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Advancement of women

Pathways to, conditions and consequences of incarceration for women

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, in accordance with General Assembly resolution [65/187](#).

* [A/68/150](#).



Report of the Special Rapporteur on violence against women, its causes and consequences

Summary

Many countries are witnessing a significantly disproportionate rate of increase of women being incarcerated. Throughout the world, women prisoners face similar human rights violations relating to the causes that lead to their imprisonment, the conditions they face in prison and the consequences of their incarceration. The present report illustrates that there is a strong link between violence against women and women's incarceration, whether prior to, during or after incarceration.

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I. Introduction¹

1. Many countries are witnessing a significantly disproportionate rate of increase of women being incarcerated, compared to their male counterparts.² Globally, women and girls constitute a minority of the prison population as a whole, and it is estimated that they represent between 2 and 9 per cent of the total population. Throughout the world, women prisoners face similar human rights violations relating to the causes that led to their imprisonment, the conditions they face in prison and the consequences of their incarceration.³

2. The present report illustrates that there is a strong link between violence against women and women's incarceration, whether prior to, during or after incarceration. The portrayal of all incarcerated women as victims of violence, or of their lived circumstances, or of women as passive victims of the criminalization system, is not intended or promoted. The report acknowledges that there are women who are incarcerated for committing crimes, without extenuating circumstances linked to prior violence. Nonetheless, the undeniable link between violence and incarceration, and also the continuum of violence during and after incarceration, is a reality for many women globally.

3. Drawing upon research reports, treaty body findings, as well as the mandate's country mission reports, the report examines the causes, conditions and consequences of women's incarceration. Section II considers the different pathways to incarceration. Section III examines the conditions that women experience in custodial settings. Section IV explores the consequences of incarceration for women. Section V provides some conclusions.

II. Pathways to incarceration

4. Evidence from different countries suggests that incarcerated women have been victims of violence at a much higher rate prior to entering prison than is acknowledged by the legal system generally.⁴ The following sections look at some of the pathways that lead to women's incarceration.

¹ The Special Rapporteur on Violence against Women acknowledges the research assistance provided by Dorian Hall and interns and students of the Cornell University Law School International Human Rights Clinic and Avon Global Center for Women and Justice, under the supervision of Professors Elizabeth Brundige and Sital Kalantry. She also acknowledges the valuable input provided by participants at the expert group meeting held at the University of Chicago on 14 May 2013. Information on the meeting is available from www.lawschool.cornell.edu/womenandjustice/Clinical-Projects/upload/Expert-Group-Meeting-FINAL.pdf.

² Jenni Gainsborough, "Women in prison: international problems and human rights based approaches to reform", *William & Mary Journal of Women and the Law*, vol. 14, No. 2 (2008), pp. 271-304.

³ Julie Ashdown and Mel James, "Women in detention", *International Review of the Red Cross*, vol. 92, No. 877 (March 2010), pp. 123-141.

⁴ Draft notes from the expert group meeting held at the University of Chicago, 14 May 2013.

A. Presence of violence

5. According to many interlocutors, despite the lack of studies that have found a conclusive causal link, the presence of violence is often a central one in the experience of incarcerated women. A gendered approach to women and incarceration requires acknowledging that gender stereotyping can have disproportionate negative effects on women, including increased sentencing patterns and specific forms of violence, as compared to male prisoners. Also, women belonging to ethnic and racial minorities face a disproportionate rate of incarceration, as structural factors affect the causes, consequences and conditions of, and vulnerability to, arrest and incarceration.⁵

6. Numerous studies in the United States illustrate a strong correlation between incarceration and prior abuse, and the nexus with women's involvement in the activities for which they were incarcerated including drug use, prostitution and intimate involvement with criminals.⁶ In one study, of the women imprisoned for killing someone close to them, 67 per cent had been abused by the victim of their crime.⁷ Another study found that 66 per cent of women reported as being "physically aggressive" towards their partners were women acting in self-defence, and 22 per cent were acting out of fear for their safety.⁸

7. Similarly, studies in Australia, Canada and South Africa reveal high rates of prior violence and possible links with criminal conduct. The disproportionate incarceration rates of women from certain ethnic and minority groups is also highlighted in such studies.⁹ In Kyrgyzstan, one report noted that 70 per cent of women convicted of killing a husband or other family member had experienced a "longstanding pattern of physical abuse or forced economic dependence"

⁵ Ibid.

⁶ See Judith Green and Kevin Pranis, "Hard hit: the growth in the imprisonment of women, 1977-2004: The Punitiveness Report, Part I, Growth trends and recent research", Institute on Women & Criminal Justice, 2006; American Civil Liberties Union (ACLU), Prison Rape Elimination Act of 2003, 29 April 2011, available from www.aclu.org; Avon Global Center for Women and Justice at Cornell Law School and Women in Prison Project of the Correctional Association of New York, "From protection to punishment: post-conviction barriers to justice for domestic violence survivor-defendants in New York State" (2011); Angela Browne, Brenda Miller and Eugene Maguin, "Prevalence and severity of lifetime physical and sexual victimization among incarcerated women", *International Journal of Law and Psychiatry*, vol. 22, Nos. 3-4 (May-August 1999), pp. 301-322.

⁷ State of New York, Department of Correctional Services, "Female homicide commitments: 1986 vs. 2005" (July 2007).

⁸ Edward W. Gondolf, "The victims of court-ordered batterers: their victimization, help-seeking, and perceptions", *Violence against Women*, vol. 4, No. 6 (1998), p. 669.

⁹ Australia, New South Wales Legislative Council, Select Committee on the Increase in Prisoner Population, *Interim Report: Issues Relating to Women* (2000); Rowena Lawrie, "Speak out speak strong: rising imprisonment rates of Aboriginal women", *Indigenous Law Bulletin*, vol. 5, No. 24 (April-May 2003); *Social Justice Report 2007: Report of the Aboriginal & Torres Strait Islander Social Justice Commissioner* (Sydney, Australian Human Rights and Equal Opportunity Commission, 2008), p. 165; Anti-Discrimination Commission Queensland, *Women in Prison* (2006), p. 33; B. A. Hockings and others, "Queensland women prisoners' health survey" (Brisbane, Department of Corrective Services, 2002), p. ii; Aboriginal Justice Implementation Commission, "Report of the Aboriginal Justice Inquiry of Manitoba" (2001); Sadiyya Haffjee, Lisa Vettenand and Mike Greyling, "Violence and abuse in the lives of women and girls incarcerated at three Gauteng women's prisons", Center for the Study of Violence and Reconciliation, Research Brief No. 03 (February 2006), p. 3.

(A/HRC/14/22/Add.2, para. 26). Reports on Tajikistan suggest that most women convicted of homicides had killed their partners in self-defence (A/HRC/11/6/Add.2).

8. Women in a prison in the former Yugoslav Republic of Macedonia revealed how severe partner abuse was linked to the crimes they committed, and that they felt safer once they entered prison.¹⁰ A recent Government-sponsored report in the United Kingdom of Great Britain and Northern Ireland has corroborated findings of high rates of prior abuse, noting that one in three women in prison has experienced prior sexual abuse.¹¹ An urgent appeal regarding the case of an incarcerated woman in the Islamic Republic of Iran clearly illustrates the link between prior violence and crime, and also the disproportionate punishment often meted out to women. The woman was a victim of domestic violence and was forced into prostitution by her husband. One of her clients killed her husband, and the woman was convicted of adultery and of being an accomplice to murder. The male client was sentenced to an eight-year prison term and the woman was sentenced to death by stoning (A/HRC/11/6/Add.1).

B. Coercion

9. In some cases, women are incarcerated for illegal activities which they commit in response to coercion by abusive partners. Coercive threats of violence are sometimes explicit but may also be implied, for example manifesting in comments or actions that might seem insignificant to an outside observer but that may signal an imminent attack for a victim.¹²

10. One study illustrates how violence in relationships or marriages can lead to coercion to commit crimes such as shoplifting, cheque fraud, robbery, fencing of shoplifted items, prostitution, drug sales or murder.¹³ Some of the women interviewed said that they had been forced, by physical attacks or death threats, or in response to more subtle pressure or provocation, to commit criminal acts. This included being manipulated or “talked into” committing the crime, confessing to an abuser’s crime due to fear of the abuser, or committing physical assaults in response to psychological victimization.¹⁴

11. Some women are incarcerated as a result of their connection with others engaged in illegal behaviour. Sometimes called the “girlfriend problem”, women are often caught up in the offences of their significant other by participating minimally, or unknowingly, in crimes, often drug-related crimes.¹⁵ For example, in Mexico, the

¹⁰ Minnesota Advocates for Human Rights, *Domestic Violence in Macedonia* (1998).

¹¹ *The Corston Report: A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System* (United Kingdom of Great Britain and Northern Ireland, Home Office, 2007), p. 17; Lucy Watkins, “An evaluation of The Freedom Programme: a prison support programme for women who have experienced domestic violence”, Research Paper 2009/01 (The Griffins Society, 2009), p. 15; United Kingdom, Crown Prosecution Service, “Violence against women: strategy and action plans” (London, 2008), p. 31.

¹² Elizabeth M. Schneider, “Equal rights to trial for women: sex bias in the law of self-defense”, *Harvard Civil Rights-Civil Liberties Law Review*, vol. 15 (1980), p. 634.

¹³ Beth E. Richie, *Compelled to Crime: The Gender Entrapment of Battered Black Women* (Routledge, 1996), pp. 127-131.

¹⁴ *Ibid.*, p. 128. See also Avon, “From protection to punishment”.

¹⁵ ACLU, “‘Girlfriend problem’ harms women and children, impacted families call mandatory sentences unfair and destructive”, 14 June 2005.

number of incarcerated women has increased by 400 per cent since 2007. It is estimated that at least 40 per cent of women convicted of drug crimes, such as transporting drugs between cities or smuggling drugs into prisons, were coerced to do so by their boyfriends or husbands.¹⁶

12. Women and girls who are coerced and become victims of sex trafficking have also been incarcerated in numerous countries for crimes such as prostitution. They are frequently prosecuted because States have inadequate or no formal procedures for identifying such victims.¹⁷

C. Abortion

13. In countries where abortion is illegal or legal only in limited circumstances, women are subject to criminal liability for obtaining abortions, including in cases of rape. Some countries have restrictive abortion laws which impose criminal sanctions for abortions with no exceptions or allowance for extenuating circumstances, including when a pregnancy is due to rape.¹⁸ For example, in Chile abortion is illegal, even when the pregnancy is a result of rape. In a study of 80 women prosecuted for obtaining an abortion, 10 per cent were pregnant as a result of rape, and data gathered for a comparable nationwide study portrayed a similar reality.¹⁹

14. In Argentina abortion is allowed under limited circumstances, including for pregnancies resulting from “rape or indecent assault perpetrated against a feeble-minded female”. Prior to a 2012 judgement, lower courts were sentencing some women to long prison terms for obtaining an abortion for a pregnancy resulting from rape²⁰ (in 2012, the Supreme Court interpreted the law as permitting abortion for all women who are pregnant as a result of rape, as opposed to only women who have diminished capacity).²¹

15. While Mexico permits abortion in cases of rape, a woman must go through extensive administrative procedures to obtain a legal abortion. During this process, threats of incarceration are made, and women who have not gone or could not go through the administrative procedures are imprisoned.²²

¹⁶ David Agren, “Female felons swell ranks among Mexican criminals”, *USA Today*, 2 December 2010.

¹⁷ United States of America, Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report* (Washington, D.C., June 2011), pp. 63, 66, 81, 196, 209, 263, 302, 308, 312.

¹⁸ United Nations, *World Population Policies 2009* (United Nations publication, Sales No. E.09.XIII.24), p. 26.

¹⁹ Lidia Casas-Becerra, “Women prosecuted and imprisoned for abortion in Chile”, *Reproductive Health Matters*, vol. 9, No. 9 (May 1997), p. 31.

²⁰ Argentina, Criminal Code, art. 86; Christina M. Fetterhoff, “Argentina decriminalizes abortion in cases of rape”, *The Human Rights Brief*, 19 April 2012.

²¹ Argentine, Corte Suprema de Justicia, *F. A. L. s/ Medida Autosatisfactiva*, F.259.XLVI, judgement of 13 March 2012.

²² Human Rights Watch, “Mexico: the second assault: obstructing access to legal abortion after rape in Mexico”, 7 March 2006.

D. Moral crimes

16. In some countries, women are imprisoned for “moral” crimes such as adultery or extramarital sex, and it is argued that although laws may appear to be gender neutral, such charges are more often brought against women.²³ Evidentiary rules which require collaboration in rape cases may place a huge burden on women victims of rape, who in most cases are unable to meet the evidentiary burden necessary to prove the offence and are consequently convicted of a moral crime.

17. In Pakistan, many women in prisons have been convicted or are being prosecuted for violating the prohibition against extramarital sex.²⁴ These include many women who were charged with adultery after reporting rape,²⁵ as well as women who were accused of adultery after seeking a divorce.²⁶

18. The United Arab Emirates criminalizes any sexual relationship outside marriage, and some women survivors of rape do not report their attacks, out of fear that they will be prosecuted for committing adultery.²⁷ Although Afghanistan criminalizes extramarital sex, a woman who can prove she was coerced is excused from criminal liability. Coercion, however, is difficult to prove, due in part to the lack of a clear definition of rape and also the required standard of proof.²⁸ Thus, some rape victims are charged or convicted of extramarital sex, which is considered a moral crime. Reports in 2008 and 2012 estimate that approximately 50 per cent of women in prisons had been convicted of moral crimes.²⁹

E. Running away

19. In some countries, women are imprisoned for leaving their homes without permission. Many of these women leave in an attempt to escape violence in the home, including forced marriages, forced prostitution, and physical or sexual violence by a family member.

20. Afghanistan’s Penal Code does not criminalize the act of leaving one’s home without permission, whether for women or men. Despite this, it is only women who are imprisoned for running away without permission. One study reflects that approximately 20 per cent of incarcerated women were charged with the crime of running away in 2007, and this was often combined with another offence, such as adultery or theft.³⁰

²³ United Nations Office on Drugs and Crime, *Handbook for Prison Managers and Policymakers on Women and Imprisonment* (United Nations publication, Sales No. E.08.IV.4), p. 81.

²⁴ Amnesty International, Asia Pacific Regional Office, “Hudood Ordinances: the crime and punishment for Zina” (2007).

²⁵ United States, Department of State, “2010 country reports on human rights practices: Pakistan” 8 April 2011. Available from www.state.gov.

²⁶ National Commission for the Status of Women-Pakistan, “The impact of family laws on the rights of divorced women in Pakistan”, p. 72. Available from www.ncsw.gov.pk.

²⁷ Amnesty International, “United Arab Emirates — Amnesty International Report 2010”.

²⁸ United Nations Mission in Afghanistan and Office of the United Nations High Commissioner for Human Rights, “Silence is violence: end the abuse of women in Afghanistan” (Kabul, 2009), p. 23.

²⁹ United Nations Office on Drugs and Crime, “Afghanistan: implementing alternatives to imprisonment, in line with international standards and national legislation” (New York, United Nations, 2008), para. 14; Human Rights Watch, “*I Had to Run Away*”: *The Imprisonment of Women and Girls for “Moral Crimes” in Afghanistan* (2012), p. 1.

³⁰ *Ibid.*

F. Protection or rehabilitation

21. Sometimes women are held in prisons in an effort to protect them from gender-based violence, including preventing them from becoming victims of so-called “honour” crimes. In Afghanistan, women who have accused a family member or members of domestic violence are sometimes detained for their protection.³¹ At one time, approximately 30 women were in prison in Jordan to protect them from honour-based violence, including one woman held in prison for 12 years.³² On a positive note, the number of such detentions appears to have decreased in recent years (A/HRC/20/16/Add.1).

22. In some cases women sex workers have been administratively detained for the purpose of rehabilitation. Research in India reveals that women who engage in sex work are detained against their will in Government-operated rehabilitation facilities. While the stated purpose of these facilities is to rehabilitate sex workers, the conditions at these facilities are prisonlike.³³ Sex workers in Cambodia are sent to rehabilitation facilities managed by the Government or non-governmental organizations (NGOs), and are sometimes held against their will under harsh conditions; there have been allegations of deaths, beatings, rapes and torture.³⁴

G. Anti-drug policies

23. Currently both domestic and international anti-drug policies are a leading cause of rising rates of incarceration of women around the world.³⁵ Studies have found high rates of women being imprisoned for drug-related offences: almost 50 per cent in Estonia, Portugal and Spain; almost 70 per cent in Tajikistan; almost 68 per cent in Latvia;³⁶ almost 40 per cent in Georgia and Kyrgyzstan³⁷ and 37 per cent in Italy.³⁸

³¹ Amnesty International, “Afghanistan: women still under attack: a systematic failure to protect” (2005), p. 30.

³² Rana Hussein, “HRV and human rights, the Jordanian experience”, in “Honour-related violence within a global perspective: migration and prevention in Europe” (Stockholm, European Conference Report, 2004), p. 16.

³³ A. K. Jayasree, “Searching for justice for body and self in a coercive environment: sex workers in Kerala, India”, *Reproductive Health Matters*, vol. 12, No. 23 (2004), pp. 58, 63; Greetanjali Misra, Ajay Mahal and Rima Shah, “Protecting the rights of sex workers: the Indian experience”, *Health and Human Rights*, vol. 5, No. 1 (2000), p. 102.

³⁴ Human Rights Watch, *Off the Streets: Arbitrary Detentions and Other Abuses against Sex Workers in Cambodia* (2010), p. 6.

³⁵ See generally E. Iakobishvili, *Cause for Alarm: The Incarceration of Women for Drug Offences in Europe and Central Asia, and the Need for Legislative and Sentencing Reform* (London, Harm Reduction International, 2012); R. Uprimny Yepes, D. E. Guzmán and J. Parra Norato, *Addicted to Punishment: The disproportionality of drug laws in Latin America*, Working Paper 1 (Bogota, Dejusticia, 2013); ACLU, “Caught in the net: the impact of drug policies on women and families” (2005).

³⁶ Iakobishvili, *ibid.*

³⁷ Eurasian Harm Reduction Network, “Women and drug policy in Eurasia” (2010), p. 8.

³⁸ Itaca Association, Associazione Antigone, Associazione Nazionale Giuristi Democratici, Canadian HIV/AIDS Legal Network and Harm Reduction International, “Drug dependence, HIV/AIDS and the criminal justice system: articles 2 and 12 of the Convention”, briefing to the Committee on the Elimination of Discrimination against Women on the sixth periodic report of Italy, June 2011. Available from www2.ohchr.org.

24. A study on women inmates in Argentina found that over 55 per cent of surveyed women inmates were imprisoned for drug offences. This trend is similar in other Latin American countries, with figures ranging between 40 and 75 per cent.³⁹ The Russian Federation has a high rate of incarceration for drug-related offences. It is argued that Russian drug policies are severe; that police violence against female drug users is common; that the acquittal rate in drug cases is less than 5 per cent; that in about 70 per cent of cases the accused are sentenced without trial; and that the courts do not take into account the conditions that make women vulnerable to drug use. It is also said that the global “war” on drugs has led to numerous violations of women’s human rights.⁴⁰

25. A 2005 report noted that since 1986, the imprisonment rate for African American women for all offences, a large proportion of which are drug-related, has risen by 800 per cent, as opposed to 400 per cent for women of all other racial groupings. Also, Latina and African American women are being imprisoned for drug-related crimes as opposed to receiving punishment such as community supervision, which is more regularly available to white offenders.⁴¹ Recent positive developments in the United States of America indicate a decrease in drug offences⁴² due to a revisiting of drug policies and the consequences thereof.⁴³

26. Many new minimum sentencing regulations have resulted in harsher sentences for drug-related offences than for crimes such as rape and murder.⁴⁴ Such sentencing regulations result in gendered disparity as regards incarceration. For example, in Ecuador, in one year 77 per cent of women in prisons were incarcerated for drug-related offences, compared with 33.5 per cent of men.⁴⁵ An ironic consequence of such sentencing regulations is that women who commit relatively low-level drug crimes find themselves serving prison time while more serious offenders often escape imprisonment by entering into plea-bargaining deals, which involve giving “substantial assistance” to the prosecution.⁴⁶ Women are usually unable to provide such “assistance”.

27. The Global Commission on Drug Policy argues that despite harsher laws and policies and rising incarceration rates, it is not clear that the drug policies are having their intended effect of reducing or eliminating drug offences.⁴⁷

³⁹ Uprimny, p. 12.

⁴⁰ Mikhail Golichenko, “Vulnerability of women who use drugs to arbitrary arrest and discriminating sentencing”, presentation on behalf of the Canadian HIV/AIDS Legal Network at the expert group meeting, University of Chicago, 14 May 2013.

⁴¹ ACLU, “Caught in the net”.

⁴² United States, Department of Justice, Bureau of Justice Statistics, *Correctional Populations in the United States* (November 2011), p. 1.

⁴³ R. Lemaitre, “Nation’s prison and jail populations drop for third straight year”, 5 December 2012. Available from www.whitehouse.gov.

⁴⁴ See Uprimny.

⁴⁵ Jennifer Fleetwood and Andreina Torres, “Mothers and children of the drug war: a view from a women’s prison in Quito, Ecuador”, in *Children of the Drug War: Perspectives on the Impact of Drug Policies on Young People*, Damon Barrett, ed. (New York, International Debate Education Association, 2011), p. 129.

⁴⁶ ACLU, “Caught in the net”.

⁴⁷ “War on drugs: report of the Global Commission on Drug Policy” (2011), p. 10.

H. Political activities

28. In many countries, women's political activism has given rise to arrests and detentions. A recent report on the Islamic Republic of Iran refers to interviews with former women prisoners of conscience who were arrested for a number of reasons, including political affiliation, which can include affiliation with political opposition, women's rights activists, student bodies, NGOs, members or defenders of the lesbian, gay, bisexual and transgender community or defenders of the rights of religious minorities; individual activities related to journalism, the media, blogging and human rights advocacy; participation in demonstrations or other forms of activism; religious crimes, including affiliation with unrecognized minorities; and violations pertaining to laws linked to dress codes (hijab).⁴⁸

I. Pretrial detention

29. Many countries hold women in pretrial detention for extremely long periods, and the number of female pretrial detainees is often equivalent to or larger than the number of convicted female prisoners. Pretrial detainees may have limited contact with other prisoners, fewer opportunities for health-care, vocational or job programmes, as well as restrictions on family contact.⁴⁹

30. Women are generally more impacted than men by pretrial detention. In Scotland, 25 per cent of the female daily prison population consists of pretrial detainees compared to 17 per cent of the male daily prison population. In England and Wales, between 1992 and 2002 there was a 196 per cent increase in female pretrial detainees as compared to a 52 per cent increase for males.⁵⁰

J. Immigration and refugee detention

31. Migrants who are held in custody, typically on administrative grounds, are traditionally either asylum seekers or irregular immigrants awaiting adjudication of their claims.⁵¹ A rising number of migrants are held in detention around the world.⁵² Some countries, including Malta and Australia, have mandatory detention policies applicable to irregular migrants and refugees.⁵³ Women make up a small percentage of immigrant detainees. For example, in 2002 almost 15 per cent of the foreign nationals imprisoned in Australian immigration detention centres were

⁴⁸ Justice for Iran, *Crime and Impunity: Sexual Torture of Women Prisoners in Islamic Republic Prisons, Part 1: 1980s* (2012).

⁴⁹ World Health Organization (WHO) Regional Office for Europe and United Nations Office on Drugs and Crime, "Women's health in prison: correcting gender inequity in prison health", document EUR/09/5086/974 (2009), p. 13.

⁵⁰ Laurel Townhead, "Pre-trial detention of women and its impact on their children" (Geneva, Quaker United Nations Office, 2007), p. 6.

⁵¹ Global Detention Project. Information about the Global Detention Project is available from www.globaldetentionproject.org.

⁵² Stephanie J. Silverman and Evelyne Massa, "Why immigration detention is unique", *Population, Space and Place*, vol. 18, No. 6 (November/December 2012).

⁵³ Cetta Mainwaring, "Constructing a crisis: the role of immigration detention in Malta", *Population, Space and Place*, vol. 18, No. 6 (November/December 2012); Adele Murdolo, "Keeping 'our' women safe: containing Australian fear and danger through immigration detention", *Hecate*, vol. 28, No. 1 (May 2002), p. 128.

women,⁵⁴ while in South Africa the figure was 20 per cent.⁵⁵ The United States has seen a 50 per cent increase in the number of women immigrant detainees since 2005 (A/HRC/17/26/Add.5 and Corr.1).

32. Administrative detention of migrants is generally inconsistent with the international prohibition against arbitrary detention.⁵⁶

III. Conditions of incarceration

33. The prevalence of dire prison conditions with a lack of a gender focus is a global problem, and female prisoners often face conditions that are worse than those experienced by their male counterparts. It is argued that prisons were made with men in mind, and gender-neutral policies can have serious negative consequences for women prisoners. Furthermore, opposition and hostility from policymakers and male corrections officials is common. The view is held that women prisoners unfairly receive preferential treatment.⁵⁷ An official working in a correctional facility stated “the general view is that women get everything and men get nothing. In reality, women get everything that can be provided for free”.⁵⁸

A. Violence

34. Female prisoners throughout the world are vulnerable to numerous manifestations of violence. According to testimonies received by the Special Rapporteur, women in prison are raped by inmates and guards, forced into prostitution, touched in a sexual manner during frisks and required to wear revealing prison uniforms. In some contexts, women and men are housed together in the same facility or even the same jail cell, which increases the risks of abuse⁵⁹ and is contrary to international standards.

35. A communication sent to the Government of Brazil addressed the case of a 15-year-old girl who was accused of petty theft and placed in a police cell with approximately 20 male prisoners, where she was raped by several of the men (A/HRC/11/6/Add.1). An urgent appeal was sent to the Government of Kyrgyzstan regarding the multiple rape of a detainee in police detention, the subsequent threats and assaults against her and the lack of attention to her allegations by the court (A/HRC/11/6/Add.1).

36. In 2011 in Egypt, 20 female prisoners were arrested in a peaceful public protest and 17 were subjected to forced virginity testing in a military prison. It is alleged that the purpose was to humiliate them and deter other women from protesting.⁶⁰

⁵⁴ Murdolo, *ibid.*

⁵⁵ “South Africa: focus on Lindela detention centre”, IRIN News, 16 May 2002.

⁵⁶ Office of the United Nations High Commissioner for Refugees, “Guidelines on applicable criteria and standards relating to the detention of asylum-seekers” (February 1999).

⁵⁷ Ashdown and James, “Women in detention”.

⁵⁸ *Ibid.*, pp. 8-9.

⁵⁹ Megan Bastick and Laurel Townhead, “Women in prison: a commentary on the UN Standard Minimum Rules for the Treatment of Prisoners”, Human Rights & Refugees Publications (Geneva, Quaker United Nations Office, 2008), p. 29.

⁶⁰ Amnesty International, “Egypt: military ‘virginity test’ investigation a sham”, 9 November 2011.

37. Women in prison in Paraguay have been subjected to multiple forms of sexual violence, including sexual harassment, threats of rape, inappropriate touching and being forced into prostitution.⁶¹ In Yemen, a study found that guards were impregnating female prisoners and marrying them to men who paid bribes to the guards.⁶² A report has also noted that guards and prisoners frequently rape female prisoners in Kenya (E/CN.4/1998/54).⁶³ In Uganda, prisoners are subjected to violence, including having wardens throw stones at them as punishment; being forced to cultivate rice in waist-deep water, where leeches attach to their bodies; being beaten; and pregnant women being beaten and forced to perform heavy work, resulting in two women miscarrying.⁶⁴ Female prisoners in a Zambian prison reported beatings and being stripped naked, covered with mud and forced to stand in the hot sun all day as forms of punishment (A/HRC/17/26/Add.4).⁶⁵

38. A recent study uncovered cases of rape of female political prisoners in the Islamic Republic of Iran throughout the 1980s, including the rape of young virgin girls before execution, forced marriages and other forms of sexual violence, some of which continues today.⁶⁶ In July 2011, a female prisoner committed suicide after violent beatings, including with electronic batons.⁶⁷ The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran states that a prisoner alleged that prison guards tortured her by subjecting her to sleep and toilet deprivation, keeping her in a standing position for hours, burning her with cigarettes, exposing her to extreme temperatures for extended periods of time and punching, kicking and striking her with batons (A/67/369, para. 27).

39. In China, torture and ill-treatment of “politically sensitive” prisoners have been reported, usually involving activists and human rights defenders.⁶⁸ Guards at one prison deliberately prevented women inmates from taking baths and changing clothes for months, or using sanitary napkins during their period.⁶⁹ In Argentina’s federal prisons, it is argued that women who have a history of behavioural problems are often grouped together on purpose, under inadequate supervision, leading to violence among the female inmates.⁷⁰

40. Psychological violence, including solitary confinement of women and girls, can be another form of abuse, particularly when applied for an extended period of time or used as punishment, during pretrial detention. It is argued that in prison

⁶¹ Center for Justice and International Law, “Women in prison regional report: Argentina, Bolivia, Chile, Paraguay, Uruguay” (2006), p. 45.

⁶² Assma Almasmari, “Female prisoners in Yemen living a haunted life”, *Yemen Post*, 4 February 2008.

⁶³ United Kingdom, Home Office, UK Border Agency, Operational Guidance Note: Kenya, 3 January 2013, p. 13.

⁶⁴ Human Rights Watch, “*Even Dead Bodies Must Work*”: *Health, Hard Labor, and Abuse in Ugandan Prisons* (New York, 2011), p. 33.

⁶⁵ Human Rights Watch, *Unjust and Unhealthy: HIV, TB, and Abuse in Zambian Prisons* (2010), p. 94.

⁶⁶ Justice for Iran, *Crime and Impunity*.

⁶⁷ “Woman prisoner commits suicide because of harsh conditions”, Iran Daily Brief, 17 July 2011.

⁶⁸ Amnesty International, “People’s Republic of China: briefing for the Committee against Torture in advance of their consideration of China’s fourth periodic report”, 3 November 2008.

⁶⁹ The Conscience Foundation, “Shadow report on the observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the People’s Republic of China for the period from 2000 to 2008”, October 2008, p. 13.

⁷⁰ Avon, “From protection to punishment”.

settings, solitary confinement is sometimes used as a way to separate girls from the adult population, but is also often used punitively against women and girls. In contrast, solitary confinement is used primarily for safety reasons with male prisoners. There is a perception that there may also be a correlation between solitary confinement and high suicide rates and attempted suicide among women prisoners.⁷¹

41. Severe psychological abuse is used in the Islamic Republic of Iran to extract details of prisoners' sexual relations and, under threat of public disclosure blackmailing them to confess to charges of espionage. Other tactics are intimidation, verbal abuse during interrogation and branding the victim as illegitimate, or being born as a result of or practising prostitution.⁷²

B. Violation of privacy

42. Women in prison are routinely watched/placed under surveillance, with reports of attempts by male guards to watch women in various stages of nudity, including while undressing, bathing, using the toilet and during medical examinations. According to one report, male guards have an unobstructed view into the women's showers and they regularly watch female prisoners bathing ([A/HRC/17/26/Add.5](#) and Corr.1). A 2007 report of the Parliamentary Assembly of the Council of Europe confirms that privacy is inadequate in the shower and toilet facilities in some women's prisons in Armenia, Azerbaijan and Georgia.⁷³ In Serbia, a study found that "privacy isn't provided throughout all [toilet] facilities" in the Penitentiary-Reformatory for Women.⁷⁴ In one case examined by the Committee on the Elimination of Discrimination against Women, the Committee considered that the unjustified male surveillance of a woman in a prison amounted to discriminatory treatment ([CEDAW/C/49/D/23/2009](#), para. 7.7).

43. Female prisoners in many countries are subjected to invasive and degrading searches. Some searches require women to undress and lift their breasts or bend over at the waist and spread their cheeks. Female prisoners are also subject to vaginal searches and in some countries, male guards search female prisoners. In many countries subjecting women prisoners to strip searches is more or less routine ([A/HRC/17/26/Add.5](#) and Corr.1).⁷⁵

C. Inadequate health care and hygienic conditions

44. Many prisons do not offer adequate mental or physical health care to women inmates and may actually provide less health care to female prisoners than to male prisoners. The consequence of a failure to consider women's specific health needs means ignoring reproductive health needs and medical conditions stemming from a

⁷¹ Ashdown and James, "Women in detention".

⁷² WHO Regional Office for Europe, "Women's health in prison".

⁷³ Council of Europe, Parliamentary Assembly, "The situation of women in the South Caucasus", document 11178 (6 February 2007), para. 53.

⁷⁴ Helsinki Committee for Human Rights in Serbia, "Prisons in Serbia February-March 2010: monitoring of the prison system reform" (Belgrade, 2011), p. 5.

⁷⁵ Human Rights Watch, *Unjust and Unhealthy*; South African Human Rights Commission, "Report of the National Prisons Project" (1998), p. 67.

history of poverty, malnutrition, physical or sexual abuse, drug use, or inadequate medical care.⁷⁶

45. In Africa, the needs of women and children receive “little to no attention”, as “prison administration remains a decidedly male- and adult-dominated milieu”.⁷⁷ Due to the same laws and rules which are applicable to women and men prisoners in India, “inadequate attention is paid to women-specific needs such as menstruation, pregnancy, childbirth, contact with children, body searches, and lack of general privacy”.⁷⁸

46. Women in prison are more prone to illness from infectious disease, digestive issues, respiratory ailments, injuries and other medical problems. Moreover, HIV and other sexually transmitted and blood-borne diseases are more prevalent among female prisoners than their male counterparts. In Zambia, diseases such as HIV and tuberculosis are transmitted relatively easily as a result of the minimal medical care afforded to prisoners (A/HRC/17/26/Add.4).⁷⁹ Prisons in Cameroon simply separate the prisoners with contagious diseases from other inmates, rather than offering preventive medical care to the general population.⁸⁰

47. Prison authorities and staff do not foster a supportive environment for women prisoners’ timely access to medical services, failing to attend to complaints of ill-health with urgency and sometimes disregarding prisoners’ ailments altogether. For example in the United States, patients with chronic health concerns complain of long delays before seeing a doctor (A/HRC/17/26/Add.5 and Corr.1). Female detainees in Zambia receive little medical attention for pre- and postnatal treatment and care (A/HRC/17/26/Add.4).

48. Mental health problems can be both the cause and the result of imprisonment. Inadequate health-care services, overcrowding and a lack of safety from abuse can exacerbate these problems. Women generally experience more psychological distress than men over their lifetimes, including anxiety, depression and guilt. Also, they have higher rates of substance abuse, personality disorders and histories of abuse than incarcerated men, and a higher rate of self-harm and attempted suicide.⁸¹

49. Many female prisoners continue their existing drug and alcohol addictions, or develop such addictions, during incarceration, due to the availability of illicit drugs

⁷⁶ See Tammy L. Anderson, “Issues in the availability of health care for women prisoners”, in *Female Prisoners in the United States: Programming Needs, Availability, and Efficacy*, Susan Sharp, ed. (New Jersey, Prentice Hall, 2002), p. 1. See also WHO Regional Office for Europe, “Women’s health in prison”.

⁷⁷ Jeremy Sarkin, “Prisons in Africa: an evaluation from a human rights perspective”, *Sur — International Journal on Human Rights*, vol. 5, No. 9 (December 2008), p. 29.

⁷⁸ Anupma Kaushik and Kavita Sharma, “Human rights of women prisoners in India: a case study of Jaipur central prison for women”, *Indian Journal of Gender Studies*, vol. 16, No. 2 (2009), pp. 253, 268.

⁷⁹ See generally Human Rights Watch, *Unjust and Unhealthy* and WHO Regional Office for Europe, “Women’s health in prison”.

⁸⁰ African Commission on Human and Peoples’ Rights, “Prisons in Cameroon: report of the Special Rapporteur on Prisons and Conditions of Detention in Africa”, document ACHPR/37/OS/11/437 (2002).

⁸¹ See generally WHO Regional Office for Europe, *Health in Prisons: a WHO Guide to the Essentials in Prison Health*, EUR/07/5063925 (Copenhagen, 2007); see also Anderson, “Issues in the availability of health care for women prisoners” and WHO Regional Office for Europe, “Women’s health in prison”.

in prison.⁸² Many prisons do not provide adequate substance abuse treatment programmes, or do not tailor programmes specifically for women. In the Russian Federation, it is argued that there is widespread discrimination against women as regards the accessibility of substance abuse programmes.⁸³

50. Many facilities for women fail to provide a hygienic environment that meets basic health needs and increases the health risks and prevalence of diseases. In Zambia, it has been alleged that unclean water is used for bathing, no soap or toothpaste is provided, bathroom facilities are run-down and dirty, blankets are infested with lice and rags are given as clothing (A/HRC/17/26/Add.4).⁸⁴ In some Sri Lankan prisons, cells are infested with rats; beds, mats and pillows are often lacking; and no fans are provided even when temperatures climb to dangerous levels. Two bathrooms, which are frequently in a serious state of disrepair, are allocated for every 75 inmates to share.⁸⁵

D. Overcrowding, poor nutrition and lack of feminine-specific care

51. Overcrowding results in prisoners living in environments that do not adequately provide for health, comfort, privacy, sanitation, nutrition and safety needs. In Sri Lanka, a cell that should hold 75 prisoners often has to accommodate around 150.⁸⁶ Ecuador also faces this problem: a facility with a capacity of 80 was occupied by 209 adult prisoners and 70 children.⁸⁷

52. Inadequate quantities and poor nutritional value of foods is an issue in many countries. It can result in starvation and malnourishment, including for pregnant or nursing women; it can become a commodity traded for sex; denial of food can be used as a form of punishment; because of limited quantities, it can lead to fights; and the poor quality and nutritional value may endanger the health of inmates, including impacting the ability of mothers to breastfeed babies.⁸⁸

53. In India, the conditions in which prisoners are held can vary according to how they are classified: foreign citizens, political prisoners and individuals belonging to “higher” castes receive better treatment while incarcerated, including placement in larger or less-crowded prison cells, access to books and newspapers, and more and better food. Those who belong to the “lower” castes do not receive these benefits.⁸⁹

54. Prisons are ordinarily modelled on men’s needs, with little or no attention paid to gender-specific issues such as menses, menopause, gynaecological facilities, adequate nutrition for pregnant women, and other basic sexual and reproductive

⁸² European Monitoring Center for Drugs and Drug Addiction, *Annual report 2004: The State of the Drugs Problem in the European Union and Norway* (Lisbon, 2004).

⁸³ Penal Reform International, “Women in prison in Russia: at a glance” (2010).

⁸⁴ Human Rights Watch, *Unjust and Unhealthy*.

⁸⁵ Ranmali Bandarage, “Sri Lankan jails ‘hell’ for females”, Inter Press Service, 20 July 2011.

⁸⁶ Ibid.

⁸⁷ Inter-American Commission on Human Rights, “The human rights situation of individuals incarcerated within the penal system of Ecuador”, in “Report of the situation of human rights in Ecuador”, OEA/Ser.L/V/II.96, Doc. 10 rev. 1 (24 April 1997).

⁸⁸ See generally Human Rights Watch, *Unjust and Unhealthy*; Bandarage, “Sri Lankan jails ‘hell’ for females”; African Commission on Human and Peoples’ Rights, “Prisons in Cameroon”.

⁸⁹ M. P. Mahaworker, *Prison Management: Problems and Solutions* (Kalpaz Publications, 2006), p. 72.

health needs. In Zimbabwe, women activists and human rights defenders are reported to be systematically denied access to medical care, including when pregnant.⁹⁰

E. Women with children and pregnant women

55. Incarceration of mothers throughout the world has an impact on vast numbers of children. One United States study indicates that 55 per cent of state prisoners and 63 per cent of federal prisoners reported having at least one child under the age of 18.⁹¹ In Swaziland, among the 62 women living in one facility, there were 30 children living in prison with their mothers in the course of one year.⁹²

56. There are no universally agreed upon standards for determining which circumstances warrant a child living in prison, and there is considerable variation between countries.⁹³ On the whole, most countries have instituted policies that base this decision on the age of the child.⁹⁴ The inherent paradox is articulated as “Prisons are not a safe place for pregnant women, babies and young children, and [but] it is not advisable to separate babies and young children from their mother.”⁹⁵ Support services, such as nurseries, schooling and social therapy, are offered to children in some prisons.

57. Prison authorities in some parts of the world routinely shackle pregnant prisoners to their beds while they are in labour, or when they are being transported to off-site visits for medical treatment. For example, despite recent legal developments in the United States, interlocutors have stated that many states allow for the restraint of pregnant women during transportation to hospitals, and some states permit the use of shackles during the delivery (A/HRC/17/26/Add.5 and Corr.1).⁹⁶ Such practices have also been found in the Occupied Palestinian Territory (E/CN.4/2005/72/Add.4). Shackling pregnant inmates is representative of the failure of the prison system to adapt protocols to unique situations faced by the female prison population.⁹⁷

⁹⁰ Amnesty International, “Zimbabwe: briefing to the pre-session working-group of the Committee on the Elimination of Discrimination against Women” (June 2011), pp. 13-14.

⁹¹ Lauren E. Glaze and Laura M. Maruschak, “Parents in prison and their minor children”, United States, Department of Justice, Bureau of Justice Statistics Special Report 1 (August 2008, revised March 2010).

⁹² United States, Department of State, “2007 country reports on human rights practices — Swaziland” (March 2008).

⁹³ Oliver Robertson, “Children imprisoned by circumstance”, Human Rights & Refugees Programme (Geneva, Quaker United Nations Office, 2008), p. 6.

⁹⁴ Ashdown and James, “Women in detention”, p. 138.

⁹⁵ African Commission on Human and Peoples’ Rights, “Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa, V. Chirwa: prisons in Malawi”, series IV, No. 9 (2001).

⁹⁶ Cristina Costantini, “Undocumented woman forced to give birth while shackled and in police custody”, Huffington Post, 21 December 2011.

⁹⁷ Dana Sussman, “Bound by injustice: challenging the use of shackles on incarcerated pregnant women”, *Cardozo Journal of Law & Gender*, vol. 15, No. 3 (Spring 2008), p. 487.

F. Sexual orientation and gender identity

58. The rights and needs of lesbian, gay, bisexual, transgender and intersex persons are violated worldwide, with many prison systems subjecting them to increased discrimination and not affording them equal standards of health care and protection from sexual violence, humiliation, intolerance and abuse.⁹⁸ Studies have consistently shown that those with a non-heterosexual orientation, or whose gender expression does not fall into exact categories of female and male, are vulnerable to targeted abuse both by staff and by other prisoners.⁹⁹ In many prison systems complaints by lesbian, gay, bisexual, transgender and intersex prisoners about sexual abuse and rape are less likely to receive a response from prison administrations, leading to impunity and continued abuse.¹⁰⁰

59. With respect to women's prisons, and lesbians specifically, the expectation of many guards is that the prisoners should behave in a passive and submissive manner, with the assumption that since non-feminine behaviour landed them in prison, incarceration should "restore them to it". Those prisoners whom guards view as masculine or "butch" are subjected to increased levels of threats, harassment and physical abuse. In other cases, guards may respond with confrontation or retaliation when they interpret a female prisoner's masculinity as insubordinate and challenging to their authority. Due to strict requirements relating to dress, hair length, style and appearance, prisoners that are non-gender-conforming are subject to "forced feminization".¹⁰¹

60. It has been reported that in some prisons, guards will blatantly allow abuse and rape to occur, and also facilitate abuse by placing lesbian, gay, bisexual, transgender and intersex persons in less safe conditions than the majority population. Additionally, those prisoners are sometimes deliberately placed in cells with known sexual predators, and lesbian women are commonly placed in cells with men if they refuse the sexual advances of prison staff.¹⁰² Transgender prisoners face sexual abuse and rape, especially when they are placed in accommodations according to their birth gender, particularly when male-to-female transgender prisoners are placed with men.¹⁰³ Also, certain prisons have staff-run prostitution rings that force all transgender prisoners to participate.¹⁰⁴

61. Policies for conjugal visits often discriminate against lesbian, gay, bisexual, transgender and intersex prisoners. Because same-sex marriages are illegal in many

⁹⁸ United Nations Office on Drugs and Crime, *Handbook on Prisoners with Special Needs*, Criminal Justice Handbook Series (Vienna, 2009), p. 104.

⁹⁹ See United States, Bureau of Justice Statistics, National Prison Rape Elimination Commission Report (2009), p. 7; see also The National Coalition of Anti-Violence Programs, "Hate violence against lesbian, gay, bisexual, and transgender people in the United States" (2008), p. 42; Amnesty International, "Human rights don't discriminate"; International Gay and Lesbian Human Rights Commission and others, universal periodic review submission: Cameroon (October 2012), p. 2.

¹⁰⁰ Ibid.

¹⁰¹ Robin Levi and others, "Gender-identity based violations in California women's prisons", unpublished briefing paper, Justice Now (2010), p. 3.

¹⁰² United Nations Office on Drugs and Crime, *Handbook on Prisoners with Special Needs*.

¹⁰³ See, e.g., International Commission of Jurists, *International Human Rights References to Human Rights Violations on the Grounds of Sexual Orientation and Gender Identity*, 2nd updated ed., (Geneva, 2006), p. 9.

¹⁰⁴ United Nations Office on Drugs and Crime, *Handbook on Prisoners with Special Needs*.

countries, such prisoners are not likely to be lawfully married, and thus not permitted to receive visits from their partners. Even in systems allowing conjugal visits to unwedded partners, lesbian, gay, bisexual, transgender and intersex prisoners are not offered the same rights.¹⁰⁵

62. As lesbian, gay, bisexual, transgender and intersex prisoners in many jurisdictions have exceptionally limited contact with their families and partners, the sense of isolation in prison is intensified, impacting their mental health and prospects for social reintegration. Lesbian, gay, bisexual, transgender and intersex prisoners frequently are not afforded adequate access to health care, including specific physical and mental-health treatment.¹⁰⁶ They also are more likely to be the victims of disrespectful health care generally. In Guatemala, prisoners have been subjected to medical testing without their consent, including for HIV.¹⁰⁷

63. Transgender prisoners, specifically, face unique and particularly harsh circumstances in prison systems, including issues of classification for their prison placement, the possibility of administrative segregation, barriers to the accessibility of hormone treatment, and higher instances of abuse and discriminatory treatment.¹⁰⁸ Generally, transgender people who have had genital surgery are classified and housed according to their reassigned sex, but those who have not are usually classified according to their birth sex for purposes of prison housing, regardless of how long they have lived as a member of the other gender and regardless of how much medical treatment they have undergone.¹⁰⁹ In Guatemala, one transgender woman stated that she was raped more than 80 times in one year.¹¹⁰ Separation of transgender women may result in greater protection, but this in turn results in exclusion from recreation, educational and occupational opportunities and rights of association.¹¹¹

G. Immigration and refugee detention

64. Administrative detention of migrants raises multiple human rights concerns, including a lack of legal protection, an absence of limits on the length of detention and few, if any, possibilities of obtaining redress through the courts.¹¹² Women migrants held in immigration detention are subject to similar conditions as incarcerated women, including sexual and physical violence, violations of privacy and inadequate health care. The lack or inadequacy of interpretation and translation

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Timothy Merlo and Supraja Murali, “Human rights violations of lesbian, gay, bisexual, and transgender (LGBT) people in Guatemala: a shadow report”, submitted to the Human Rights Committee (March 2012), p. 19.

¹⁰⁸ Rebecca Mann, “Treatment of transgender prisoners, not just an American problem — A comparative analysis of American, Australian, and Canadian prison policies concerning the treatment of transgender prisoners and a universal recommendation to improve treatment”, *Law & Sexuality: A Review of Lesbian, Gay, Bisexual and Transgender Legal Issues*, vol. 15 (2006), p. 118.

¹⁰⁹ Darren Rosenblum, “‘Trapped’ in Sing Sing: transgendered prisoners caught in the gender binarism”, *Michigan Journal of Gender and Law*, vol. 6 (2000), p. 528.

¹¹⁰ Merlo and Murali, “Human rights violations of lesbian, gay, bisexual, and transgender (LGBT) people in Guatemala: a shadow report”.

¹¹¹ Rosenblum, “‘Trapped’ in Sing Sing”.

¹¹² Global Detention Project, www.globaldetentionproject.org/aaboout/faq.html.

services may make it difficult or even impossible for women foreign nationals to make complaints or object to abuses. Cultural differences can also exacerbate these problems, especially where women migrants are used to complying unquestioningly with the demands of men or individuals in authority.¹¹³ Both a 1999 and a 2011 report note that although immigration detention facilities are civil and administrative forums, many function similarly to punitive correctional facilities in terms of confinement and isolation practices (E/CN.4/1999/68/Add.2 and A/HRC/17/26/Add.5 and Corr.1).

65. Abortion may not be available to women in immigration detention centres, depending on the laws of the country. In Malta, for example, abortion is illegal under domestic laws, and is thus unavailable to women held in detention centres. This in turn can lead to complications during childbirth, as doctors may not be trained in or well equipped to handle births for women who have undergone female genital cutting, for example.¹¹⁴

IV. Consequences of incarceration

66. The effects of incarceration on women are often longer lasting due to the more dire conditions and deprivations they experience. The consequences of incarceration take a toll on several aspects of women prisoners' lives, including negative outcomes with respect to health, substance abuse, medical insurance, housing, employment, social stability and familial connections. These negative consequences also contribute to recidivism among former female prisoners,¹¹⁵ even though their recidivism rates, in general, are much lower than those of men.¹¹⁶

A. Lack of effective rehabilitation and reintegration programmes

67. Generally, women in prison do not receive adequate rehabilitation resources or guidance preparing them for release and life after imprisonment. They are commonly burdened with low social and economic status in society and within their own families, and therefore face more difficult conditions upon release than do men. Many female prisoners are not equipped with vocational skills and have not been afforded educational opportunities prior to or in prison, posing further barriers to rehabilitation and successful re-entry into society. For example, one report states that in England, 33 per cent of detained women had been excluded from school, 71 per cent had no qualifications and 48 per cent had reading and numeracy abilities well below those of the general population (A/HRC/11/8, para. 49).

68. There are fewer programmes for women, and those that are available are less varied and of poorer quality than those offered to male detainees.¹¹⁷ Several

¹¹³ Ashdown and James, "Women in detention".

¹¹⁴ Alison Gerard and Sharon Pickering, "The crime and punishment of Somali women's extra-legal arrival in Malta", *British Journal of Criminology*, vol. 52, No. 3 (May 2012), p. 520.

¹¹⁵ Rachel Taylor, "Women in prison and children of imprisoned mothers" (Geneva, Quaker United Nations Office, 2004).

¹¹⁶ Elizabeth Piper Deschenes, Barbara Owen and Jason Crow, "Recidivism among female prisoners: secondary analysis of the 1994 BJS [Bureau of Justice Statistics] recidivism data set", unpublished report submitted to the United States Department of Justice, 2006.

¹¹⁷ Bastick and Townshead, "Women in prison".

countries' prisons limit the educational opportunities provided to prisoners by tailoring them to gender stereotypes, and only offer vocational opportunities that conform to traditionally feminine occupations including hairstyling, sewing, vegetable-selling and catering. Male prisoners, on the other hand, are given opportunities to learn about building, welding and carpentry.

69. Women prisoners' mental health problems are both more frequent and more serious than those of their male counterparts. While incarcerated, women prisoners engage more often in self-mutilation, experience depression and attempt suicide.¹¹⁸ An Australian report argues that in contrast to male prisoners, who express anger and frustration by engaging in physical violence or initiating riots, women are more likely to turn to self-harm.¹¹⁹ After being released from prison, women who struggle with mental health problems have a propensity to self-harm, including overdosing on drugs. For example, a study in England and Wales found that within one year of being released, former female prisoners were 36 times more likely to die by suicide than the general population.¹²⁰

70. The effect of imprisonment on the physical health of women is often a direct result of the poor conditions that they face, including overcrowding, poor sanitary facilities, lack of physical and mental activities and lack of appropriate health care. One of the primary barriers to addressing various health problems is the inability to access health-care services upon their re-entry into society, either through denial of access or inability to afford health-care insurance.¹²¹

71. For women incarcerated for drug crimes, the lack of rehabilitative care often means that the conditions that rendered them vulnerable to drug involvement in the first place are sometimes replicated and augmented in prison, and after release.¹²² One Canadian study found that women offenders who were released and who did not participate in a drug treatment programme were 10 times more likely to return to prison within one year than the prisoners who did participate.¹²³

72. Research studies indicate that finding permanent employment after release can be a critical element in preventing recidivism among prisoners.¹²⁴ However, women prisoners may encounter obstacles in finding steady employment because of a lack of skill-development opportunities, or the loss of previously held skills.¹²⁵ Additionally, employers may be reluctant to hire convicted felons, or they may be legally barred from offering jobs in certain sectors to former prisoners.

¹¹⁸ Sarkin, "Prisons in Africa".

¹¹⁹ Anti-Discrimination Commission Queensland, *Women in Prison and Social Justice Report 2007*.

¹²⁰ D. Pratt and others, "Suicide in recently released prisoners: a case-control study", *Psychological Medicine*, vol. 40, No. 6 (May 2010), p. 827.

¹²¹ Robert Wood Johnson Foundation, "Returning home: understanding the challenges for prisoners" (2009).

¹²² ACLU, "Caught in the net".

¹²³ Flora I. Matheson, Sherri Doherty and Brian A. Grant, "Community-based aftercare and return to custody in a national sample of substance-abusing women offenders", *American Journal of Public Health*, vol. 101, No. 6 (June 2011), p. 1129.

¹²⁴ United Nations Office on Drugs and Crime, *Handbook for Prison Managers*; see also Christy Visher, Sara Debus and Jennifer Yahner, "Employment after prison: a longitudinal study of releasees in three states", Research Brief, Urban Institute Justice Policy Center (2008), p. 1.

¹²⁵ Visher, Debus and Yahner, *ibid.*

73. Finding housing is also a significant challenge for ex-prisoners, as they may not have enough money to pay upfront housing costs such as security deposits; application forms may require a disclosure of criminal history, which may impede access to housing; and they may be unable to return to or are unwelcome in their previous home.¹²⁶

74. Stigmatization, social alienation and feelings of shame and guilt may also contribute to hindering reintegration. Stigma and the loss of certain rights are a challenge to re-establishing relationships and social ties. Family and community support is critical to successful reintegration, and also to decreasing the chance of recidivism.¹²⁷

75. In some countries, women are unable to return home on release due to fear that violence may be committed against them. According to one report, female prisoners in Iraq have asked to remain in detention centres following their scheduled release due to fear of honour-related violence.¹²⁸ It is argued that in India “the inter-changeability of punitive and protective or curative institutions has led to prison cells being regarded as places of safe custody”.¹²⁹ In Australia, research has shown that women are left homeless, or forced to remain in secure custody, due to fear of payback and retaliation by the community.¹³⁰

76. Preparing children who have remained with their mothers in prison for integration back into society is a crucial step towards their ability to adjust to life outside, particularly for those who were born in prison or have no memory of life before prison. One report on India states that

Many children born in prison have never experienced normal family life up to the age of four-five years. The socialization pattern of children gets severely affected due to their stay in prison. Their only image of a male authority figure is that of the police and prison officials. They are unaware of the concept of a “home”. Boys sometimes talk in the female gender, having grown up only among women in the female ward. Sights like animals on roads frighten these children because of lack of exposure to the outside world.¹³¹

B. Failure to protect the family unit

77. The legal basis for the protection of the family unit can be found in the International Covenant on Civil and Political Rights, article 23 (1) of which provides: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” In addition, article 17 (1) states that no person “shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”. A fundamental premise with respect to the right to

¹²⁶ Jeremy Travis, Amy L. Solomon and Michelle Waul, “From prison to home: the dimensions and consequences of prisoner reentry” (Washington, D.C., The Urban Institute, 2001), p. 35.

¹²⁷ Deschenes, Owen and Crow, “Recidivism among female prisoners”.

¹²⁸ Human Rights Watch, *At a Crossroads: Human Rights in Iraq Eight Years after the US-Led Invasion* (2011), p. 15.

¹²⁹ R. D. Shankardass and others, *Workshop on New Models of Accessible Justice, The India Experience: Special Focus on Women and Juveniles* (Penal Reform and Justice Association for Penal Reform International, 2000), p. 7.

¹³⁰ *Social Justice Report 2007*.

¹³¹ Robertson, “Children imprisoned by circumstance”.

maintain contact with the world outside of prison is that, like free persons, those deprived of their liberty enjoy all the human rights guaranteed by international law, subject only to those restrictions that are an unavoidable consequence of the confinement.¹³²

78. Many women in prison have little meaningful contact with their family members, more especially their children. There are several reasons for limited contact, including the mother's incarceration in a prison located a distance from the family and the logistical and financial costs involved in arranging visits, a prison's restrictions on contact or communications with family members and the greater likelihood that the family of a female prisoner will shun or reject her, compared to families of male prisoners.¹³³ Also, prison regulations and institutional barriers may be partially at fault for limited family contact. For example, most detainees in Latvia are not allowed to telephone their families or receive visits.¹³⁴

79. In some cases, families choose not to visit relatives in prison. This is especially true in cultures that regard imprisonment of women as shameful. In other instances, the caregiver may be unwilling or unable to permit children to visit their incarcerated mothers.¹³⁵ A caregiver may be angry or resentful at the imprisoned mother because of being burdened with having to take care of her children.¹³⁶ Also, a prisoner who has dependent children may face termination of her parental rights.¹³⁷ Children who have a parent incarcerated are at risk of poor academic performance, alcohol and drug abuse and low self-esteem. Additionally, such children are approximately six times more likely to be incarcerated in their lifetime.¹³⁸

80. Allowing infants and young children to live with their incarcerated parents reduces some risks associated with separation, if implemented with adequate safeguards, proper infrastructure and necessary resources.¹³⁹ Co-residence in prisons and community-based programmes provide two alternatives to separation in the early years of a child's life. Italy and Argentina allow for house arrest if certain conditions are met, and Italy further offers an alternative work programme for mothers with children under the age of 10.¹⁴⁰ In Canada, one prison allows some women to stay with their children in on-site trailers for two nights a week.¹⁴¹ In one

¹³² Human Rights Committee, general comment No. 21 (1992), replacing general comment No. 9 concerning humane treatment of persons deprived of liberty (article 10 of the International Covenant on Civil and Political Rights), para. 3.

¹³³ ACLU, "Caught in the net".

¹³⁴ Laurel Townhead, "Women in prison & children of imprisoned mothers: recent developments in the United Nations human rights system" (Geneva, Quaker United Nations Office, 2006), p. 9.

¹³⁵ Emily Saunders and Rachel Dunifon, "Children of incarcerated parents" (Cornell University College of Human Ecology, 2011), p. 4.

¹³⁶ Alison Cunningham and Linda Baker, "Invisible victims: the children of women in prison" (Ontario, Canada, Centre for Children & Families in the Justice System, 2004).

¹³⁷ United Nations Office on Drugs and Crime, *Handbook for Prison Managers*.

¹³⁸ Patricia Gonzalez, Tony Romero and Christine B. Cerbana, "Parent education program for incarcerated mothers in Colorado", *Journal of Correctional Education*, vol. 58, No. 4 (December 2007), p. 357.

¹³⁹ Avon, "From protection to punishment".

¹⁴⁰ Nancy Loucks, "'Prison without bars': needs, support, and good practice for work with prisoners' families" (United Kingdom, Tayside Criminal Justice Partnership and Families Outside, 2004), p. 36.

¹⁴¹ Oliver Robertson, "The impact of parental imprisonment on children" (Geneva, Quaker United Nations Office, 2007), p. 28.

Sierra Leone prison that lacked dedicated infrastructure for co-residence, infants frequently became ill due to the conditions in prison and the spread of contagious diseases.¹⁴² In Finland, mothers at two prisons complained that the childcare services were insufficient, and sometimes their requests for health services for their children were denied for “arbitrary reasons”.¹⁴³

V. Conclusions

81. Under international law, “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.¹⁴⁴ Prisoners may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty, and respect for the dignity of such persons must be guaranteed under the same conditions as that of free persons. Moreover, this fundamental rule must be applied without distinction of any kind, including discrimination on the basis of sex.¹⁴⁵ This principle of non-discrimination requires States to take into account and address any disparate impact of criminal justice strategies on women,¹⁴⁶ even if they have been adopted for legitimate goals such as, for example, the “war on drugs”. States are directed to develop policies based on women’s special needs as criminal justice offenders.¹⁴⁷

82. In 2011, the General Assembly, by its resolution 65/229, adopted the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which established for the first time standards that relate specifically to women prisoners, offenders and accused persons. The Bangkok Rules recognize that the international law principle of non-discrimination requires States to address the particular challenges that women confront in the criminal justice and penitentiary systems (rule 1).¹⁴⁸ They provide comprehensive standards for the treatment of women prisoners and offenders, addressing issues such as prior victimization and its links with incarceration; alternatives to incarceration; mental and physical health care; safety and security; contact with family members; staff training; pregnant women and mothers with children in prison; and prisoner rehabilitation and reintegration, among other things.

83. These rules supplement the standards of the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), which afford protection to all prisoners and offenders, respectively. Other applicable international standards

¹⁴² Alison Thompson, “Children living in prison: insights from Sierra Leone”, report prepared by AdvocAid for the United Nations Quaker Office (2008), p. 10.

¹⁴³ Tarja Pösö, Rosi Enroos and Tarja Vierula, “Children residing in prison with their parents: an example of institutional invisibility”, *The Prison Journal*, vol. 90, No. 4 (December 2010), p. 527.

¹⁴⁴ International Covenant on Civil and Political Rights, art. 10 (1).

¹⁴⁵ Human Rights Committee, general comment No. 21 (1992).

¹⁴⁶ General Assembly resolution 61/143, para. 8 (f).

¹⁴⁷ Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, General Assembly resolution 55/59, annex, paras. 11 and 12.

¹⁴⁸ See also Penal Reform International, “Women in prison: incarcerated in a man’s world”, Penal Reform Briefing No. 3 (2008), p. 2.

include the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the Basic Principles for the Treatment of Prisoners; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice; and the Code of Conduct for Law Enforcement Officials. Although these rules are non-binding instruments, they constitute authoritative guides to the content of binding treaty standards and customary international law.

84. International standards recognize that “violence against women has specific implications for women’s contact with the criminal justice system”, and that violence against women may be a cause of women’s involvement in criminal offences and subsequent imprisonment.¹⁴⁹ States have a duty to address the structural causes that contribute to women’s incarceration and to address root causes and risk factors related to crime and victimization through social, economic, health, educational and justice policies. Member States have been called upon to develop gender-specific sentencing alternatives and to recognize women’s histories of victimization when making decisions about incarceration.¹⁵⁰ In addition, States have an obligation under international human rights law to act with due diligence to prevent, respond to, protect against, and provide redress for all forms of gender-based violence.¹⁵¹

85. In some countries, there are emerging practices and ongoing discussions on the need for a paradigm shift from incarceration to community-based sentencing for female offenders. This movement is based on factors such as the sharp increase in the number of women being incarcerated; the overrepresentation of women who have experienced prior violence; the economic and social costs of imprisonment; the detrimental effects of incarceration on women and their families, especially since more women have dependent children than do male prisoners; the impact of overcrowding and unsanitary conditions in prisons; and the rising incidence of self-harm by incarcerated women. There is a growing recognition that most female offenders pose little, if any, risk to society.¹⁵² For those women who are deemed to be a risk to society, the recommendations include the need for smaller, specialist prisons which are easily accessible and where mental and physical health care, remedial and rehabilitative services, appropriate living space and family visiting facilities can be better met.¹⁵³

86. As this report illustrates, much more remains to be done to identify and address the pathways to women’s incarceration; to establish better, safer and more gender-sensitive conditions for women prisoners; to ameliorate the negative consequences of women’s imprisonment; and to reduce the numbers of women in prison around the world.

¹⁴⁹ Bangkok Rules, preliminary observations, para. 9.

¹⁵⁰ Tokyo Rules, rules 2.3 and 5.1; Bangkok Rules, rules 41 and 60.

¹⁵¹ See Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992) on violence against women; see also Declaration on the Elimination of Violence Against Women, General Assembly resolution 48/104, art. 4 (c).

¹⁵² *The Corston Report*.

¹⁵³ See The Scottish Government, Commission on Women Offenders: Final Report (2012), pp. 3-6.