#### Vaduz, 27 September 2018

#### Questionnaire on Deprivation of Liberty of Women and Girls in the Principality of Liechtenstein to the Working Group on Discrimination against Women in Law and in Practice

**I. Justice System**

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| 1. What are the main causes for women coming into conflict with the law and facing the associated deprivation of liberty, including pre-trial detention? Which are the groups of women who are most vulnerable and why? Please list the types of offenses for which women, or any particular group of women, are typically charged with, including administrative offenses. |

The number of women detained in Liechtenstein is very low (2017: 4; 2016: 4; 2015: 3; 2014: 4; 2013: 3; 2012: 3; 2011: 3; 2010: 5; 2009: 9; 2008: 4). Most women deprived of liberty in the National Prison are subject to pre-trial detention. The second most common cause for a deprivation of liberty of women is an alternative term of imprisonment, e.g. the conversion of a fine into a term of imprisonment if the fine turns out not to be collectable entirely or in part. The third most common ground is detention based on a foreign request for extradition in criminal matters. In very few cases, women were subject to administrative detention in the form of arrest for extradition purposes.

No particularly vulnerable group of women can be discerned with regard to the deprivation of liberty.

The types of offenses for which women are typically charged are burglaries, economic crime and (very few) drug offences in order of frequency.

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| 2. Please indicate if there are cases of women facing detention in relation to civil law suits and identify the particular groups of women mostly affected. |

Detention in relation to civil law suits was neither imposed on women nor men in the past ten years.

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| 3. What are the main challenges for women’s access to justice, including, for example, the availability and quality of legal representation, the ability to pay for bail, and the existence of gender stereotyping and bias in judicial proceedings? |

Women's access to justice is fully guaranteed in Liechtenstein. There are no gender-specific restrictions. Based on the Criminal Code of Procedure (CCP), every suspect may consult a lawyer prior to every questioning (including by the police). The CCP guarantees the right to inspect documents, the right to translation help, the right to request production of evidence, the right to free choice of a defence lawyer with the opportunity to consult at all times and the right to legal aid, the right to consult a defence lawyer during questioning, and the right to participate and be present. The lawyer may also attend the questioning (see § 147(2) CCP). The suspect must be informed of his rights before the questioning.

The CCP further stipulates that every arrested person must, upon arrest or immediately afterwards, be informed of the suspected offence and the reason for arrest as well as of the fact that she is entitled to contact a relative or other person of trust and defence counsel, and that she has the right to remain silent. The arrested person is informed that any statement made by her may serve her defence but may also be used against her. The CCP also requires the appointment of a defence lawyer for the duration of detention pending trial. If the accused does not appoint a defence lawyer, the court provides a public defence lawyer. Every arrested person must be questioned by the investigating judge immediately or at the latest within 48 hours of receipt of the application for detention pending trial.

The Liechtenstein Chamber of Lawyers offers a legal on-call service that can be used by suspects outside regular office hours to exercise their right to contact a defence lawyer. The on-call defence service includes a personal telephone consultation with a lawyer at the request of the suspect. Where necessary, the lawyer can also attend the questioning by the police and perform other acts necessary for an adequate defence (e.g. applying for legal aid). The on-call number is deposited at the operations centre of the National Police and also available from on-call judges. The CCP also provides that in principle, after expressly informing the person to be questioned, an audio and video recording of every questioning may be made (see § 50a).

Further, women and girls, like every affected party, have access to legal aid in criminal and civil proceedings, which includes the exemption from legal fees. Legal aid is provided if a party is unable to bear the procedural costs or the costs of defence without an impairment of the maintenance necessary for a simple lifestyle.

On 1 January 2008, the new Execution of Sentences Act (ESA) entered into force. Based on the new ESA, an independent Corrections Commission was appointed. The Corrections Commission’s mandate covers visits of the inmates of the National Prison at least four times a year. It also assumes the responsibilities of the National Preventive Mechanism pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Liechtenstein ratified in 2006.

The ESA also regulates the complaints procedure for detained persons. Under Art. 114 ESA, convicts may file a complaint against any decision or order affecting their rights as well as against any conduct of corrections personnel affecting their rights. The complaint must indicate the decision, order, or conduct complained of and set out the reasons for filing the complaint, to the extent that they are not obvious. Complaints must be made in writing or be presented verbally to the prison management during working hours.

When transferring a detained person to the National Prison for the execution of a sentence, the National Prison conducts an entry briefing. In addition to the administrative matters, the rights of the detained person are covered in that briefing. In conclusion, every person is given a comprehensive dossier (including the ESA, the prison rules, and various information sheets) in which all topics discussed are set out.

The prison management decides on complaints against corrections personnel or their orders. If the complaint is directed against the prison management or against a decision or order of the prison management, and if the prison management does not provide a remedy, then the Complaints Commission for Administrative Matters is responsible for deciding. If the complaint is not granted, the decision can be appealed to the next instance (Administrative Court). Moreover, the convict has the possibility of appealing to the Government's right of supervision by submitting a request and complaint (Article 116 ESA).

A number of legal avenues are specifically geared towards protecting women from gender discrimination. In 2001, Liechtenstein ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, thereby accepting the individual complaints procedure under the Convention. The rights guaranteed by the Convention can be asserted in an individual complaints procedure before the Constitutional Court analogously to the rights guaranteed by the Constitution of the Principality of Liechtenstein. Legal protection for girls and women against discrimination is also guaranteed by the Gender Equality Act which has been in force since 1999. The Gender Equality Act governs the legal claims and remedies of girls and women affected by discrimination in the workplace or in their access to or supply of goods and services. For the benefit of those affected, Article 6 of the Gender Equality Act provides for a lesser burden of proof, so that merely a *prima facie* claim of discrimination must be made.

In regard to effective legal protection from discrimination, the entry into force of the new § 283 of the Criminal Code (CC) in April 2016 is of particular note, introducing a comprehensive prohibition of discrimination. While prior to the revision of the article, only racial discrimination constituted a criminal offence, public incitement to hatred or discrimination on the basis of language, nationality, ethnicity, religion, ideology, gender, disability, age, or sexual orientation is now also a criminal offence punishable by imprisonment of up to two years. The term "gender" covers not only women and men, but also transsexuals and persons with ambiguous gender characteristics. It is also punishable to refuse to provide a service intended to be provided to the general public to a person or group of persons on the grounds referred to above.

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| 4. What have been the main drivers for the increasing or decreasing of the female prison population in your country in the past decade? To what extent are non- custodial measures used, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)? |

Over the past ten years the female prison population did neither increase nor decrease. It has generally been very low as described in the answer to question I. 1.

**II. Other institutions**

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| 1. What other institutions outside the justice system exist in your country wherein women and girls are institutionalized on grounds such as care, correction, protection and prevention against potential harms, etc.? Please list the groups of women and girls who are most concerned in each situation. |

*Involuntary forensic placement*

As a preventive measure, persons (irrespective of their gender) who have committed a criminal offence under the influence of a mental disorder may be placed in an institution for mentally disturbed offenders by court order. Under certain circumstances, such a measure may also be imposed in cases where the person concerned has not been declared criminally irresponsible. Similarly, involuntary placement in a specialised institution may be ordered in respect of persons who have committed a criminal offence under the influence of intoxicating or narcotic substances, or in respect of persons who are considered to be at risk of re-offending.

In the absence of an appropriate establishment on the territory of Liechtenstein, all preventive measures are usually implemented in Austrian establishments, in accordance with a bilateral treaty concluded with Austria in 1982.

The procedure for the placement of persons under §§ 21 to 23 CC is set out in §§ 340 to 352 CCP. In particular, placement decisions are taken by a court, the person concerned must be assisted by a lawyer throughout the proceedings, and the court decision must be based on the opinion of at least one doctor with professional qualifications in psychiatry.

Placements under § 21 CC are for an indeterminate period (“for as long as their purpose requires it”), while placements under §§ 22 and 23 CC may not exceed maximum periods of two and ten years respectively.

The CC stipulates that all involuntary forensic placements have to be reviewed by the court at one-year or six-month intervals. Pursuant to the above-mentioned co-operation treaty between Liechtenstein and Austria, the general competence in enforcement of preventive measures lies with the Austrian courts, applying Austrian law, while Liechtenstein authorities remain competent to decide on certain matters, such as the termination of the measure.

With regard to legal representation in placement review procedures, the provisions on criminal proceedings apply *mutatis mutandis* with the deviation that, with regard to defence, the person concerned must already be represented by a defence lawyer in the preliminary proceedings (§ 340 para. 2(1) CCP).

If a person is unable to bear the costs of defence without diminishing the livelihood necessary for a simple lifestyle for herself and her dependent family, the court shall, on application of the person concerned, decide that a defence lawyer shall be provided without cost to the person concerned, if and to the extent that this is necessary in the interest of the administration of justice, and especially in the interest of a suitable defence (§ 26 CCP).

*Involuntary civil placement*

Based on Art. 11 para. 1 of the Law on Social Welfare, persons (irrespective of gender) who are mentally ill or disabled, or who suffer from substance dependence or are severely neglected, may be placed against their will in an appropriate care institution. In practice, involuntary psychiatric patients are usually admitted to psychiatric hospitals in Switzerland.

According to Art. 12 para. 1 of the Law on Social Welfare, the National Physician and the Office for Social Services may apply to the court of first instance, which may order an involuntary placement for a maximum period of one year. The court must hear the person concerned and, if necessary, appoint a legal adviser to assist her. For involuntary placement due to mental illness, mental disability or substance dependence, an expert opinion must also be sought.

The placement decision must be brought to the attention of the person concerned, her next-of-kin, the Government, the Office for Social Services, the National Physician and the mayor of the relevant municipality. An appeal against a decision on the initial placement or against its renewal may be lodged by the person concerned, her next-of-kin or the legal representative to the Appellate Court.

In cases of imminent danger, the National Physician, her or his deputy or the physician on duty must order the immediate placement of the person and notify the court of first instance, which must then approve or reject the placement within five days. If the emergency placement is approved, the court proceedings will continue on the basis of the above-mentioned rules for ordinary placement procedures.

Any involuntary placement is automatically reviewed by the court upon expiry of the term of the placement order, if it is intended to prolong the involuntary placement. For that procedure the same rules apply as for the initial placement procedure. In addition, a judicial review of the necessity of the continued placement may be prompted at any time by the placed or retained person, her next-of-kin or legal representative. Upon receipt of a request for discharge submitted by the person herself, the court conducts proceedings to review the necessity of continued retention.

Based on Art. 25 of the Children and Youth Act (CYA), children and adolescents (irrespective of gender) whose well-being would be severely endangered if they were left in their given environment by a mental disorder, addiction, deviant behaviour, neglect, use of force, sexual abuse or other adverse impairment be it through their own doing or that of another person, may be placed in appropriate institutions against their own and their parents’ or legal guardian’s will if the necessary aid cannot be afforded to them otherwise.

With the consent of the parent or legal guardian, the Office for Social Services may decide about the placement of a child or adolescent in an open institution in accordance with Art. 27 para. 1 CYA. Based on an application of the Office for Social Services, the Court of first instance decides within four weeks about the placement in cases of dissent of the parent or legal guardian with regard to the placement in an open institution or in case of a placement in a closed institution.

Based on Art. 27 para. 2 CYA, the application of the Office for Social Services has to inform about the place and duration of the placement and include the Office’s expert opinion. If required, the Court of first instance seeks additional child and adolescent psychiatric or child and adolescent psychological opinions or other expert opinions. If necessary, the Court appoints a legal adviser to assist the child or adolescent. The costs of legal representation are borne by the State. The placement decision and the decision about the admission of a legal adviser must be brought to the attention of the parent or legal guardian, the Office for Social Services and in an appropriate manner the child or adolescent concerned and if required the National Physician or the physician on duty.

The placement may be ordered for a maximum period of a year. The Office for Social Affairs has to regularly review whether the purpose of the measure is still being served and if the placement is still justified. For that purpose, reports of the responsible institutions are to be sought.

The Court of first instance decides upon a prolongation of the placement at the application of the Office for Social Services as well as upon a preterm termination of the measure at the application of the Office for Social Services, the child or adolescent concerned or the parent or legal guardian; the opinion of the Office for Social Services and an independent expert opinion are to be sought.

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| 2. Please explain the decision-making process for the institutionalization of women and girls in each situation, including the role of women and girls themselves in the decision on institutionalization. Please highlight any good practices in terms of enabling women to exercise agency within institutional systems, with due respect to their rights? |

Please see the answer to question II. 1. above.

**III. Forced confinement in private contexts**

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| 1. What forms of forced confinement of women and girls exist in a private or social context sanctioned by family, community or group of individuals such as abduction, servitude, guardianship and “honor” practices, trafficking, home detention, “witch camps”, widowhood rites, etc.? |

To provide an adequate response to this question, two NGOs and the Victims Assistance Office[[1]](#footnote-1) were consulted. The NGOs were the Liechtenstein Women's Home[[2]](#footnote-2) which offers counselling and emergency housing to women and children affected by domestic violence and the NGO "infra – Information and Counselling Centre for Women" which counsels and supports women and girls with regard to a wide array of subject matters such as violence, pregnancy, labour-, custody-, inheritance-, pension law, social security, care and family work, gender equality in the labour market etc.[[3]](#footnote-3) The Victims Assistance Office counsels victims of offences and their family members and provides the necessary medical, psychological, social, material, and legal assistance. The three institutions reported that there were generally only few cases of women and girls forcefully confined in a private or social context and that they could not detect a pattern or trend of forceful confinement. They reported a few cases where women from a migrant background who were raised in communities/countries with patriarchal structures were brought to Liechtenstein by their families for the purpose of marriage. Some of these women were then socially controlled by their husbands and parents in law. This includes that they are denied the right to leave the house on their own, that they are not allowed to learn German and have no access to their husband’s bank account.

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| 2. Please identify the groups of women and girls who are most affected by these situations. |

Women with a migrant background are primarily affected by the above described social control by their husbands and parents in law. These women are socially isolated and not easily accessible for the national institutions in charge of women’s or victim’s rights such as the Office for Social Services, the Victims Assistance Office, the Women’s Home or the "infra – Information and Counselling Centre for Women".

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| 3. What is the role of law and policy (including customary law and authorities) in your country concerning these types of confinement? |

All forms of violence against women and forced confinement of women and girls in a private or social context are prohibited by the CC in Section 1 (offences against life and limb), Section 3 (offences against liberty) and Section 10 (offences against sexual self-determination and other sexual offences).

In 2011, the law governing sexual offences was adjusted with the goal of expanding the substantive legal protection of victims and the practical measures taken by the Government to combat violence against children and women as well as domestic violence at a legal level. In particular, the range of criminal offences that must be prosecuted *ex officio* was expanded. These offences now include cases of dangerous threats against close family members, stalking, rape or sexual assault in marriages and domestic partnerships, and coerced marriages. *Ex officio* prosecution ensures that prosecution is no longer tied to any limiting preconditions for the different forms of domestic violence.

A second concern of the 2011 reform was to strengthen victims' rights in criminal procedure. Victims of offences must now be informed of their rights and, at their request, of the development of the case and of the release of the accused from detention. Victims of physical, psychological, or sexual violence whose emotional suffering is especially severe may assert special rights to considerate treatment.

A comprehensive network of national institutions aims at ensuring that women are consulted and supported in situations of distress that may result from any type of forceful confinement.

**IV. Migration and crisis situations**

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| 1. What are the specific risks of detention and confinement encountered by women on the move in the context of asylum seeking, internal displacement and migratory processes? |

Detention and confinement of irregular migrants and asylum seekers are regulated in the Foreigners Act (FA). The rules are laid down in Arts. 57 to 63 FA. Administrative detention of a person always forms the ultima ratio. Milder measures are taken where possible such as a duty to report to the National Police on a regular basis or to hand in one’s valid travel documents to the authorities. There are different types of administrative detention.

Women can become subject to detention when they do not meet the entry requirements and if additional grounds for detention laid down in Arts. 58 to 59a FA apply. Depending on whether a person is an irregular migrant or an asylum applicant, different detention grounds are applicable. One of the main reasons for detention is the risk of absconding. Administrative detention is imposed to ensure the enforcement of a removal or expulsion order.

Based on Art. 60 (1a) FA, a detention order is only legal when proportional and if milder measures cannot be devised effectively. The decision is taken on a case by case basis.

The maximum possible duration of administrative detention is laid down in Art. 61 FA. In normal cases, the maximum duration is 6 months and for minors between 15 and 18, 3 months. Special maximum durations are laid down for persons that fall under the so-called Dublin-III-Regulation. Also detention against children and adolescents who have not yet reached the age of 15 is impermissible. In practice, detention generally lasts about 3 days. For durations of 96 hours or more, review of the detention by a judge of the Court of Justice is mandatory.

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| 2. What is the policy relating to the administrative detention of women migrants including pregnant women and women with children? |

There are specific conditions of detention laid down in Art. 62 FA regarding women, vulnerable persons and families in detention. Male and female detainees are separated in the detention facility. Families obtain separate accommodation which guarantees an adequate level of privacy. Emergency health care and treatment of illnesses (including pregnancy) are ensured.

As mentioned in the answer to question IV. 1. above, detention orders are only issued if necessary and proportional. This is even more applicable with regard to pregnant women and women with children. In the last five years no pregnant women were detained. There is no specific data with regard to administrative detention, but in general less than 5 women were in administrative detention in the last five years.

Detention of pregnant women or women with children would only be imposed in exceptional cases.

1. https://www.llv.li/#/11484/opferhilfestelle. [↑](#footnote-ref-1)
2. http://www.frauenhaus.li/. [↑](#footnote-ref-2)
3. http://www.infra.li/. [↑](#footnote-ref-3)