

**Submission to the Working Group on the issue of Discrimination Against Women in
Law and Practice on Deprivation of Liberty of Women and Girls
Sexual Rights Initiative and Global Network of Sex Work Projects
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1. This submission is made by the Sexual Rights Initiative¹(SRI) and Global Network of Sex Work Projects² (NSWP). The Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Poland, India, Egypt, Argentina and South Africa, that work together to advance human rights related to sexuality at the United Nations. NSWP is a global network of sex worker-led organisations, with 258 members in 80 countries, that exists to uphold the voice of sex workers globally and connect regional networks advocating for the rights of female, male and transgender sex workers. It advocates for rights-based health and social services, freedom from abuse and discrimination, and self-determination for sex workers

Deprivation of Liberty of Women and Girls: Root Causes

2. Deprivation of liberty, including forced confinement and institutionalisation, is a tool used by dominant hegemonies of white supremacy, patriarchy and heteronormativity and adopted by all formal and informal institutions including the State and families. These hegemonies perpetuate the idea that gender is fixed and biological. Heteronormative and patriarchal notions can be found at all levels of society; some of the manifestations are obvious and public (such as legislation limiting women’s access to healthcare or education), while others are more hidden or ideological (such as the common belief that ‘boys will be boys’ when boys and men harass and exploit girls and women, and that ‘good girls are seen but not heard’).
3. Women and girls’ sexuality continues to be perceived as the dominion of everyone except women and girls themselves. Laws, policies and practices are constantly defined and redefined towards ‘acceptable’ behaviour of women and girls. Acceptable behaviour is then countered with ‘deviancy’ and the need to ‘correct’ this deviancy. Most often ‘deviancy’ is any behaviour or action that does not mirror the dominant community hegemonies including a non-adherence to the stereotypes of gender and sexuality.
4. Deprivation of liberty of women and girls by the State, institutions and families is often the result of the need to control women and girls, accompanied by the fear of sexuality, its expression and assertion. This phenomenon is not new, one can perhaps trace this to the idea of the ‘hysterical woman’ where hysteria was seen as woman-specific condition which needs to be treated with “abstinence” coupled with institutionalisation and all the cruelty that such institutionalisation brings with it. Remnants of this philosophy can be seen codified and adopted by laws in all parts of the world.

¹ <http://www.sexualrightsinitiative.com/>

² <http://www.nswp.org/>

5. This morality of controlling sexuality as ‘deviancy’ was brought to the colonial territories and incorporates as whole to control the people in the territories. The project of colonialism codified this “morality” of colonial powers in their “territories”. The subsequent nationhood project used these very same laws as the bedrock to formulate the norms and values on dealing with marginalised subjects of the nation particularly while dealing with issues of sexuality and gender. The impact of conservative morality on sexuality has been much discussed in the context of same sex relations. However, its construction of women’s sexuality and consequent impact on laws and policies in the formation of nation states after independence less so.
6. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in his report to the Human Rights Council has affirmed this analysis highlighting that restrictions on the liberty of movement have emerged in the past two centuries as the default tool of social control to promote public safety, “morals” and public health. He further elaborates that this includes the detention, on the grounds of behaviour socially labelled as “immoral”, of, among others, lesbian, gay, bisexual, transgender and intersex persons, rebellious young persons, drug users and women exercising their right to make choices concerning pregnancy prevention and termination.³
7. The Working Group on the issue of discrimination against women in law and practice has also highlighted that women and girls are especially vulnerable to degrading treatment in situations where they are deprived of liberty, including in migrant detention facilities or mental institutions. They are subjected to humiliating treatment within the health-care system because of their gender identity and sexual orientation, sometimes expressly in the name of morality or religion, as a way of punishing what is considered “immoral” behaviour.⁴ However, this kind of policing is not utilised only by State representatives, public and private institutions but also by families, and individuals holding formal and informal institutional power.
8. Another aspect leading to deprivation of liberty of women and girls is in order ‘to protect’ them – from themselves and/or from real and perceived dangers. This protection reframes state obligations from respecting, protecting and fulfilling human rights and fundamental freedoms of people to ‘protecting people.’ This distinction dislocates the bodies of women and girls from autonomous people to victims without agency and in need of protection. And most often the protection takes the form of depriving their freedom. This paternalistic formulation of women and girls essentialises the experiences of women and girls, denying them their human rights. It often leads to victim blaming in cases of violence and places the burden of preventing violence on women and girls, absolving the state and perpetrators of all responsibility.

³ A/HRC/38/36, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/101/42/PDF/G1810142.pdf?OpenElement>

⁴ A/HRC/32/44, Report of the Working Group on the issue of discrimination against women in law and in practice on the issue of discrimination against women with regard to health and safety, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/072/19/PDF/G1607219.pdf?OpenElement>

9. However, protectionism do not manifest in isolation. Protectionist discourses are used extensively in all countries and are opportunistically used to deny women and girls their autonomy when multiple oppressions are in operation. An example of this the surveillance and detention of migrant sex workers, women sex workers belonging to racial or ethnic minorities as described in this submission below. An intersectional understanding of discrimination highlights the exacerbated impact based on multiple and intersecting forms of discrimination. The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, stated that “the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.” As highlighted by an Expert Group Meeting on gender and racial discrimination convened by OHCHR in 2000, “[t]he idea of ‘intersectionality’ seeks to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination. It specifically addresses the manner in which racism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structures the relative positions of women and men, races and other groups. Moreover, it addresses the way that specific acts and policies create burdens that flow along these intersecting axes contributing actively to create a dynamic of disempowerment.”⁵ As the Special Rapporteur on Extra-Judicial Executions highlights, “for the vast majority of women and girls, their human rights journey entails confronting a system of State actions and inactions, feeding and fed by systemic discrimination, resulting in violation of their rights to basic necessities and ultimately in a violation of their right to life”.⁶
10. Femicides in certain countries of Latin America, and especially in Mexico, are a form of social and institutional violence to oppose the autonomy of women who leave their homes to work. Femicides are part of complex relations between different forms of violence, discrimination and exploitation of women by gender, age, class, ethnicity, and socio-geographical condition.⁷ Colonial economic dynamics exacerbate structural violence that seek to re-establish traditional social arrangements that assume women should stay at home. As recognized by decisions and reports by the Inter-American Court of Human Rights, the Inter-American Commission and the CEDAW Committee on this issue, as well as all academic literature, “maquila industries were characterized by employing women almost exclusively, in a context of male unemployment; this ‘produced

⁵ UN Division for the Advancement of Women, Office of the High Commissioner for Human Rights, and the United Nations Development Fund for Women. *Report of the Expert Group Meeting on Gender and Racial Discrimination*. 21-24 November 2000, available at <http://www.un.org/womenwatch/daw/csw/genrac/report.htm>

⁶ A/HRC/35/23, Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions on gender sensitive approach to arbitrary killings available at <http://undocs.org/A/HRC/35/23>

⁷ Marcela Lagarde, Expert Witness in: Inter-American Court of Human Rights, Case of González et al. (“Cotton Field”) v. Mexico, November 16, 2009.

a cultural shock within the families' and when 'the men could not find work, it was the women who supported the household'."⁸ Maquila industries proliferated in Mexico after the signature of the North American Free Trade Agreement (NAFTA),⁹ paying very low wages, sometimes below minimum wage,¹⁰ and impoverishing whole regions to date.¹¹ Impunity resulting from States' complicity in not investigating these violations leave women no other choice than to risk their lives if they leave home. In practice, women who do not take their chances end up institutionalized in their own homes.

11. This deprivation of liberty also affects Women Human Rights Defenders (WHRDs)¹². WHRDs are often targeted because they act counter to patriarchal stereotypes of women as submissive and obedient by fighting for human rights and protesting publicly. Such actions challenge patriarchal norms in addition to power structures – state and corporate power. The environment in which WHRDs operate is characterized in many countries by increasing and incessant arbitrary arrests and detention, including judicial harassment, threats, intimidation, summary and extrajudicial executions, torture, and inhumane and degrading treatment because of their activities.¹³ According to the report of African Commission on Human and Peoples' Rights, "In 2012, the Office of the Special Rapporteur on human rights defenders in Africa received fifty (50) urgent appeals, fourteen (14) of which concerned women human rights defenders and nine (9) were filed by women. The communications were related to arbitrary arrests and detentions, two (2) cases involved threats of rape and murder and two (2) were related to intimidation and "judicial harassment". The appeals were related especially to women NGO leaders, human rights defenders dealing with sexual orientation and gender identity and members of women's organizations, human rights activists and journalists."¹⁴
12. Wrongful stereotyping directly affects women and girls with disabilities' right to liberty and security through forced institutionalization. As pointed out by the Committee on

⁸ Inter-American Court of Human Rights, Case of González et al. ("Cotton Field") v. Mexico, November 16, 2009. Footnote 112. This was also recognized by the Mexican state, asserting during the Cotton Field case that it "led to conflicts within the family because women began to present an image of being more competitive and financially independent."

⁹ Ibid.

¹⁰ Around 17% of maquila jobs pay below minimum wage. Hilda Salazar Ramírez, "The Impacts of NAFTA on Mexican Women" in: Red Nacional de Género y Economía, Women's Resistance and Alternatives to the Globalizing Model, México (2005). Referenced in FESCOL, IATP, et.al., Un largo camino que recorrer: El impacto de género en la liberalización del comercio de nuestro sistema alimentario, los mercados agrícolas y los Derechos Humanos de las mujeres, Mexico (2006), p. 26.

¹¹ As a result, the highest percentages of impoverished population live in areas where these industries are located. Consejo Nacional de Evaluación de la Política de Desarrollo Social, Pobreza urbana y de las zonas metropolitanas en México, p.53. Available at:

https://www.coneval.org.mx/Informes/Pobreza/Pobreza%20urbana/Pobreza_urbana_y_de_las_zonas_metropolitanas_en_Mexico.pdf

¹² The Special Rapporteur on the situation of human rights defenders defines women human rights defenders as both female human rights defenders, and any other human rights defenders who work in the defence of women's rights or on gender issues, please refer to <https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-44.pdf> last seen on 15 October 2018 at 11.09 am

¹³ The African Commission on Human and Peoples' Rights, Report on the Situation of Women Human Rights Defenders in Africa

¹⁴ The African Commission on Human and Peoples' Rights, Report on the Situation of Women Human Rights Defenders in Africa

Rights of Persons with Disabilities, “[w]omen with disabilities are exposed to compounded stereotypes that can be particularly harmful. Disability and gender stereotypes applying to women with disabilities include, but are not limited to: being burdensome to others (that they must be cared for, are a cause of hardship, an affliction, a responsibility, require protection), vulnerable (defenceless, unsafe, dependent, reliant, unsafe) and/or victims (suffering, passive, helpless), inferior (inability, inadequacy, weak, worthless); have a sexual abnormality (for example, women with disabilities are stereotyped as asexual, inactive, overactive, incapable, sexually perverse), being mystical or sinister (stereotyped as cursed, possessed by spirits, practitioners of witchcraft, as being good or bad luck, harmful). Gender and/or disability stereotyping is the practice of ascribing to a specific individual a stereotypical belief, and it is wrongful when it results in a violation or violations of human rights and fundamental freedoms.”¹⁵

13. These stereotypes surrounding women and girls with disabilities affect a broad range of rights relevant to deprivation of liberty, including: their right to freedom from exploitation, violence and abuse, for instance in the form of “absence of free and informed consent and legal compulsion” and “the exercise of control, for example by restricting face-to-face or virtual access to family, friends or others;”¹⁶ their right to equal recognition before the law, to legal capacity and to access to justice,¹⁷ which in turn affects their ability to contest institutionalization, and their right to choose where and with whom to live;¹⁸ their sexual and reproductive health and rights; and their freedom from torture or cruel, inhuman or degrading treatment or punishment through, including when subjected to forced interventions.¹⁹ Such stereotypes also expose girls with disabilities to social isolation and segregation inside the family.²⁰

14. In the sections below, this submission will address in more detail specific examples of penal regulations on sex work, abortion and contraception, which lead to incarceration of women and girls. These are rooted in the ideas that women and girls either do not have the capacity to decide what they want to do with their bodies or that what they want is ‘deviant’ and hence needs to be controlled.

International Standards on Deprivation of Liberty

15. Deprivation of liberty exists in opposition to the right to liberty and security of the person. The Human Rights Committee defines the right to liberty of persons, enshrined in article 9 of the International Covenant on Civil and Political Rights, as “freedom from confinement of the body, not a general freedom of action,” while security of person concerns “freedom from injury to the body and the mind, or bodily and mental

¹⁵ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 3 (2016), Article 6: Women and girls with disabilities*, 2 September 2016, CRPD/C/GC/3, para. 47.

¹⁶ *Ibid.*, paras 30-31.

¹⁷ *Ibid.*, para. 52.

¹⁸ *Ibid.*, para. 51.

¹⁹ *Ibid.*, para. 54.

²⁰ *Ibid.*, para. 36.

integrity.”²¹ Examples of deprivation of liberty given by the Committee include “police custody, arraigo, remand detention, imprisonment after conviction, house arrest, administrative detention, involuntary hospitalization, institutional custody of children and confinement to a restricted area of an airport, as well as being involuntarily transported.”²² Article 9 of the ICCPR establishes the prohibition of arbitrary arrest or detention and outlines the safeguards for the protection of liberty and security of person (article 9(2) to 9(5)), including for those deprived of liberty in cases that do not involve criminal charges, such as the right to review by a court of the legality of detention.²³ This standard should be upheld in contexts where women and girls’ bodily autonomy is restricted and criminalised, and consequently hinders their access to legal and judicial review. It is also important to note that these standards are often violated in regard to women and girls with disabilities, where their legal capacity is deemed non-existent and stereotyping by justice systems often exacerbates the violation.

16. In addition to their duty to respect the right to liberty and security of the person, States have the obligation to “take appropriate measures to protect the right to liberty of persons against deprivation by third parties” and to “protect individuals against wrongful deprivation of liberty by lawful organizations, such as employers, schools and hospitals.”²⁴ The UN Working Group on Arbitrary Detention has also found the prohibition of arbitrary deprivation of liberty to be “part of treaty law, customary international law and constitutes a jus cogens norm [...] fully applicable in all situations.”²⁵ It also clarified that “any confinement or retention of an individual accompanied by restriction on his or her freedom movement, even if of relatively short duration, may amount to de facto deprivation of liberty,”²⁶ including in situations of house arrest, rehabilitation through labour, retention in non-recognized centres for migrants or asylum seekers, psychiatric facilities and so-called international or transit zones in ports or international airports, gathering centres or hospitals.²⁷
17. The Working Group has also expressed its concern about the increased reliance on administrative detention, which it has found to be arbitrary and incompatible with international human rights law in the majority of cases, and to increase the likelihood of acts of torture and ill-treatment in detention.²⁸ This type of detention is commonly used to restrain migrant women, sex workers, women and girls trying to access sexual and reproductive health care and services, women and girls with disabilities, women who use drugs and women and girls living with HIV.

²¹ Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person). CCPR/C/GC/35. 16 December 2014, para. 3, available at

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/35&Lang=en

²² Ibid., para. 5.

²³ Ibid., para. 4.

²⁴ Ibid., para. 7.

²⁵ UN Working Group on Arbitrary Detention, Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, 24 December 2012, para. 51. Available at

<https://www.ohchr.org/Documents/Issues/Detention/CompilationWGADDeliberation.pdf>

²⁶ Ibid., para. 55.

²⁷ Ibid., para. 59,

²⁸ Ibid., paras 68-73.

18. As stressed by the Special Rapporteur on the Right to Health in his report on deprivation of liberty, “[t]he manner in which women are actually or de facto deprived of liberty arises from structural inequalities and discrimination, harmful gender stereotypes and deep disadvantage, which lead to failure to secure their rights to social and underlying determinants of health, to reproductive autonomy, to an environment free from gender-based violence, and to services and support in the community.”²⁹ He highlights that this type of punitive legal frameworks and public policies hinders women and girls’ right to health³⁰ in gendered ways and the way power in detention and confinement settings rooted in patriarchal and hyper masculinist analysis affect women and girls differently.³¹
19. The Convention and Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) have highlighted that States have the obligation to combat harmful stereotypes affecting women and girls based on their gender, race, disability and other factors and to repeal laws, policies and practices based on them. Patriarchal, racist, and ableist stereotypes about who is considered “dangerous” or “requiring protection” from themselves or others often contribute to the root causes of women and girls’ deprivation of liberty, as well as conditions of detention³². Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) addresses the related notion of prejudice and calls on States to “[combat] prejudices which lead to racial discrimination”. The CEDAW,³³ CRPD,³⁴ CERD,³⁵ CESC,³⁶ CDDR,³⁷ CAT³⁸ and CRC³⁹ Committees have repeatedly affirmed the need to combat wrongful stereotyping and bias affecting women and girls.⁴⁰

²⁹ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. A/HRC/38/36, 10 April 2018, para. 72, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/36

³⁰ Ibid., para. 19(b).

³¹ Ibid., para. 72.

³² Please refer to Article 5(b) of the Convention showing State obligation to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

³³ See, *inter alia*: Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, which identifies the obligation to “address prevailing gender relations and the persistence of gender-based stereotypes” as central to the achievement of substantive equality.

³⁴ See, *inter alia*: UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 3 (2016), Article 6: Women and girls with disabilities*, 2 September 2016, [CRPD/C/GC/3](https://www.unhcr.org/refugees/crpd-c/gc/3), paras 30, 37, 38, 46, 47, 52, 54.

³⁵ See, *inter alia*: UN Committee on the Elimination of Racial Discrimination (CERD): *General Recommendation No. 25*, (2000), para. 3; *General Recommendation No. 34*, CERD/C/GC/34 (3 October 2011), paras. 31, 61; *General Recommendation 30*, CERD/C/64/Misc.11/rev.3 (2004), paras. 10, 12; *General Recommendation No 29*, at 111 (2002), para. (vv); *General Recommendation No 27*, A/55/18, annex V at 154 (2000), para. 9.

³⁶ See, *inter alia*: UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20*, UN Doc. E/C.12/GC/20 (25 May 2009), para. 8.

³⁷ See, *inter alia*: UN Human Rights Committee, *General Comment No. 28*, HRI/GEN/1/Rev.9 (Vol. I) (2000), para. 5.

³⁸ See, *inter alia*: UN Committee against Torture (CAT), *General Comment No. 2*, CAT/C/GC/2 (24 January 2008), para. 22.

³⁹ See, *inter alia*: UN Committee on the Rights of the Child (CRC) *General Comment No. 13*, CRC/C/GC/13 (18 April 2011), para. 72(b).

⁴⁰ For a comprehensive overview of gender stereotyping as a human rights violation, see OHCHR Commissioned Report “Gender Stereotyping as a Human Rights Violation” (2013), available at <https://www.ohchr.org/Documents/Issues/Women/WRGS/2013-Gender-Stereotyping-as-HR-Violation.docx>

20. Article 8(b) of the Convention on the Rights of Persons with Disabilities provides that States “undertake to adopt immediate, effective and appropriate measures [...] [t]o combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.” Forced institutionalization and deprivation of liberty on the basis of an impairment are prohibited under the CRPD Convention, including in cases of “perceived danger to themselves or others, or lack of fitness to stand trial.”⁴¹ The CRPD Committee has also clarified that States’ obligation to respect the right of people with disabilities to live independently and be included in the community includes “the obligation to release all individuals who are confined against their will in mental health services or other disability-specific forms of deprivation of liberty.”⁴²

Denial of Sexual and Reproductive Health and Rights

21. Currently, some 6% of the world’s 1.64 billion women of reproductive age live in a country where abortion is prohibited altogether, without any explicit exception. Twenty-one percent of reproductive-aged women live in a country where abortion is explicitly allowed only to save a woman’s life. An additional 11% live where abortion is also permitted to protect a woman’s physical health, another 4% where abortion is also permitted to protect a woman’s mental health, and 21% where abortion is also permitted on socioeconomic grounds—the specifics of which vary by country.⁴³ The Working Group on the issue of discrimination against women in law and practice has documented how politicized religious conservative movements in numerous countries have influenced decision-making to either halt or roll back progress, making concerted efforts in various regions to retain or even introduce prohibitions on termination of pregnancy. In a few countries, there have been attempts made to have a total ban, even where the pregnancy threatens the life of the pregnant woman. There have also been moves to further restrict funding of contraceptives. This criminalisation of women and girls’ access to abortion has the impact of incarcerating them denying them their liberty and life. An instance of such incarceration can be seen in the case of imprisoning women after miscarriage in Argentina.⁴⁴ As the working group has highlighted in the previous report criminalization of behaviour that is attributed only to women is inherently discriminatory. So is denying women’s autonomous decision-making and access to services that only women require and failing to address their specific health and safety, including their reproductive and sexual health needs.⁴⁵

⁴¹ Thematic study on the right of persons with disabilities to live independently and be included in the community. Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/28/37, 12 December 2014, para 20.

⁴² Committee on the Rights of People with Disabilities (CRPD), *General Comment No. 5: Article 19: Living independently and being included in the community*, CRPD/C/GC/5, 27 October 2017, paras 47-48.

⁴³ Susheela Singh, Lisa Remez, Gilda Singh, Lorraine Kwok and Tsuyoshi Onda, *Abortion Worldwide 2017, Uneven Progress and Unequal Access*, Guttmacher Institute Report at <https://www.guttmacher.org/report/abortion-worldwide-2017>

⁴⁴ Please see <https://www.amnesty.org/en/press-releases/2016/08/argentina-ruling-to-release-woman-jailed-after-miscarriage-a-step-forward-for-human-rights/>

⁴⁵ A/HRC/38/46, Working group on issue of discrimination against women in law and practice available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/132/85/PDF/G1813285.pdf?OpenElement>

22. Criminalizing termination of pregnancy is one of the most damaging manifestations of that instrumentalization, subjecting women to risks to their lives or health and depriving them of autonomy in decision-making. The lack of universal access to comprehensive sexuality education and contraceptive information and services, particularly for adolescents and girls, and the practice of child marriage, lead to teenage pregnancy and the exclusion of girls from education and employment, hence limiting their enjoyment of many other rights.⁴⁶
23. Denial of access to essential health services with respect to termination of pregnancy, contraception, treatment for sexually transmitted diseases and infertility treatment has particularly serious consequences for women’s health and lives. Women may be denied such services through criminalization, reduction of availability, stigmatization, deterrence or derogatory attitudes of health-care professionals. In reality, denial of access drives service provision underground into the hands of unqualified practitioners. This exacerbates the risks to the health and safety of the affected women. Persistently high maternal mortality rates often reflect a lack of investment in and under prioritization of services required only by women.⁴⁷
24. The Special Rapporteur on Cultural Rights has shown how fundamentalist and extremist abuses of cultural rights aim to limit the enjoyment of women’s human rights and restrict the sexual and reproductive rights of all.⁴⁸ In this regard, the Working Group reaffirms that health-care providers’ refusal to provide reproductive health care on the grounds of conscience or religion is a violation of women and girls human rights and if accommodated such objections would put women’s health or lives in danger.⁴⁹ “Conscientious Objection” to deny reproductive health care, specifically abortion, is growing trend among health care providers in different parts of the world in particularly in Poland, Italy and Croatia among others. The use of conscience claims by health care providers is a growing trend in the world and widespread although documentation of the same remains low.⁵⁰ ‘Conscience claims’ are used not only by health providers but also by pharmacists to deny contraception, emergency contraception, health services for transgender people, and sterilization and infertility treatments. When conscience clauses are used by health care providers and pharmacists, it is often not accompanied by mandatory referral to a health profession who can provide the specific services. Women wanting to terminate or avoid pregnancies are forced to resort to options which deprive them of options for the future.

⁴⁶ A/HRC/38/46, Working group on issue of discrimination against women in law and practice available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/132/85/PDF/G1813285.pdf?OpenElement>

⁴⁷ A/HRC/32/44, Report of the Working Group on the issue of discrimination against women in law and in practice on the issue of discrimination against women with regard to health and safety, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/072/19/PDF/G1607219.pdf?OpenElement>

⁴⁸ A/HRC/34/56

⁴⁹ A/HRC/38/46, Working group on issue of discrimination against women in law and practice available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/132/85/PDF/G1813285.pdf?OpenElement>

⁵⁰ Please refer to Unconscionable, When Providers Deny Abortion Care, International Women’s Health Coalition and Mujer Y Salud En Uruguay available at <https://iwhc.org/resources/unconscionable-when-providers-deny-abortion-care/>

25. Freedom from confinement of the body as highlighted by the Human Rights Committee as the right to liberty necessarily includes freedom from confinement of the body by processes and administrative measures that force procedures on the bodies and lives of women and girls. And confining women and girls to areas where health services available, accessible, acceptable and of good quality is a form of such deprivation. This has been reported as one of the key issues in Armenia, that the state is not creating appropriate conditions for women to realize their right. They are forced to travel to cities to access abortion services. The introduction of legal provision of three-day-long waiting time adds extra impediments and for women living in rural areas this adds an impediment of accessibility of services. Frequently, women need to have resources both in terms of time and finances to reach the cities, then come back and after the three days again reach those locations for the abortion.⁵¹

Sex Work

26. Sex work is criminalised or penalised in one or multiple ways, at the national, provincial/state, or municipal level in virtually all countries. The criminalization of sex work comes with a constant police presence, class and racial profiling, harassment, surveillance, arrest, detention and deportation — all of which contribute to sex workers' isolation and vulnerability to violence. Policing of public spaces and misuse of anti-trafficking laws to systematically conduct raids of sex workers' workspaces render female sex workers as a group of women that is particularly vulnerable to punitive action.⁵²

27. Several groups of sex workers are particularly vulnerable to punitive action by the state. These groups include: **Outdoor sex workers:** due to their visibility, as well as exposure to a wide array of laws specific to behaviour in public spaces. **Transgender sex workers:** due to stereotypes and selective policing. **Migrant sex workers:** migrant sex workers are frequently stereotyped as potential victims of trafficking, and thus indoor workspaces used by migrant sex workers are disproportionately targeted in raids on sex work establishments. Migrant sex workers are exposed to specific immigration offenses that specifically prohibit migrant sex workers from engaging in sex work and are afforded fewer rights upon arrest for these violations. Migrant sex workers who do not speak the language of the host country are frequently denied adequate interpretation services at some or all points in the judiciary process, and they are particularly vulnerable to fabricated or coerced evidence and ineffective representation during trial.

28. Globally, police are among the primary perpetrators of violence against sex workers.⁵³ Institutional violence against sex workers manifests itself in a multiplicity of ways such as: racial, sexist and occupation-based discrimination; forced and illegal arrests; searches and abusive identity and/or health cards checks; impromptu raids; homicides; ill-treatment and physical violence; emotional torture; subjugation and forced isolation; extortion;

⁵¹ The Invisible Rights of Women in the Republic of Armenia, The Overall State of Reproductive Health And Rights Among Various Groups of Women

⁵² For further discussion of legislative frameworks related to the deprivation of liberty of female sex workers, please see: NSWP, 2014, "[Sex Work and the Law: Understanding Legal Frameworks and the Struggle for Sex Work Law Reforms.](#)"

⁵³ NSWP, 2017, "[The Impact of Criminalisation on Sex Workers' Vulnerability to HIV and Violence.](#)"

intimidation; rape and sexual abuse; exposure of their personal image without authorization; demanding sex in exchange for liberty, etc. This violence is often perpetrated by different State agents.⁵⁴ Since the perpetrators are seen as linked to and associated with the judicial systems, the violations go unreported due to fear of reprisals.⁵⁵

29. Migrant sex workers fear deportation as the result of reporting a crime. Further, Migrant sex workers frequently are not provided a translator or are provided with ineffective translation during interrogation and judiciary proceedings.^{56 57} For instance, in Argentina security forces and other control entities belonging to the local Executive Power violently get into the private homes of sex workers and arrest them invoking contraventions rules. Other times, enter without a search warrant and force sex workers to enrol in ‘rescue and rehabilitation’ programs, ignoring their claims to be willingly engaging in sex work and when sex workers refuse to enrol in such programs, they are mistreated.⁵⁸ In Canada, despite claims by the federal government of Canada that new laws on sex work would not be used against sex workers, indigenous, migrant and sex workers of colour have been disproportionately arrested and detained under the sex work offences. Sex workers, including migrant sex workers, may be prosecuted under the offences related to third party benefits and trafficking when they work with, gain material benefits from, and assist other sex workers to enter or work in Canada.⁵⁹ In July 2016, police in St. Catharine’s, Ontario, conducted a “sweep” to “sting” street sex workers by having undercover officers pose as potential clients – then arrested sex workers under s. 213(1)(a) of the Criminal Code for stopping traffic. Known as “Operation Red Light,” this sting was part of an intensified effort by the police to eliminate street-based sex work in the area. A Staff Sergeant with the Niagara Regional Police was quoted in the local paper stating, “They are victims, but the women — and the johns — are breaking the law, and we are the cops. This is what we do.” The sex workers were released on conditions that included “no-go orders” prohibiting them from entering the area where the community and health services they access are located; reportedly some were offered diversion if they agreed to attend a study program about exiting sex work. A similar sting took place, also in St. Catharine’s, in October 2015.⁶⁰

⁵⁴ RedTraSex, Sex work and institutional violence, rights violations and power abuse of women sex workers, Research Conducted in 14 Latin American and Caribbean countries, Regional Report

⁵⁵ RedTraSex, Sex work and institutional violence, rights violations and power abuse of women sex workers, Research Conducted in 14 Latin American and Caribbean countries, Regional Report

⁵⁶ Ibid, 7.

⁵⁷ Amnesty International, 2016, “[Harmfully Isolated Criminalizing Sex Work in Hong Kong](#),” 28

⁵⁸ Interviews with sex workers by AMMAR – Asociación de Mujeres Meretrices de Argentina (Women Prostitutes Association of Argentina), cited in situational report presented to the UN Committee on Economic, Social and Cultural Rights on the Human Rights Situation of Women Sex Workers in Argentina by RedTraSex, Akahata and Synergia

⁵⁹ Canadian Alliance for Sex Work Law Reform and Sexual Rights Initiative Joint Stakeholder Submission, Universal Periodic Review of Canada, 30th Session, April/May 2018

⁶⁰ Canadian Alliance for Sex Work Law Reform and Sexual Rights Initiative Joint Stakeholder Submission, Universal Periodic Review of Canada, 30th Session, April/May 2018

30. All laws criminalising or prosecuting sex work are a violation of fundamental human rights. Some of the most common types of laws that prosecute sex workers are; **'Prostitution' laws**, which penalise or criminalise the act of engaging in sexual activity for money. **'Solicitation' or 'Loitering for the Purposes of Prostitution' laws**, which penalise or criminalise publicly (or 'ostentatiously') soliciting or offering to engage in sexual activity for money. These laws are often overly broad, without clear parameters on permitted evidence. As a result, sex workers may be prosecuted simply due to knowledge they are a sex worker, possession of condoms, money or lubricant, their clothing, and their presence in a certain location. **Immigration laws**, which prohibit migrants from selling sex. **Zoning ordinances**, which penalise or enhance penalties for soliciting sex in specific areas. **Licensure laws**, which may penalise or criminalise sex workers who fail to register as sex workers. **Public health laws**, including laws against HIV transmission which may specifically criminalise selling sex while living with HIV, or laws that require compulsory HIV or STI screening.⁶¹
31. Sex workers may also be prosecuted under offenses aimed at third parties or 'traffickers' in the sex industry while working collectively (e.g. sharing a workspace, working together for safety, or placing advertisements for themselves or others). These include laws against 'keeping a place of prostitution', 'promoting or benefiting from the prostitution of another' or 'advertising sexual services'. A concerning trend is pressure from police to identify a third party or 'trafficker' in raids of sex workers' workspaces, regardless of whether a third party or exploitation is present. For example, in Buenos Aires, Argentina, Amnesty International reports that: "[E]fforts to enforce the Federal Anti Trafficking Law are failing to target people at the top of criminal networks and are instead more often used to punish sex workers working collectively. For example, in situations where a group of sex workers work together, the one with the most responsibility or who manages the apartment is usually identified by the police and in judicial proceedings as "victimizer". Sex workers in Mexico report similar use of antitrafficking laws to prosecute sex workers or even victims of economic exploitation:⁶²
32. Offenses relating to adultery or sex outside of marriage are used against female sex workers broadly, anti-'sodomy', 'crimes against nature' laws, and laws relating to transgender expression are particularly, frequently used against transgender and gender non-conforming sex workers. Transgender sex workers are frequently detained or charged simply for their gender identity and expression. Clothing, possession of money, lubricant or condoms, presence in an area known for sex work, common knowledge that the person is a sex worker, or previous criminal or administrative offenses for sex work are allowed as evidence for solicitation charges.^{63,64}

⁶¹ Ibid

⁶² Asociación en Pro Apoyo a Servidores (APROASE A.C.) & Tamaulipas VIHda Trans, A.C., 2018, "[SHADOW REPORT TO THE CEDAW COMMITTEE ON THE SITUATION OF FEMALE SEX WORKERS IN MEXICO](#)"

⁶³ Amnesty International, 2016, "[What I'm Doing Is Not A Crime](#)" *The Human Cost Criminalizing Sex Work In The City Of Buenos Aires, Argentina*, 24.

⁶⁴ Red Umbrella Project, 2014, "[Criminal, Victim or Worker? The effects of New York's Human trafficking intervention courts on adults charged with prostitution-related offenses](#)"

33. Other than the laws that prosecute and detain sex workers, the state machinery employs various fraudulent and underhanded methods to prosecute and persecute sex workers. Police frequently threaten sex workers with extra-legal action (e.g. notification of friends or family) or use harassment or intimidation to obtain a confession. Sex workers with low levels of literacy may be misled regarding the content of a document and told that signing a confession is a simple form required from their release from custody. In many contexts, free legal representation is not available at all, is not available to sex workers during pre-trial detention, or is not available for individuals facing administrative or low-level offenses. Sex workers who are repeatedly arrested and detained frequently never have access to a trial, or face significant barriers to asserting their right to a trial for a variety of reasons. Sex workers are often arbitrarily arrested and detained and then released after a period of time without the state filing charges. For example, sex workers in Papua New Guinea report that are commonly subjected to unlawful detention for up to five days.⁶⁵ Laws governing sex work allow for sentence duration and fines which are disproportionate to that frequently offered to sex workers who plea guilty. For example, in the United States, sex workers are frequently detained without or with bail they cannot afford until they appear before a judge. At this time, they are given a choice between pleading guilty and receiving a sentence of “time considered served,” or challenging their charges in court, where they could face months to a few years in jail.

Trafficking and Rehabilitation

34. Globally, the rhetoric of saving the “trafficked women and girls” is used indiscriminately to curtail human rights of women and girls and denying them any agency. This can most clearly seen in the way conflation of sex work and trafficking has impacted sex worker’s access to justice and deprived their liberty in the forced rehabilitation process. When police raid sex work establishments or arrest sex workers, they may initiate questioning under the guise of helping or supporting an alleged victim.

*The officers who first approached Mi identified themselves as a team that helps victims and invited her to talk with them — she did not realize they were also police officers. She gave a statement that was later used to charge her for working illegally in Canada.*⁶⁶

-Butterfly, Canada

35. In some jurisdictions, police are accompanied by psychologists or social workers, or ‘survivors of prostitution’. While questioned as victims, sex workers are legally under investigation for criminal or administrative offenses, and information provided may be used in their own prosecution, or to commit them to compulsory diversion or rehabilitation.

36. Sex workers (who are themselves defendants facing criminal or immigration charges) that are presumed to be victims of trafficking have reported authorities refusing to allow friends to post bail ‘for their own protection’ under the assumption that these friends are

⁶⁵ Amnesty International, 2016, “[Outlawed and Abused Criminalizing Sex Work in Papua New Guinea](#),” 2.

⁶⁶ Butterfly, 2018, “[Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers](#),” 13.”

traffickers.⁶⁷ The conflation of sex work and trafficking has resulted in extensive situations where sex workers are confined against their will as ‘victims’. The two main situations where this occurs is in the course of antitrafficking raids and investigations; and in the context of compulsory ‘rehabilitation’.

37. Sex workers are frequently detained and invasively questioned as ‘victims’ during the course of antitrafficking raids. For example, in Argentina, sex workers reported that “following anti-trafficking raids, law enforcement officials occupy sex workers’ apartments for long periods (at times, up to 12 hours) and take their personal property (money and cell phones).”⁶⁸
38. In **Canada**, Asian migrants are stereotyped as victims of trafficking and particularly targeted by law enforcement: “migrant sex workers often experience human rights violations while under the care of investigators, including arbitrary arrests and detainment, inhuman and degrading treatment, false allegations, and false evidence being used to keep them detained. Legal representation and support is sometimes withheld from migrant sex workers, and they can be detained for long periods of time (up to three months in some cases), which keeps them isolated from their friends and families, who are generally perceived as involved in trafficking”.⁶⁹
39. In some countries (including China, India, Indonesia, Malaysia, Sri Lanka, and Thailand,⁷⁰) sex workers who are deemed to be victims of trafficking may be sentenced to compulsory ‘rehabilitation’ or ‘re-education’. When sentenced to ‘rehabilitation’, the length of time sex workers are deprived of freedom is almost always longer than the typical criminal or administrative sentence, and in some contexts, including India, may exceed the maximum sentence duration for the offence committed. Women in these centres are vulnerable to a range of human rights abuses, including compulsory medical examinations, forced labour, and lack of adequate access to medical care. Women construed as victims of trafficking are frequently denied their human rights and deprived of their freedoms including communication with family, friends and partners which are afforded to individuals in standard detention based on the assumption that their social support networks are perpetrators of trafficking.
40. In **Thailand**⁷¹ sex workers apprehended in ‘antitrafficking’ raids identified as victims of trafficking are forcibly placed in government care for a period of up to two years before being sent home. While in detention, detainees have severely restricted access to their families, education and work; at the end of their detention, they are given no labour or criminal compensation before being sent home or deported.

⁶⁷ Ibid.

⁶⁸ RedTraSex, Sex work and institutional violence, rights violations and power abuse of women sex workers, Research Conducted in 14 Latin American and Caribbean countries, Regional Report

⁶⁹ Butterfly, 2018, "[Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers](#)"

⁷⁰ UNAIDS, UNDP, UNFPA, 2012, "[Sex Work and the Law in Asia and the Pacific](#)."

⁷¹ GAATW, 2018, "[Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions](#)," 43-68.

41. In **India**⁷² the Immoral Traffic (Prevention) Act 1956 requires compulsory medical examination of persons removed from brothels for detection of sexually transmitted infections. Some state laws mandate identification and segregation of women found to have sexually transmitted infections in state homes. The Act also provides institutional rehabilitation for ‘rescued’ sex workers in state homes. Rehabilitation involves detention in State homes. Sex workers can request rehabilitation, or a magistrate can request that a sex worker be placed in a protective home or corrective institution. While the maximum criminal penalty for soliciting sex work is one year, the Act gives courts power to, “pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than five years.”
42. In **China**,⁷³ sex workers and their clients can be detained by police for ten to 15 days and/or fined up to 5,000 yuan (US \$834). However, regulations also authorise state security to subject these individuals to "Custody and Education" for as long as two years. In the name of “education” and “rescue,” large numbers of sex workers and their clients are without any form of judicial oversight. Individuals detained under the Custody and Education system are denied a fair trial and lack all essential procedural rights such as the right to a defence and a hearing. and, while in custody, they are subjected to forced labour and compulsory testing for sexually transmitted diseases (STDs).
43. For migrant sex workers, coming into contact with law enforcement, during a brothel or ‘antitrafficking’ raid or as a victim of a crime, can and frequently does result in prolonged detention followed by deportation. In Canada, migrant Asian sex workers apprehended as presumed victims in the course of undercover ‘antitrafficking’ raids repeatedly were held for days to months without being charged of a crime.⁷⁴ In Oslo, Norway, police use sex workers' reports of violence to facilitate their deportation.⁷⁵ In Thailand, migrant sex workers identified as trafficking victims are placed in mandatory government care and then deported; while migrant sex workers who are not identified as trafficking victims face detention in an immigration facility prior to deportation.⁷⁶

Discrimination in incarceration of women and girls

41. 'Unsound mind' is used under various laws – civil, criminal and administrative—as an exception to accessing rights, including in relation to sexuality and in particular against women with disabilities. “Forced Institutionalisation is a mechanism of expediency and exercised of power- it is involuntary, protective of society while callous about the victim, ill-informed and frightening.”⁷⁷ Forced institutionalisation also denies women any and

⁷² UNAIDS, UNDP, UNFPA, 2012, "[Sex Work and the Law in Asia and the Pacific](#)," 54-55.

⁷³ Asia Catalyst, 2013, "[Custody and Education: Arbitrary Detention for Female Sex Workers in China](#)"

⁷⁴ Butterfly, 2018, "[Behind the Rescue: How Anti-Trafficking Investigations and Policies Harm Migrant Sex Workers](#)"

⁷⁵ Amnesty International, 2016, "[Norway: The Human Cost of ‘Crushing’ The Market: Criminalization of Sex Work in Norway](#)."

⁷⁶ GAATW, 2018, "[Sex Workers Organising for Change: Self-representation, community mobilisation, and working conditions](#)," 43-68.

⁷⁷ Usha Ramanathan, Women, law and Institutionalization: A manifestation of State Power, Indian Journal of Gender Studies, 3:2, 1996

every agency and is a complete negation of any autonomy and consent of people concerned and this is seen particularly in cases affecting women with disabilities.⁷⁸

42. Across the world incarceration of women from ethnic, racial and religious minorities, is practiced in a discriminatory manner. This active form of discrimination is rooted in the institutional practice of ‘othering’ minorities based on patriarchal and racist stereotypes. In Canada, for example, “Aboriginal women as [a] licentious and dehumanized squaw, ultimately laying blame on them for their own victimization. As such, through these discriminatory practices that disproportionately target Aboriginal women and paint them as offenders, current policing practices play a significant role in contributing to severe over-representation of Aboriginal women in Canadian prisons.”⁷⁹ Although research supports the notion that women are treated unfairly in the court system, sentencing of indigenous women in Canada highlights the higher incarceration and longer terms for minor offences.⁸⁰ A UN Expert Meeting on gender and racial discrimination highlighted this type of stereotype as portraying poor and ethnic women as “sexually undisciplined,” which can thus also play a role in the reasons for their detention, as well as their detention conditions.⁸¹ Once incarcerated, sexual and reproductive health and rights in prisons is not prioritised exacerbating the existing discrimination faced by women and girls.
43. The same UN Expert Meeting on gender and racial discrimination further highlighted that the specific and targeted human rights violations experienced by Indigenous women and women belonging to racial and ethnic minorities generally were also linked to the intersection of racist and sexist stereotypes seeking to control their sexuality: “Sexualized propaganda targeted at racialized women may also contribute to their political subordination, particularly in contexts relating to reproductive policies and social welfare. Justifications for policies and actions that compromise the reproductive rights of poor and minority women such as sterilization, forced birth control policies, and the imposition of economic penalties and other disincentives for childbearing are sometimes premised on stereotypical images of poor and ethnic women as sexually undisciplined.”⁸²

⁷⁸ CREA Submissions for Universal Periodic Review of India, <http://www.sexualrightsinitiative.com/wp-content/uploads/Submission-for-Indias-3rd-cycle-on-behalf-of-CREA.pdf>

⁷⁹ Holmes Alyssa, The over representation of Aboriginal Women in Prisons: A Cycle of Victimization, Discrimination and Incarceration, *Invoke: Sociology Undergraduate Journal* Vol. 2 (2017), Available at https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=2ahUKewi_g_uPiO_dAhXiLOAKHeHhDLUQFjACe_gQIBxAC&url=https%3A%2F%2Fjournals.library.ualberta.ca%2Finvoke%2Findex.php%2Finvoke%2Farticle%2Fview%2F29330%2F21345&usq=AOvVaw1wwPt31VXvOz0tDqgdT2oT

⁸⁰ Ibid

⁸¹ United Nations Division for the Advancement of Women (DAW), Office of the High Commissioner for Human Rights (OHCHR), United Nations Development Fund for Women (UNIFEM):

“Gender and racial discrimination.” Report of the Expert Group Meeting. 21-24 November 2000, Zagreb, Croatia. Available at <http://www.un.org/womenwatch/daw/csw/genrac/report.htm>

⁸² United Nations Division for the Advancement of Women (DAW), Office of the High Commissioner for Human Rights (OHCHR), United Nations Development Fund for Women (UNIFEM):

“Gender and racial discrimination.” Report of the Expert Group Meeting. 21-24 November 2000, Zagreb, Croatia. Available at <http://www.un.org/womenwatch/daw/csw/genrac/report.htm>

Recommendations:

- All states must respect, protect and fulfil women and girl's right to their bodily autonomy and create the conditions for the exercise and full enjoyment of the right to bodily autonomy.
- All laws, policies and administrative measures which use any form of institutionalisation as penalty or 'correction' of women needs to be revised and reformed to consider free, full and informed consent of women and girls taking into account multiple and intersecting forms of discrimination.
- Any confinement of adolescent girls by family, state and private institutions must consider the evolving capacities of adolescent girls with their full participation.
- Mass campaigns by state and non-state actors that seek to address violence must be premised on ensuring women and girls bodily autonomy and agency and not the "protection of women and girls."

- All laws and policies that criminalise or seek to regulate women and girl's sexuality must be repealed. Women's sexuality does not need regulation it needs freedom.
- States should ensure every person in the world has accessible, available, acceptable and of good quality sexual and reproductive health and rights and services including abortion, contraception, emergency contraception. Denial of this service by service providers cannot be justified.
- All forms sex work should be decriminalised and any regulation that de-facto or de jure penalises sex work and/or activities related to sex work must be repealed.
- Sex work should not be conflated with trafficking, and the rights of sex workers should be upheld irrespective of their race, class and caste.
- 'Rescue missions' of any kind should be stopped, women and girls do not need rescue they need their rights upheld.
- An evaluation of the justice mechanism in country should be undertaken to review the stigma and stereotyping in courts, police and other enforcement mechanisms which penalise women and girls.