交换或抓获一个知名被拘留者并将其送回该国。⁴⁶

54. 在审议这些案件时,工作组一贯回顾,有关引渡的国际法规定了各国在将个人遣返到另一国接受刑事诉讼时必须遵守的程序,以确保其获得公平审判的权利得到保护。⁴⁷ 虽然工作组不质疑每个国家驱逐对其国家安全构成威胁的外国人的权利,⁴⁸ 但这种做法不能将这些外国人置于法律保护之外。⁴⁹ 《公约》第十三条规定,各国义务确保只有根据依法作出的裁判,才能驱逐在其领土上合法居住的外国人,允许他们提交反对驱逐的理由,由主管当局复审案件并由代理人出席审理。⁵⁰ 《世界人权宣言》第九条也有这项规定。⁵¹ 未经司法当局听证而非自愿驱逐到外国不符合正当程序。

55. 工作组强调,根据《世界人权宣言》第三条、第八条和第九条、《公约》第二条第(三)款、第九条第(一)款和第(四)款以及《保护所有遭受任何形式拘留或监禁的人的原则》原则 11、32 和 37 的规定,每个人均享有在法庭上质疑拘留合法性的权

³⁶ 例如,见第 84/2020 号意见。

³⁷ 例如,见第 47/2020 号和第 42/2020 号意见。

³⁸ 例如,见第 23/2020 号意见。

³⁹ 例如,见第 51/2020 号意见。

⁴⁰ 例如,见第 47/2020 号意见。

⁴¹ 例如,见第 88/2020 号意见。

⁴² 例如,见第 23/2020 号和第 84/2020 号意见。另见 A/HRC/13/42。

⁴³ 例如,见第 33/2020 号和第 42/2020 号意见。

⁴⁴ 例如,见第 47/2020 号意见。

⁴⁵ 例如,见第 51/2020 号意见。也见第 11/2018 号意见。

⁴⁶ 例如,见第 88/2020 号意见。

⁴⁷ 见第 42/2020 号意见,第 60 段;第 33/2020 号意见,第 63 段;第 23/2020 号意见,第 58 段;第 10/2019 号意见,第 71 段;以及第 11/2018 号意见,第 53 段。

⁴⁸ 人权事务委员会, *V.M.R.B.诉加拿大*, 第 236/1987 号来文;以及人权事务委员会, *J.R.C.诉哥斯达黎加*, 第 296/1988 号来文。

⁴⁹ *Alzery 诉瑞典*(CCPR/C/88/D/1416/2005)。

⁵⁰ 见第 23/2020 号意见。

⁵¹ 见第 47/2020 号意见。

利。⁵² 同样，每个人都有权被告知逮捕或拘留的理由，并迅速向司法当局提出申诉。⁵³ 不尊重正当程序基本要求的强行移交人员永远不会有法律依据，因此永远属于工作组的第一类。

56. 工作组还注意到，此类案件涉及剥夺获得法律顾问的权利，而这一权利在程序上是人身自由和安全权以及禁止任意拘留权所固有的，因此，这类案件违反了《世界人权宣言》第三条和第九条和《公约》第九条第(一)款，《保护所有遭受任何形式拘留或监禁的人的原则》原则 15、17 和 18 以及《关于律师作用的基本原则》原则 1、5、7、8、21 和 22 的规定。工作组回顾，被剥夺自由者有权在拘留期间的任何时候，包括紧接在被逮捕那一刻之后，获得他们选择的律师的法律援助。⁵⁴ 工作组重申，从拘留开始就获得法律顾问的机会适用于每个人，包括外国人，这是确保被拘留者可以质疑其拘留合法性的基本保障。⁵⁵

57. 工作组还注意到在这类案件中拒绝领事协助的情况，并注意到在国际领域为个人提供的补救措施有限，并回顾说，领事保护对于因不熟悉当地法律、习俗和语言而处于不利地位的外国国民来说是非常宝贵的。⁵⁶

58. 工作组重申，根据《维也纳领事关系公约》第三十六条第一(二)款，立即得知有权获得领事协助的权利适用于所有被拘留的外国国民。这种和其他对《维也纳公约》第三十六条第一款保障的权利的侵犯，构成了对《世界人权宣言》第十条和第十一条第(一)款、《公约》第十四条以及《保护所有遭受任何形式拘留或监禁的人的原则》原则 16(2)规定的正当程序和公平审判权的严重侵犯。⁵⁷

59. 此外，工作组注意到，强行移交人员的案件涉及完全无视不推回的基本原则。工作组回顾，如果有充分理由相信个人的生命或自由将受到威胁，⁵⁸ 或个人将面

⁵² 也见《联合国与任何被剥夺自由者向法院提起诉讼的权利有关的补救措施和程序的基本原则和准则》。

⁵³ 例如，见第 51/2020 号意见。

⁵⁴ 第 84/2020 号意见，第 43 段。另见人权事务委员会，第 32 号一般性意见(2007 年)，第 34 段；以及《联合国与任何被剥夺自由者向法院提起诉讼的权利有关的补救措施和程序的基本原则和准则》，原则 9 和准则 8。

⁵⁵ 第 81/2020 号意见，第 81 段；另见 A/HRC/45/16，第 50-53 段。

⁵⁶ 第 84/2020 号、第 88/2020 号和第 47/2020 号意见。

⁵⁷ 见大会第 72/149 号决议，第 32 段；第 72/179 号决议，第 4(k)段；第 73/175 号决议，第 7(b)段；第 74/166 号决议，第 17(g)段；第 74/167 号决议，第 13 段；第 74/168 号决议，第 6(j)段；以及人权理事会第 42/24 号决议第 5 段和第 40/20 号决议，第 2(j)段。另见《联合国囚犯待遇最低限度标准规则》(《纳尔逊·曼德拉规则》)规则 62(1)；《非居住国国民个人人权宣言》第 10 条；以及《联合国与任何被剥夺自由者向法院提起诉讼的权利有关的补救措施和程序的基本原则和准则》，准则 21。

⁵⁸ A/HRC/4/40，第 44-45 段。

临酷刑或虐待的危险，则不应将个人驱逐到另一个国家。⁵⁹ 在接收国或在第三方过境国被任意拘留的风险必须列入考虑因素之列。⁶⁰

60. 工作组回顾，强行将个人逐出其管辖范围的国家不能对此人在被强行遣送到其管辖范围内发生的情况推卸责任。因此，工作组一贯认为，驱逐国应对接受国个人遭受的侵犯人权行为负全部责任。工作组呼吁所有国家避免强行移交个人，绕过国际人权法规定的正当程序，无视防止任意拘留的保障措施。

C. 《反对在国家关系中使用任意拘押手段的宣言》

61. 工作组欢迎加拿大发起《反对在国家关系中使用任意拘押手段的宣言》及其推进该《宣言》的《伙伴关系行动计划》的倡议，迄今已得到 63 个国家的认可。⁶¹ 工作组回顾其对拘留外国国民的严重关切，并建议提供适当和迅速的领事协助，以此作为防止任意拘留的基本保障。⁶²

62. 《反对在国家关系中使用任意拘押手段的宣言》旨在促进《世界人权宣言》第九条和《公约》第九条所设想的绝对禁止任意拘留，前提是这一禁令具有不可减损的普遍性⁶³ 和习惯性。⁶⁴ 世界范围内禁止任意拘留清楚地证明了其根据习惯国际法⁶⁵ 具有普遍约束力的性质，这使得任何克减都是不允许的。⁶⁶

63. 2021 年 2 月 15 日在渥太华发表了《反对在国家关系中使用任意拘押手段的宣言》；随后介绍了 2021 年 5 月 5 日宣布的《伙伴关系行动计划》，以推动该计划的传播和实施。其目的和宗旨与工作组过去表达的关切密切相关。⁶⁷ 因此，工作组赞扬由于外国国民被拘留在一国以便在与其国籍国的关系中获得影响力而产生的这一倡议，并随时准备在其任务范围内支持《伙伴关系行动计划》并与所有签字国接触。

⁵⁹ 见第 23/2020 号、第 51/2020 号和第 84/2020 号意见。

⁶⁰ 见第 42/2020 号意见。

⁶¹ 可查阅 www.international.gc.ca/news-nouvelles/assets/pdfs/arbitrary_detention-detention_arbitraire-declaration-en.pdf。

⁶² 例如，见第 89/2017 号、第 45/2017 号、第 7/2017 号、第 56/2016 号、第 53/2016 号和第 28/2016 号意见。另见 A/HRC/39/45，第 50-58 段。

⁶³ 《美洲人权公约》第 7 条；《非洲人权和民族权宪章》，第 6 条；《阿拉伯人权宪章》第 14 条；《保护人权与基本自由公约》（《欧洲人权公约》）第 5 条。另见人权事务委员会，第 35 号一般性意见（2014 年），第 2 段。

⁶⁴ E/CN.4/2002/77，第 60(a)段和 A/HRC/42/39/Add.1，第 65 段。

⁶⁵ A/HRC/22/44。

⁶⁶ 同上，第 43-50 段。

⁶⁷ A/HRC/39/45，第 50-58 段和第 5 号订正审议意见(A/HRC/39/45，附件)。

四. 结论

64. 2020 年,工作组在全球疫情的特殊情况下继续开展工作,处理收到的大量来文,包括通过其常规来文程序。通过意见被确定为优先事项,共通过了 92 项意见,涉及 47 个国家的 221 人。

65. 工作组关切地注意到各国在其正常来文程序下的回复率,在 2020 年工作组通过意见的案件中,约 53% 的案件中,各国及时回复了工作组的来文和提供信息的要求。

66. 工作组注意到,与前一年相比,其后续程序的回复率有所提高,来文方和政府的回复率均有所上升,2020 年收到的回复率约为 58%。遗憾的是,回复率的提高并不一定意味着意见的执行力度增加。

67. 虽然工作组继续根据人权理事会第 42/22 号决议第 15 段回应尽可能多的要求其采取行动并及时、高效地处理案件的请求,但它继续面临不断积压的案件。

68. 在整个报告所述期间,工作组继续探讨各种专题问题,以协助利益攸关方防止任意拘留。这包括拟定一份审议报告,详细说明本报告的专题,并完成与禁毒政策有关的任意拘留问题的研究。

五. 建议

69. 工作组呼吁各国加强合作,回复定期来文和其他来文,通过后续程序报告工作组意见的执行情况(包括向任意拘留受害者提供适当补救和赔偿的情况),并积极回应国家访问请求。

70. 工作组鼓励各国充分落实《人权维护者宣言》,确保人权维护者不会因其活动而被剥夺自由。这需要结束让人权维护者对其工作保持沉默的做法,如长期监禁、根据模糊和过于宽泛的法律进行拘留,以及一再以保护他人权利的人为目标,特别是代表或属于边缘化群体的维护者。

71. 工作组还鼓励各国向所有将被驱逐或引渡出其管辖区的人提供所有正当程序保障,特别是法律代表权和质疑拘留合法性的权利,并确保任何这种驱逐或引渡不会导致任意剥夺自由。

72. 工作组重申对外国国民因其外国国籍而被剥夺自由并被拘留在一国的严重关切,同时欢迎通过《反对在国家关系中使用任意拘押手段的宣言》,并呼吁所有国家认可该《宣言》,并采取必要措施在实践中执行该《宣言》及其《伙伴关系行动计划》。

73. 工作组呼吁各国继续努力缩小国际标准与被剥夺自由妇女所面临的现实之间的执行差距,将其第 12 号审议意见中提供的指导纳入国家法律、政策和做法。必须优先考虑拘留妇女的替代办法,确保妇女不会因歧视理由被拘留,为妇女被拘留者提供专用和适当的拘留设施,并在所有拘留情况下解决第 12 号审议意见中确定的具体关切领域。

附件

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 women¹ 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 standards² 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

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.

defenders and activists and women belonging to national or ethnic, cultural, religious or linguistic minorities, amongst others. In particular, the Working Group 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

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.

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

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 family¹⁹ 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 discrimination²⁴ 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

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).

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.

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;

(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

²⁶ A/HRC/30/37, annex, para. 8; A/HRC/36/37, para. 46.

²⁷ See, e.g. Opinion No. 61/2018, para. 72.

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.

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

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

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.

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.

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 detainees⁴⁵ and failure to provide separate facilities for female and male detainees;⁴⁶
- (c) Separation of women and children in immigration facilities;⁴⁷
- (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

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>.

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.

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 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 poverty⁶² 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

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.

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.

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 women⁶⁸ 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, 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 violence⁷⁵ and may violate a

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.

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.

number of other provisions of international human rights law, including a woman's right to life⁷⁶ 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 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 bills⁸⁸ 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

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.

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.

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 offences⁹⁷ are similarly discriminatory and in violation of international law.⁹⁸

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

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.

⁹⁹ A/HRC/45/16/Add.2, para. 45; A/HRC/29/23, para. 15.

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

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

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.

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 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.

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.

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.

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.

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

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.

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.

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 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-

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.

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.

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 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

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.

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.

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 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

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.

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.

liberty¹⁶⁵ 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

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]

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.

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.