

# Questionnaire on deprivation of liberty of women and girls for the UN

October 1, 2018

by Quenby Wilcox

[quenbywilcox2@gmail.com](mailto:quenbywilcox2@gmail.com)

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## Questionnaire on deprivation of liberty of women and girls

The Working Group on the issue of discrimination against women in law and in practice will present a thematic report on women deprived of liberty to the 41st session of the Human Rights Council in June 2019. This report will be produced in the context of the Working Group focus on key areas affecting the human rights of women and girls and will aim at reasserting women's right to equality and countering rollbacks in this area,

In this regard, the Working Group would like to seek inputs from States and other stakeholders to inform the preparation of this report in line with its mandate to maintain a constructive approach and dialogue with States and other stakeholders to address discrimination against women in law and practice,

The Working Group intends to take a comprehensive approach to the issue by including various forms of restriction or interference with women's personal liberty or movement by state and non-state actors, including on the basis of their sex and prescribed gender roles. Thus, deprivation of liberty of women and girls can manifest in a variety of settings, ranging from detention in penitentiary institutions to different forms of forced confinement, because of decisions by authorities, families, communities or private groups. The report will examine the causes, nature and extent of the deprivation of liberty of women and girls, with particular attention to the impact of multiple and intersecting forms of discrimination against women and girls.

In answering the questions below, please also highlight the following crosscutting issues: a) any good practices you may have identified in addressing the causes and extent of deprivation of liberty of women and girls; b) the main developments in law or practice in the past five years; and c) the main challenges within your country or region in tackling the issue.

### I. Justice system

#### 1. Main Causes for Women Coming into Conflict with the Law

##### **Question**

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.

##### **Response**

##### **Penal Incarceration of Women during Divorce and Custody Battles**

One of the main reason women come into conflict with the law is in cases of domestic violence, divorce proceedings, and custody battles. Abusers, in collusion with unbridled misogyny, discrimination, and abuses of power by lawyers, judges and other court personnel (including psycho-social evaluating teams) are utilizing courts systems in a variety of ways in order to incarcerate their victims in penal detention centers or psychiatric facilities.

My own case occurred in Spain in '07-'12—with my ex-husband promising me I would end up in prison or psychiatric facility assuring me everything had been 'planned' in advance. As is often the case with incarceration (or attempts of incarceration) by abusers and their lawyers, my-husband had inside

contacts within the court-house and local law-enforcement who colluded with said manipulations. During my divorce not only was I harassed by local law enforcement officials, but the file-clerk handling my case attempted to manipulate paper-work so that I would be found in contempt of court—upon which I would have been indefinitely incarcerated. Additionally, the psycho-social team presented false testimony to the courts, claiming that I suffered from paranoia and ‘mental disorder’. And, while an independent forensic psychiatrist’s examination clearly contradicted the court-house’s psycho-social team, as is habitual custom in the courts, the judge ignored its findings in favor of the court’s team. Unfortunately, under the Spanish civil code a woman may be confined to psychiatric facilities by the courts following a declaration by her husband of her ‘mental instability’, and two healthcare ‘professionals’. One of the most common tactics of abusers is to accuse victims of ‘mental disorders’ in order to discredit them, and their accusations of abuse and mis-treatment, and unfortunately all too many ‘health-care professionals’ are all too often supporting abusers and attacking victims, due to their ignorance and mis-information about trauma and ‘mental disorders’ or their own psychopathologies about power and control over victims—including their confinement and ‘treatment’.

Not only have I documented evidence of manipulations in my own case, but my research in the past decade has identified and exposed many of the tactics of abusers seeking to utilize courts to re-victimize their victims. Additionally, what I have found is that abusers using court systems is a global problem found at approximately the same rates in countries around the world. The most common reason for the imprisoning of women in western countries is on contempt of court charges when protective mothers violate court-orders to hand over children to sexually, physically or psychologically abusive fathers. The misogyny and discriminatory norms in courts are resulting in 70% of sexually and physically abused children being handed over to their abusers, while 90% fathers who request custody are obtaining it, even when women have been primary-care givers. Please see attached reports which document the misogyny, discrimination and violation of rights that women and children are experiencing in family courts—and why protective mothers are propelled to violate court orders which provide abusive fathers access to their victims. While the tactics vary, some of the more common ones are as follows:

- In order to discredit mothers as ‘unfit’, abusive husbands are colluding with misogynistic and oppressive law enforcement officials to build criminal records of mothers. In my own case my ex-husband called local law enforcement officials to our home to falsely report a ‘domestic abuse’ occurrence (by me). He also utilized corrupt law enforcement officials to entrap me in a ‘moving traffic violation’ in order to then request custody of our children be removed from me. As indicated in court records the removal of my children violate my constitutional rights and was an illegal act by the judge. At the onset of our divorce, my ex promised I would be incarcerated in a penal institution. And, his repeated efforts to ‘entrap me’ into moving traffic violations included continually calling me on my cel. phone when he knew I would be driving, and various attempts to have me arrested for driving under the influence of alcohol. Not only do criminal records ‘condemn’ mothers as unfit, it also hampers their ability to find jobs.
- Abusive fathers file for divorce proceedings in a jurisdiction, or jurisdictions, in which neither mother or father reside, either to obtain ‘favoritism’ in jurisdictions which favor father’s rights or in order to create chaos in judicial procedures, and unending (expensive) litigation for their victims, ruining them financially in the process. The case of Spanish national and lawyer Maria Jose Carrascosa in New Jersey courts, where she was illegally held for 8 years

under contempt of court, by a court which did not have jurisdiction is a perfect example. A trailer for Carrascosa's case is posted on <https://www.youtube.com/watch?v=1nqXX81p5sl>

## Confinement in Psychiatric Facilities during Divorce and Custody Battles

Another tactic used by abusers is to convince everyone that victims suffer from 'mental-disorders'—and need to be institutionalized in psychiatric facilities. It is repeatedly demonstrated that the consequence of long-term and/or high levels of stress or trauma are mental and health care problems, as well as substance abuse and addiction. Research on post-traumatic stress disorder (PTSD) began in the aftermath of the Vietnam War and elevated level of mental health issues of returning Veterans. However, even though evidence since then is overwhelming of the direct cause-and-effect relationship between stress or trauma and mental health problems most people in systems and institutions are still guided by the antiquated and faulty ideas and biases that mental disorders and symptoms are due to 'deficiencies' of the 'afflicted'. One of the more recent studies, CDC-Kaiser ACE Study, highlights the adverse effects domestic abuse and neglect has on children, as explained below.

### The CDC-Kaiser ACE Study

[About the CDC-Kaiser ACE Study](#) - *The CDC-Kaiser Permanente Adverse Childhood Experiences (ACE) Study is one of the largest investigations of childhood abuse and neglect and later-life health and well-being.*

*The original ACE Study was conducted at Kaiser Permanente from 1995 to 1997 with two waves of data collection. Over 17,000 Health Maintenance Organization members from Southern California receiving physical exams completed confidential surveys regarding their childhood experiences and current health status and behaviors.*

*The CDC continues ongoing surveillance of ACEs by assessing the medical status of the study participants via periodic updates of morbidity and mortality data.*

*More detailed information about the study can be found in the links below or in "Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults," published in the American Journal of Preventive Medicine in 1998, Volume 14, pages 245–258...*

*Adverse Childhood Experiences (ACEs) are common. Almost two-thirds of study participants reported at least one ACE, and more than one in five reported three or more ACEs.*

*The ACE score, a total sum of the different categories of ACEs reported by participants, is used to assess cumulative childhood stress. Study findings repeatedly reveal a graded dose-response relationship between ACEs and negative health and well-being outcomes across the life course.*

*As the number of ACEs increases so does the risk for the following\*:*

*Dose-response describes the change in an outcome (e.g., alcoholism) associated with differing levels of exposure (or doses) to a stressor (e.g. ACEs). A graded dose-response means that as the dose of the stressor increases the intensity of the outcome also increases.*

- *Alcoholism and alcohol abuse*
- *Chronic obstructive pulmonary disease*
- *Depression*
- *Fetal death*

- *Health-related quality of life*
- *Illicit drug use*
- *Ischemic heart disease*
- *Liver disease*
- *Poor work performance*
- *Financial stress*
- *Risk for intimate partner violence*
- *Multiple sexual partners*
- *Sexually transmitted diseases*
- *Smoking*
- *Suicide attempts*
- *Unintended pregnancies*
- *Early initiation of smoking*
- *Early initiation of sexual activity*
- *Adolescent pregnancy*
- *Risk for sexual violence*
- *Poor academic achievement*

*\*This list is not exhaustive. For more outcomes see [selected journal publications](#).*

So, accusations of ‘mental disorders’ and ‘impairment’ by the entourage of the ‘accused’ should be carefully examined, as should any ulterior motives of the accusers. For example, one of the most common, and widely accepted, accusations of abusers is that children’s rejection of them is not caused by a (natural) aversion and repugnance of the child-victim, but rather from ‘coaching’ and ‘manipulations’ of the ‘protective-parent’—known in family courts as Parent Alienation Syndrome (PAS). Even though, PAS is vehemently denounced by mainstream psychiatry as ‘junk-science’, it has been embraced by mental health care ‘experts’, judges, lawyers, and ‘cottage’ industries with a vengeance. These practices are occurring at great detriment to women and children, future generations, and society as a whole. The entire ideology and platform was created by the repudiated pedophile and psychiatrist, Richard Gardner.

### Richard Gardner and PAS

The [Leadership Council website](#) provides the following overview of Gardner and his beliefs and contentions,

#### ***Overview of Dr. Richard Gardner's Opinions on Pedophilia and Child Sexual Abuse***

*Richard A. Gardner, M.D., is the creator of the creator and main proponent for Parental Alienation Syndrome (PAS) theory. Prior to his suicide, Gardner was an unpaid part-time clinical professor of child psychiatry at the College of Physicians and Surgeons at Columbia University . He made his money mainly as a forensic expert.*

PAS was developed by Dr Richard Gardner in 1985 based on his personal observations and work as an expert witness, often on behalf of fathers accused of molesting their children. Gardner asserted that PAS is very common and he saw manifestations of this syndrome in over 90% of the custody conflicts he evaluated--even when abuse allegations are not raised (Gardner, 1987, p. 67).<sup>1</sup>Gardner (September 6, 1993) claimed that PAS is "a disorder of children, arising almost exclusively in child-custody disputes, in which one parent (usually the mother) programs the child to hate the other parent (usually the father)."<sup>2</sup>

Gardner 's theory of PAS has had a profound effect on how the court systems in our country handle allegations of child sexual abuse, especially during divorce. Gardner has authored more than 250 books and articles with advice directed towards mental health professionals, the legal community, divorcing adults and their children. Gardner 's private publishing company, Creative Therapeutics, published his many books, cassettes, and videotapes.<sup>3</sup> Information available on Gardner 's website indicates that he has been certified to testify as an expert in approximately 400 cases, both criminal and civil, in more than 25 states.<sup>4</sup> Gardner 's work continues to serve as a basis for decisions affecting the welfare of children in courtrooms across the nation. He is considered a leading authority in family courts and has even been described as the "guru" of child custody evaluations.<sup>4</sup>

**Because Gardner 's PAS theory is based on his clinical observations--not scientific data--it must be understood in the context of his extreme views concerning women, pedophilia and child sexual abuse.**

#### **Gardner on pedophilia**

The vast majority ("probably over 95%") of all sex abuse allegations are valid.

Gardner, R.A. (1991). *Sex Abuse Hysteria: Salem Witch Trials Revisited* . Cresskill, NJ: Creative Therapeutics (pp. 7, 140).

"There is a bit of pedophilia in every one of us."

Gardner, R.A. (1991). *Sex Abuse Hysteria: Salem Witch Trials Revisited* . Cresskill, NJ: Creative Therapeutics. (p. 118)

**"Pedophilia has been considered the norm by the vast majority of individuals in the history of the world."**

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse* . Cresskill, NJ: Creative Therapeutics. (p. 592-3)

Similarly, "intrafamilial pedophilia (that is, incest) is widespread and ... is probably an ancient tradition"

Gardner, R.A. (1991). *Sex Abuse Hysteria: Salem Witch Trials Revisited* . Cresskill, NJ: Creative Therapeutics. (p. 119)

**"It is because our society overreacts to it [pedophilia] that children suffer."**

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse* . Cresskill, NJ: Creative Therapeutics. (pp. 594-5)

Pedophilia may enhance the survival of the human species by serving "procreative purposes."

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics. (pp. 24-5)

**Pedophilia "is a widespread and accepted practice among literally billions of people."**

Gardner, R.A. (1986). *Child Custody Litigation: A Guide for Parents and Mental Health Professionals*. Cresskill, NJ: Creative Therapeutics, (p. 93)

In addition, Gardner proposes that many different types of human sexual behavior, including **pedophilia, sexual sadism, necrophilia (sex with corpses), zoophilia (sex with animals), coprophilia (sex involving defecation)**, can be seen as having species survival value and thus do "not warrant being excluded from the list of the `so-called natural forms of human sexual behavior.'"

See, Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics. (pp. 18-32)

**Gardner on the sexual aggressiveness of children**

**Gardner suggests that children want to have sex with adults and may seduce them.**

Some children experience " **high sexual urges in early infancy.** " "There is good reason to believe that most, if not all, children have the capacity to reach orgasm at the time they are born."

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics. (p. 15)

Children are naturally sexual and **may initiate sexual encounters by "seducing" the adult** .

Gardner, R.A. (1986). *Child Custody Litigation: A Guide for Parents and Mental Health Professionals*. Cresskill, NJ: Creative Therapeutics (p. 93).

If the sexual relationship is discovered, " **the child is likely to fabricate so that the adult will be blamed for the initiation** ."

Gardner, R.A. (1986). *Child Custody Litigation: A Guide for Parents and Mental Health Professionals*. Cresskill, NJ: Creative Therapeutics (p. 93).

"The normal child exhibits a wide variety of sexual fantasies and behaviors, many of which would be labeled as '**sick**' or '**perverted**' if exhibited by adults"

Gardner, R.A. (1991). *Sex Abuse Hysteria: Salem Witch Trials Revisited*. Cresskill, NJ: Creative Therapeutics. (p. 12)

Sex abuse is not necessarily traumatic; the determinant as to whether sexual molestation will be traumatic to the child, is the social attitude toward these encounters.

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics. (pp. 670-71)

**Gardner on therapy with children who are sexually abused by their father**

- **Keep the child connected to the abuser**

*Special care should be taken not alienate the child from the molesting parent. The removal of a pedophilic parent from the home "should only be seriously considered after all attempts at treatment of the pedophilia and rapprochement with the family have proven futile."*

*Gardner, R.A. (1992). True and False Accusations of Child Sex Abuse . Cresskill, NJ: Creative Therapeutics.(p. 537)*

*The child should be told that there is no such thing as a perfect parent. "The sexual exploitation has to be put on the negative list, but positives as well must be appreciated"*

*Gardner, R.A. (1992). True and False Accusations of Child Sex Abuse . Cresskill, NJ: Creative Therapeutics.(p. 572)*

- ***Tell the child that sexual abuse by a father is normal***

*Older children may be helped to appreciate that sexual encounters between an adult and a child are not universally considered to be reprehensible acts. **The child might be told about other societies in which such behavior was and is considered normal.** The child might be helped to appreciate the wisdom of Shakespeare's Hamlet, who said, "Nothing's either good or bad, but thinking makes it so."*

*Gardner, R.A. (1992). True and False Accusations of Child Sex Abuse . Cresskill, NJ: Creative Therapeutics.(p. 549)*

***"In such discussions the child has to be helped to appreciate that we have in our society an exaggeratedly punitive and moralistic attitude about adult-child sexual encounters"***

*Gardner, R.A. (1992). True and False Accusations of Child Sex Abuse . Cresskill, NJ: Creative Therapeutics.(p. 572).*

***Gardner on mothers who discover that their husband is sexually abusing their child***

***Gardner blames the father's abuse on the mother, who he faults for not fulfilling her husband sexually. He suggests that therapists should help mother's of incest victims achieve sexual gratification.***

- ***Discourage litigation.***
- ***Encourage her to stay with her husband (the abuser)***
- ***Blame her and the daughter for the sexual abuse by the father***

*"It may be that one of the reasons **the daughter turned toward the father** is the impairment of the child's relationship with the mother" (pp. 579-80)*

*Gardner, R.A. (1992). True and False Accusations of Child Sex Abuse . Cresskill, NJ: Creative Therapeutics. (p. 585)*

- ***Help her get over her anger at her husband for sexually abusing their child.***

*"If the mother has reacted to the abuse in a hysterical fashion, or used it as an excuse for a campaign of denigration of the father, then the therapist does well to try and "sober her up".... Her hysterics ... will contribute to the child's feeling that a heinous crime has been committed and will thereby lessen the likelihood of any kind of rapprochement with the father. **One has to do everything possible to help her put the "crime" in proper perspective. She has to be helped***



***to appreciate that in most societies in the history of the world, such behavior was ubiquitous [i.e., everywhere], and this is still the case."***

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics. (pp. 576-7)

***"Perhaps she can be helped to appreciate that in the history of the world his behavior has probably been more common than the restrained behavior of those who do not sexually abuse their children."***

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics. (pp. 585)

- ***Encourage her to become more sexually responsive to her husband.***

*"Her increased sexuality may lessen the need for her husband to return to their daughter for sexual gratification."*

*"Verbal statements about the pleasures of orgasmic response are not likely to prove very useful. One has to encourage experiences, under proper situations of relaxation, which will enable her to achieve the goal of orgasmic response."*

*"One must try to overcome any inhibition she may have with regard to [the use of vibrators]."*

*"Her own diminished guilt over masturbation will make it easier for her to encourage the practice in her daughter, if this is warranted. And her increased sexuality may lessen the need for her husband to return to their daughter for sexual gratification."*

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics. (p. 585)

#### ***Gardner on fathers who sexually abuse their children***

- ***Tell him what he did his normal***

*"He has to be helped to appreciate that, even today, it [pedophilia] is a widespread and accepted practice among literally billions of people. He has to appreciate that in our Western society especially, we take a very punitive and moralistic attitude toward such inclinations. He has had a certain amount of back (sic) luck with regard to the place and time he was born with regard to social attitudes toward pedophilia."*

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics. (p. 593)

*He has had **bad luck** with regard to the place and time he was born with regard to social attitudes toward pedophilia. However, these are not reasons to condemn himself.*

Gardner, R.A. (1991). *Sex Abuse Hysteria: Salem Witch Trials Revisited*. Cresskill, NJ: Creative Therapeutics. (p. 119)

- ***Keep him in the home***

*The removal of a pedophilic parent from the home "should only be seriously considered after all attempts at treatment of the pedophilia and rapprochement with the family have proven futile"*

Gardner, R.A. (1991). *Sex Abuse Hysteria: Salem Witch Trials Revisited*. Cresskill, NJ: Creative Therapeutics. (p. 119)

- **Help him protect himself**

"He must learn to control himself if he is to protect himself from the Draconian punishments meted out to those in our society who act out their pedophilic impulses."

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics. (pp. 585-592)

- **Help him forget about it**

Therapy with the father should **not** be spent focusing on the primary problem (i.e., sexual molestation). Instead, therapy should be spent "talking about other things" as the goal of therapy is "to help people forget about their problems"

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics. (pp. 585-592)

### **Gardner on how society should respond to the widespread victimization of children**

- **Take a more sympathetic view toward pedophilia**

"One of the steps that society must take to deal with the present hysteria is to 'come off it' and take a more realistic attitude toward pedophilic behavior." (p. 120)

"The Draconian punishments meted out to pedophiles go far beyond what I consider to be the gravity of the crime." (p. 118)

Gardner, R.A. (1991). *Sex Abuse Hysteria: Salem Witch Trials Revisited*. Cresskill, NJ: Creative Therapeutics.

- **Abolish mandated reporting of child sexual abuse.**
- **Do away with immunity for reporters of child abuse.**
- **Create federally-funded programs to assist those claiming to have been falsely accused of child sexual abuse.**

Gardner, R.A. (1995). *Written testimony on HR3588 - Proposed revision of the child abuse prevention and treatment act (CAPTA) (Public Law 93-247)*.

- **Keep pedophiles in the community**

The removal of a pedophilic parent from the home "should only be seriously considered after all attempts at treatment of the pedophilia and rapprochement with the family have proven futile"

Pedophiles who abuse children outside of the home should first be given the opportunity for community treatment. "If that fails then and only then should some kind of forced incarceration be considered"

Gardner, R.A. (1991). *Sex Abuse Hysteria: Salem Witch Trials Revisited*. Cresskill, NJ: Creative Therapeutics. (p. 119)

### **Gardner on Child abuse hysteria**

*Child abuse allegations are the "third-greatest wave of hysteria" the nation has seen, following the Salem witch trials and the McCarthyite persecution of leftists.*

*Gardner, R.A. (1993, February 22). Modern witch hunt--child abuse charges. The Wall Street Journal, p. A10.*

*"We are currently living in dangerous times, similar to Nazi Germany. Sexual abuse hysteria is omnipresent."*

*Gardner, R.A. (1992). True and False Accusations of Child Sex Abuse . Cresskill, NJ: Creative Therapeutics. (p. xxv)*

### **Who is to Blame for "Child Abuse Hysteria"?**

- **People who voice negative feelings against pedophiles**

*"During their harangues against the 'perverts' who are the objects of their scorn, they often rise to a level of excitation that can readily be seen as sexual. . . . Psychological, such individuals are ever fighting to repress their own unacceptable pedophilic impulses, which are continually pressing for release."*

*Gardner, R.A. (1991). Sex Abuse Hysteria: Salem Witch Trials Revisited . Cresskill, NJ: Creative Therapeutics (pp. 30-31).*

- **The legal system - including judges**

*"There is no question that abuse cases are "turn ons" for the wide variety of individuals involved in them, the accuser(s), the prosecutors, the lawyers, **the judges**, the evaluators, the psychologists, the reporters, the readers of the newspapers, and everyone else involved - except for the falsely accused and the innocent victim .. Everyone is getting their 'jollies, ."*

*Gardner, R.A. (1991). Sex Abuse Hysteria: Salem Witch Trials Revisited . Cresskill, NJ: Creative Therapeutics. (p. 31).*

*"**Judges** . too may have repressed pedophilic impulses over which there is suppression, repression, and guilt. Inquiry into the details of the case provides voyeuristic and vicarious gratifications .. Incarcerating the alleged perpetrator may serve psychologically to obliterate the judge's own projected pedophilic impulses."*

*Gardner, R.A. (1991). Sex Abuse Hysteria: Salem Witch Trials Revisited . Cresskill, NJ: Creative Therapeutics. (p. 107)*

- **Sexually inhibited mothers**

*"The mother . is . psychologically gratifying [her own sexually inhibited needs] with the visual imagery that the sex abuse allegation provides."*

*Gardner, R.A. (1991). Sex Abuse Hysteria: Salem Witch Trials Revisited . Cresskill, NJ: Creative Therapeutics (pp. 36-37).*

- **Greedy parents**

*"Many are victims of their greed, which is so enormous that they blind themselves to the psychological traumas they are subjecting their children to in the service of winning lawsuits that promise them enormous wealth."*

Gardner, R.A. (1991). *Sex Abuse Hysteria: Salem Witch Trials Revisited*. Cresskill, NJ: Creative Therapeutics (p 43).

- **Judeo-Christian principles**

**"It is of interest that of all the ancient peoples it may very well be that the Jews were the only ones who were punitive toward pedophiles.. Our present overreaction to pedophilia represents an exaggeration of Judeo-Christian principles and is a significant factor operative in Western society's atypicality with regard to such activities**

Gardner, R.A. (1992). *True and False Accusations of Child Sex Abuse*. Cresskill, NJ: Creative Therapeutics. (pp. 46-7).

The tactics being used in family courts to cover-up and/or justify abusive behavior should not be considered an 'isolated incident'. These tactics, particularly blame the victim and absolve the perpetrator, have been used throughout history to persecute and oppress women and 're-educate' children.

### Comparison of Spanish Family Courts and Removal of Children from Marxist Mothers

As high-lighted in the report by Fundacion Internacional Baltasar Garzon (FIBGAR), "Estructura del sistema de capturas, deportaciones y pérdidas infantiles establecido por la dictadura del general Francisco Franco. 1938-1949," by Ricard Vinyes Ribas (2015), targeting of women and removal of their children in reprisal for failure to bow-down and conform to oppressive regimes and the *status quo* has been historically used against women. Unfortunately, while Spain has one of the most progressive legal structures and Constitutions regarding women's rights, due to the failure of lawyers, policy-makers, and activists to know how to utilize these instruments women in Spain have no more rights than they did during Franco's dictatorship, and I quote,

*En los años fundacionales del Estado franquista, probar bajo apariencia científica la maldad e inferioridad mental del disidente fue una decisión del Ejército, ejecutada por el comandante y psiquiatra Antonio Vallejo Nágera (1889-1960) desde una institución militar creada específicamente para ese objetivo, el Gabinete de Investigaciones Psicológicas, constituido en 1938 por orden expresa del general Francisco Franco y transmitida a la Inspección General de Campos de Concentración en el telegrama 1.565: «En contestación a su escrito de 10 del actual proponiendo la creación de un Gabinete de Investigaciones Psicológicas cuya finalidad primordial será investigar las raíces biopsíquicas del marxismo, manifiesto que de conformidad con su mencionada propuesta, autorizo la creación del mismo....*

*En su síntesis construida sobre datos de apariencia científica, la mujer que había participado en actividades republicanas poseía una tendencia al Mal, y su participación en actos, entornos u organizaciones revolucionarias, activaba esa tendencia lanzando a la mujer a prácticas de una perversidad sin límite que procedía de su inferioridad mental. Por lo que deducía, entre otras cosas, que la militancia marxista recogía en sus filas tan sólo enfermos sociales tendentes a la criminalidad, especialmente a las mujeres....*

*El resultado fue una penalización femenina integral. La mujer era nada, tan solo un género propenso al crimen. Además, confirmaba que el enemigo republicano era realmente tan poco respetable como todos habían imaginado, sencillamente desprovisto de sentido moral alguno y*

*embrutecido por un resentimiento histórico que lo vaciaba de humanidad posible. Por fin disponían de un arquetipo –una idea pura– del Mal...*

*el origen de todo el Mal no provenía de los genes, sino del entorno democrático, un tratamiento eugenésico no debía basarse en actuaciones de agresión biológica, como la esterilización, «pues produce sujetos libidinosos», sino **en una adecuada política de segregación de los hijos de aquellas mujeres que habían participado en la política republicana en grados diversos...***

### Incarceration of Afro-American Women in the USA, 1980s-present

Another reason that women in the USA, particularly Afro-American women, is they have cohabitated with drug-dealers, and have been arrested in raids and ‘in possession’ of illegal drugs. The American ‘War on Drugs’ is a FAILED ‘War’, and has only benefited arms and weapons producers, as well as the US military, the Pentagon, and the State Department. Not only has it completely FAILED to address the rampant and rising drug-addiction problem in the USA (which now includes opioids as well as cocaine and heroin); but it has turned the USA into the holder of the largest prison population in the world. A synopsis of the situation is stated on Senator Cory Booker of New Jersey website,

*The United States is home to almost five percent of the world's total population but about 25 percent of the world's prison population. The U.S. imprisons more people than any other country on earth and spend about a quarter of a trillion dollars each year on a bloated, backward criminal justice system.*

*Over the past 30 years, the federal prison population has grown by 800 percent, an increase largely due to overly-punitive sentences for nonviolent, low-level drug crimes. In fact, there are more people incarcerated in America today for drug offenses alone than all the people who were incarcerated nationwide in 1970. And these policies have disproportionately impacted people of color and lower-income communities.*

*In addition to undermining the potential of millions of Americans and exacerbating poverty, our criminal justice system places a huge burden on taxpayers who foot the bill. In 2012, the average American contributed \$230 to corrections expenditures.*

*For those Americans released from prison, the physical barriers encountered behind bars are often replaced by the economic barrier of trying to find a job with a criminal record. The American Bar Association identified over 46,000 so-called "collateral consequences" that hold people back long after they complete their sentence and return to society. These consequences can include suspensions of the right to vote, as well as various obstacles to obtaining a job, and prohibitions on obtaining business license, housing and education.*

Unfortunately, women who have been incarcerated for having cohabitated with drug-dealers, are also faced with criminal records upon their release and suffer the same, if not more “collateral consequences” as men with criminal records. Furthermore, conditions for women in American prisons are as bad, if not worse than men. They often lack even basic necessities, particularly those related to menstruation and child-birth, and are frequently the target of sexual harassment and exploitation by prison personnel. These women are often mothers and faced with the additional burden of finding proper care for their children, and risk losing custody if they cannot provide it during, and/or after their incarceration. Additionally, the ‘cohabiter drug-dealer’ is often the father (or provider) of the children of these women, and are unable to provide financial support for them, due to the obstacles they face in

obtaining jobs. The report by Wendy Sawyer of the Prison Policy Initiative, [The Gender Divide: Tracking Women's State Prison Growth](#) (2018) identifies issues women face, and I quote,

*...women's incarceration demands more attention because of the distinct ways in which prisons and jails fail women and their families. Research consistently shows that incarcerated women face different problems than men — and prisons often make those problems worse. While not a comprehensive list, some of the major issues facing incarcerated women include:*

- *Women are more likely to enter prison with a history of abuse, trauma, and mental health problems (see [Context](#) sidebar). But even in the “secure” prison environment, women face sexual abuse by correctional staff or other incarcerated women, and are [more likely](#) than men to experience serious psychological distress. (This is to say nothing of girls who are victimized in [juvenile](#) facilities or the abuse of incarcerated transgender women.) [Treatment](#) for trauma and mental health problems is often inadequate or unavailable in prisons.*
- *Women have different physical health needs, including reproductive healthcare, management of menopause, nutrition, and very often treatment for substance use disorders. Again, the health systems in prisons — designed for men — [frequently fail](#) to meet these basic needs.*
- *Most women in prison (62%) are mothers of minor children. These women are more likely than fathers in prison to be the primary caretakers of their children, so the increasing number of women in prisons means more and more family disruption and insecurity. Incarcerated women and their families suffer from lack of face-to-face contact: because there are fewer women's prisons, women are more likely to be held in prisons located far from home, making visits [difficult](#) and expensive. To make matters worse, if children are placed in foster care when their mother is incarcerated, her prison sentence can sever family ties [permanently](#).*
- *Economically, women with a history of incarceration face particularly daunting obstacles when they return to their communities. Even before they are incarcerated, women in prison earn less than men in prison, and earn less than non-incarcerated women of the same age and race. Women's prisons do not meet the need or demand for vocational and educational program opportunities. And once released, the [collateral consequences](#) of incarceration make finding work, housing, and financial support even more difficult.*

The book, *The New Jim Crow*, by Michelle Alexander provides an excellent examination of the problems within judicial systems, while [The Gender Divide: Tracking Women's State Prison Growth](#) (2018) exposes trends and issues of mass-incarceration of women in the USA since 1978, and I quote,

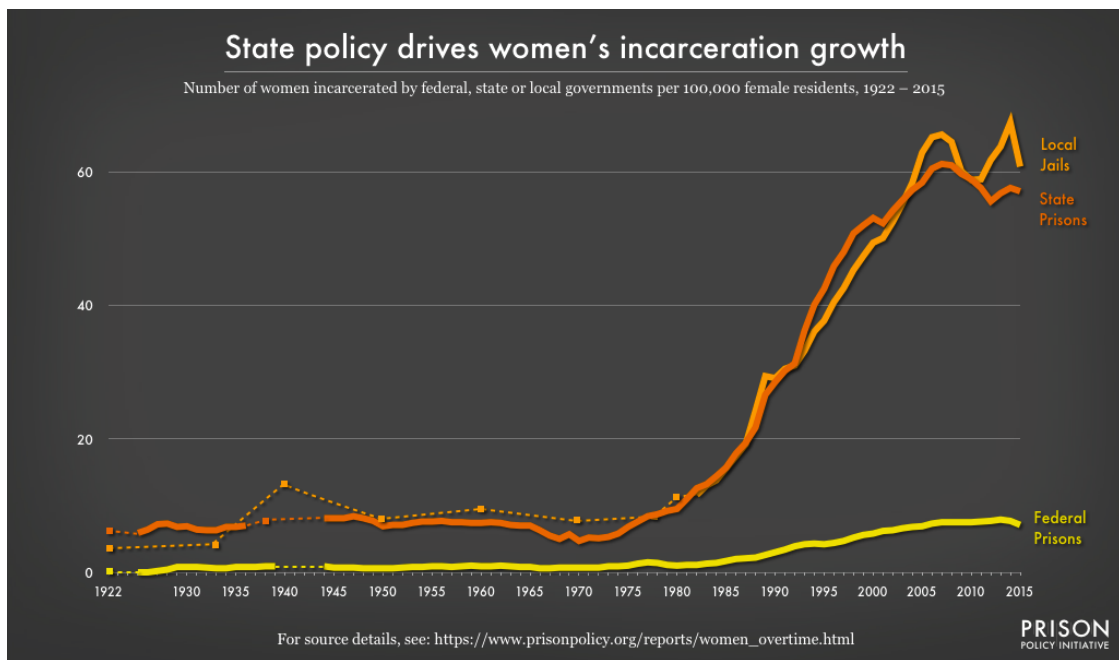
*The story of women's prison growth has been obscured by overly broad discussions of the “total” prison population for too long. This report sheds more light on women in the era of mass incarceration by tracking prison population trends since 1978 for all 50 states. The analysis identifies places where recent reforms appear to have had a disparate effect on women, and offers states recommendations to reverse mass incarceration for women alongside men.*

*Across the country, we find a disturbing gender disparity in recent prison population trends. While recent reforms have reduced the total number of people in state prisons since 2009,*

almost all of the decrease has been among men. Looking deeper into the state-specific data, we can identify the states driving the disparity.

In 35 states, women's population numbers have fared worse than men's, and in a few extraordinary states, women's prison populations have even grown enough to counteract reductions in the men's population. Too often, states undermine their commitment to criminal justice reform by ignoring women's incarceration.

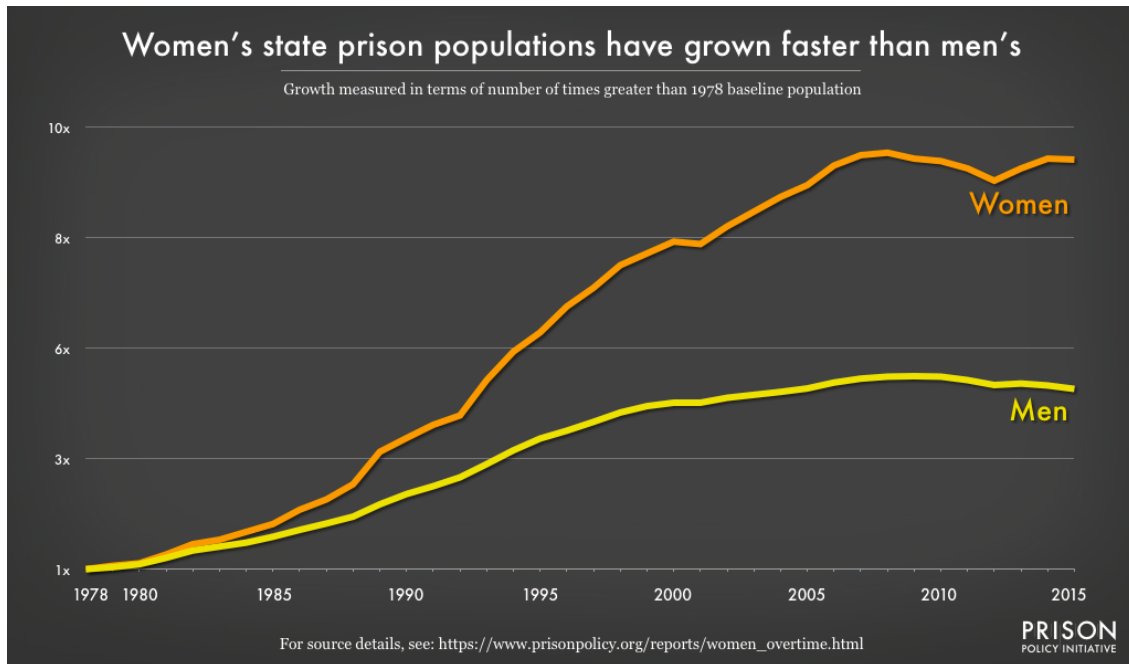
Women have become the fastest-growing segment of the incarcerated population, but despite recent interest in the alarming national trend, few people know what's happening in their own states. Examining these state trends is critical for making the state-level policy choices that will dictate the future of mass incarceration.



**Figure 1** Women's incarceration rates have grown dramatically since the late 1970s. But in contrast to the [total](#) incarcerated population — which is overwhelmingly male — women's jail rates have grown about equally to their state prison rates. (See as [raw numbers](#). The data behind both graphs is in [Table 1](#).)

#### National trends in women's state prison growth

Nationally, women's incarceration trends have generally tracked with the overall growth of the incarcerated population. Just as we see in the [total population](#), the number of women locked up for violations of state and local laws has skyrocketed since the late 1970s, while the federal prison population hasn't changed nearly as dramatically. These trends clearly demonstrate that state and local policies have driven the mass incarceration of women.



**Figure 2** Since 1978, the number of women in state prisons nationwide has grown at over twice the pace of men, to over 9 times the size of the 1978 population.

#### The role of local jails

The large proportion of women held in local jails raises serious concerns.

There are a few important differences between men's and women's national incarceration patterns over time. For example, jails play a particularly significant role in women's incarceration (see [sidebar](#), "The role of local jails"). And although women represent a small fraction of all incarcerated people, women's prison populations have seen much higher relative growth than men's since 1978. Nationwide, women's state prison populations grew 834% over nearly 40 years — more than double the pace of the growth among men.

#### **The role of local jails**

Local jails play a particularly significant role in women's incarceration, because a much larger proportion of [incarcerated women](#) are held in jails, compared to the total incarcerated population. While twice as many men are held in state prisons than are held in local jails, incarcerated women are almost evenly split between state prisons and local jails.

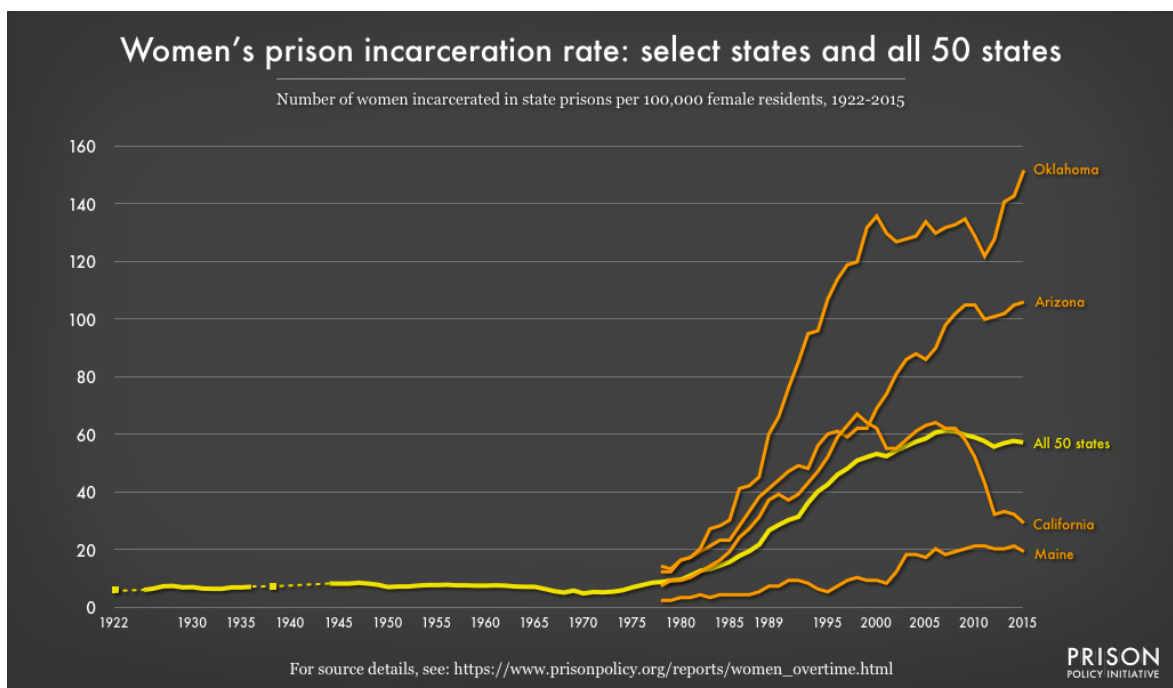
This gender difference is evident in growth trends as well. Starting in the 1970s, most of men's incarceration growth has taken place in state prisons. For women, however, local jail populations have been growing in lockstep with state prison populations, even exceeding state prison growth since 2000. While this report focuses specifically on state prison populations, jail and prison trends are connected: jail growth has a [downstream effect](#) on state prison growth.

The large numbers of women in local jails raises other serious concerns, related to the substantive differences between jails and prisons. Our previous report [Women's Mass Incarceration: The Whole Pie](#) highlights many of these problems. Unlike state prisons, most women in local jails (60%) have not been convicted and are being held while they await trial,



often because they cannot afford bail. Women are less likely to be able to [afford money bail](#) than men: those who could not afford bail had a median annual income below the poverty threshold, and about 30% lower than men who could not afford bail. Pretrial detention of even a few days can have life-altering effects for women and their families, putting jobs and housing at risk.

The 38,000 women in jails who have been convicted are typically serving sentences of under one year, often for misdemeanors. For these women, keeping in contact with family can be particularly difficult. Compared to prisons, [phone calls](#) are more expensive in jails and in-person [visits](#) may be prohibited. Jails often also offer fewer services and opportunities to participate in rehabilitative programming than prisons. Finally — or possibly as a result of these differences — women in jails report higher rates of [mental health problems](#) compared to men, with 1 in 3 women in jail reporting serious psychological distress.



**Figure 3** The national trend of women's state prison incarceration obscures a tremendous amount of state-to-state variation. State-level data reveals that some states, like Oklahoma and Arizona, have seen much more dramatic growth in women's prisons, while others have kept rates well below the national average.

## 2. Women Facing Detention in Civil Law Suits

### Question

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.

### Response

Family courts come under the purview of civil courts, while domestic violence courts are under penal systems. But, penal systems (in collusion with family courts) are systemically covering-up for domestic abuse, thereby implicating both as accessories to the original crimes. Please see below a table of

infractions (penal and civil) of lawyers implicated in my case, *Wilcox vs. Spain*, which shows violations are being committed concurrently in violation of penal and civil codes, as well as constitutions and human rights conventions.

# Violation of Rights & Criminal Infractions of Judicial Actors in the Failure to Protect Victims of Domestic Abuse

**Table 1: Violation of Rights & Infractions by Judicial Actors & US Embassies in their Failure to Protect**

Case Study: Wilcox vs. Spain – [www.warondomesticterrorism.com/](http://www.warondomesticterrorism.com/)

## The Hierarchy of Spanish Judicial Norms

Judicial Actors & Govt. Official	Complaint	Spanish Constitution	(CEDH)	Penal Code	Civil Code	Equality Act	Statutes for Lawyers Decreto 658/2001	Deontological Code
			(CEVCM)			(AI)		
			(CEDAW)			Gender Violence		
			(ICCP)			(CVG)		
			(ICESCR)			Judicial Power Law		
			(DJVCAP)			(ODJ)		
			(CRC)				Art.	Art.
LEGAL COUNSEL, JUDGES, COURT PSYCHOLOGIST & EVALUATORS, COURT PERSONNEL, LAW ENFORCEMENT, REGULATORY AGENCIES & IN TL. CASES - CONSULAR AFFAIRS & EMBASSY OFFICIALS*	Prevent the commission of a crime that affects the life of a person, their integrity, health, liberty or sexual liberty. Occult evidence of abuse & criminal acts on the part of abusive spouse as well as negligence/abuses of power by legal counsel of victim.	9, 10, 13 14, 15, 24 & 45.1	<b>CEDH</b> <b>CEVCM</b> <b>CEDAW</b> <b>ICCP</b> <b>ICESCR</b> <b>DJVCAP</b> <b>CRC</b>	10, 11, 22 27, 28, 29 195, 450 451, 465 467.2, 511 512 & 607bis	6, 7, 8, 27, 348, 349 1088, 1089, 1091, 1092 1093, 1094, 1097, 1098 1101, 1102, 1104, 1106 1107, 1254, 1255, 1262 1271, 1279, 1347, 1362 1365, 1369, 1375, 1383 1386, 1390 & 1391	<b>AI</b> 1, 2, 3, 4, 6, 9, 10, 11, 12 & 13 <b>CVG</b> 1, 2, 17, 18, 19 37, 38 & 39 <b>ODJ</b> 1, 5, 6, 9, 11 & 17	1, 4, 5 6, 7, 11 12, 17, 21 22, 23, 87 87bis & 87ter	1, 2, 3 4, 5, 6 9, 10, 11 12 & 13
	Failure of women to access common property assets & solicit common property documents. & Failure of legal counsel to exhibit due diligence in assuring the defense of right to access fin. records & property render them responsible for all & any financial damages incurred.	33.3, 34 35, 38, 14 & 24	<b>CEDH</b> 1, 4.1 & 14 <b>CEVCM</b> 3 <b>CEDAW</b> 2, 3, 4, 5 11, 13, 15 & 16 <b>ICCP</b> 1, 2, 3, 17, 23 & 26 <b>ICESCR</b> 1, 6, 7, 10, 11 <b>DJVCAP</b> 8 annex	10, 11, 22 29, 110 111, 112 113, 116 117, 120 173, 195 199, 208, 250, 450, 451.2 465, 467.2, 510, 512 & 607bis	103, 137, 138 6, 7, 8, 27 348, 349, 1088, 1089 1091, 1092, 1093, 1094 1097, 1098, 1101, 1102 1104, 1106, 1107, 1254 1255, 1262, 1271, 1279 1347, 1362, 1365, 1369 1375, 1383, 1386, 1390 & 1391	<b>AI</b> 1, 2, 3, 4 6, 9, 10, 11 12 & 13 <b>CVG</b> 1, 2, 17 18, 19, 37 38 & 39 <b>ODJ</b> 1, 5, 6, 9 11 & 17	1, 4, 5 6, 7, 11 12, 17, 21, 22, 23, 87 87bis & 87ter	1, 2, 3 4, 5, 6 9, 10 11, 12 & 13
	Violation of the right to an effective defense, the right to privacy & the right not to testify against oneself.	24 & 18	<b>CEDH</b> 1, 2, 3, 5, 6, 8, 13 & 14 <b>CEVCM</b> 3 & 4 <b>ICCP</b> 9, 17, 23 & 24 <b>ICESCR</b> 1, 6 & 10	11, 12, 22, 29, 109, 110, 116 195, 450 451.3 510, 511 & 607bis	6, 7, 8, 27, 348, 349 1088, 1089, 1091, 1092 1093, 1094, 1097, 1098 1101, 1102, 1104, 1106 1107, 1254, 1255, 1262 1271, 1279, 1347, 1362 1365, 1369, 1375, 1383 1386, 1390 & 1391	<b>AI</b> 1, 2, 3, 4, 6, 9 10, 11, 12 & 13 <b>CVG</b> 1, 2, 17, 18 87bis 19, 37, 38 & 39 <b>ODJ</b> 1, 5, 6, 9, 11 & 17	1, 4, 5 6, 7, 11 12, 17, 21 22, 23, 87 87bis & 87ter	1, 2 3, 4 5, 6 9, 10 11, 12 & 13
	Introduction of false information, falsified documents &/or false testimony to the courts	1, 9 10, 24 & 45.1	<b>CEDH</b> 1, 2, 3, 5, 6, 8, 13 & 14 <b>CEVCM</b> 3 & 4 <b>ICCP</b> 9, 17, 23 & 24 <b>ICESCR</b> 1, 6 & 10	22, 28b 390.3, 390.4 393, 396 429,450 451, 461 464, 465 467.2, 510 511, 512 & 607bis	6, 7, 8 27, 348 349, 1088, 1089, 1091 1092, 1093, 1094, 1097 1098, 1101, 1102, 1104 1106, 1107, 1254, 1255 1262, 1271, 1279, 1347 1362, 1365, 1369, 1375 1383, 1386, 1390 & 1391	<b>AI</b> 1, 2, 3, 4, 6 9, 10, 11 12 & 13 <b>CVG</b> 1, 2, 17, 18 87bis 19, 37, 38 & 39 <b>ODJ</b> 1, 5, 6, 9, 11 & 17	1, 4, 5, 6 7, 11, 12 17, 21, 22, 23, 87 87bis & 87ter	1, 2, 3 4, 5, 6 9, 10, 11, 12 & 13

**Convenios Internacionales**

- European convention on human rights (CEDH)
- Convention on the Elimination of Violence Against Women (CEVCM)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Intl. Covenant on Civil & Political Rights (ICCP)
- Intl. Covenant on Economic, Social & Cultural Rights (ICESCR)
- Declaration of Basic Principle of Justice for Victims of Crimes & Abuses of Power (DJVCAP)

\* Under 22CFR § 10.735–215 - Consular Affairs officials are “obligated to obey the laws of the country in which the employee is present.”

The defense of the Spanish government in the 2<sup>nd</sup> jurisprudence of women as human rights violations, *Gonzalez Carreño vs. Spain* (CEDAW, 2014) claimed “inadmissibility due to judicial error and a failure to exhaust domestic remedies.” What I demonstrate in my case against Spain is that “judicial errors” are not ‘errors’ but rather intention manipulations of misogynistic and discriminatory judicial actors in order to cover-up for domestic abuse. Additionally, I demonstrate that ‘domestic remedies’ are non-existence due to misogyny, stupidity, and discrimination of staff within government regulatory agencies. My ‘favorite’ RIDICULOUS contention of these agencies was by the Bar Association of Madrid, which claimed that it was “the RIGHT of lawyers to violate the rights of their clients under the principles of judicial independence.”

In my efforts to submit my case, as well as many, many others to international courts in order to challenge *Gonzalez Carreno vs. Spain*, I have been soliciting the assistance of Women’s Link Worldwide (WLW, a joint Spanish-Colombian initiative) as well as Baltasar Garzon’s law firm ‘International Legal Office for Cooperation and Development’ (ILOCAD). However, even though I have meticulously prepared the evidence and legal argumentation under the Spanish Constitution and Universal Jurisdiction, these NGOs (as well as many others), fail to even respond to my correspondence. By their omission of action they are rendering themselves complicit to the crimes against humanity (under art. 7 of the Roma Statutes) being committed by family courts.

### 3. Main Challenges in Accessing Justice

#### Question

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?

#### Response

##### 1. *Quality of legal representation:* –

Even though I am working globally and have contacted a wide-variety of domestic violence and women’s rights NGOs around the world in the past 10 years, I am constantly told that NO ONE can recommend any lawyers—because none of the lawyers know how to defend the rights of their clients.

What my research has exposed is that the inability of lawyers to effectively present and argue cases in a court of law is a long-standing one within court systems throughout the world. The American Bar Association (ABA) report in 1970, the Clark Report, estimates that negligence rates of lawyers in a court of law, and in defending their clients is at 70%—which concurs with negligence rates of 70% in professions across the board, and which is a human resource problem. In efforts to address the problems of assuring a ‘fair trial’ and proper administration of justice, the British developed and codified a system of ‘trial by jury’ in the 1200s under the Magna Carta. Unfortunately, ‘trial by jury’, particularly when bullying and abuses of power within general populations are at their height (as is the case at present) juries can be as, if not more bias, and discriminatory, than lawyers and judges, in their ‘interpretation’ of the law. Additionally, juries made up of lay people have little to no understanding of basic tenants of law, and the effective administration of justice. A much more effective solution to the abuses of power by judges, would be to effectively combat their biases, discriminatory norms, and entitlement as a ‘protected’ member of society—through objective, competent, transparent and ethical judicial review and appellate procedures.

Additionally, in **(unsuccessful)** attempts to deal with the elevated inabilities of lawyers to compile and introduce evidence, file motions, and plead cases (Clark Report) judicial systems have developed a double-tier system of lawyers—barrister and solicitors. Synopsis of this system is as follows,

*A barrister, who can be considered as a jurist, is a lawyer who represents a litigant as advocate before a court of appropriate jurisdiction. A barrister speaks in court and presents the case before a judge or jury. In some jurisdictions, a barrister receives additional training in evidence law, ethics, and court practice and procedure. In contrast, a solicitor generally meets with clients, does preparatory and administrative work and provides legal advice. In this role, he or she may draft and review legal documents, interact with the client as necessary, prepare evidence, and generally manage the day-to-day administration of a lawsuit. A solicitor can provide a crucial support role to a barrister when in court, such as managing large volumes of documents in the case or even negotiating a settlement outside the courtroom while the trial continues inside.*

*There are other essential differences. A barrister will usually have rights of audience in the higher courts, whereas other legal professionals will often have more limited access, or will need to acquire additional qualifications to have such access. As in common law countries in which there is a split between the roles of barrister and solicitor, the barrister in civil law jurisdictions is responsible for appearing in trials or pleading cases before the courts.*

*Barristers usually have particular knowledge of case law, precedent, and the skills to "build" a case. When a solicitor in general practice is confronted with an unusual point of law, they may seek the "opinion of counsel" on the issue.*

#### **Justification for a split profession**

*Some benefits of maintaining the split include:*

- *Having an independent barrister reviewing a course of action gives the client a fresh and independent opinion from an expert in the field distinct from solicitors who may maintain ongoing and long-term relationships with the client.*
- *In many jurisdictions, judges are appointed from the bar. Since barristers do not have long-term client relationships, and are further removed from clients than solicitors, judicial appointees are more independent.*
- *Having recourse to all of the specialist barristers at the bar can enable smaller firms, who could not maintain large specialist departments, to compete with larger firms.*
- *A barrister acts as a check on the solicitor conducting the trial; if it becomes apparent that the claim or defence has not been properly conducted by the solicitor prior to trial, the barrister can (and usually has a duty to) advise the client of a separate possible claim against the solicitor.*
- *Expertise in conducting trials, owing to the fact that barristers are specialist advocates.*
- *In many jurisdictions, barristers must follow the cab-rank rule, which obliges them to accept a brief if it is in their area of expertise and if they are available, facilitating access to justice for the unpopular.*

Some disadvantages of the split include:

- A multiplicity of legal advisers can lead to less efficiency and higher costs, a concern to Sir David Clementi in his review of the English legal profession.
- Because they are further removed from the client, barristers can be less familiar with the client's needs. (Wikipedia)

## 2. Existence of gender-stereotyping and bias in judicial proceedings: –

The report by the Leadership Council, [“Are “Good Enough” Parents Losing Custody to Abusive Ex-Partners?”](#) by Stephanie Dallam provides insight into the many bias and gender-stereotyping that women face in family courts, and I quote,

*High conflict families are disproportionately represented among the population of those contesting custody and visitation. These cases commonly involve domestic violence, child abuse, and substance abuse. Research indicates that that custody litigation can become a vehicle whereby batterers and child abusers attempt to extend or maintain their control and authority over their victims after separation. Although, research has not found a higher incidence of false allegations of child abuse and domestic violence in the context of custody/visitation, officers of the court tend to be unreasonably suspicious of such claims and that too often custody decisions are based on bad science, misinterpretation of fact, and evaluator bias. As a result, many abused women and their children find themselves re-victimized by the justice system after separation. Empirical research examining this issue is summarized below.*

### I. RESEARCH

**Abrams, R., & Greaney, J. (1989). Report of the gender bias study of the Supreme Judicial Court of the Commonwealth of Massachusetts.**

A 1989 study by the Massachusetts Supreme Judicial Court found that in cases involving custody and visitation litigation, "The interests of fathers are given more weight than the interests of mothers and children." (pp. 62-63).

**Ackerman, M. J., & Ackerman, M. C. (1996). Child custody evaluation practices: A 1996 survey of psychologists. Family Law Quarterly, 30, 565-586.**

Research has found that many custody evaluators consider alienation of more significance than domestic violence in making custody recommendations. A survey of 201 psychologists from 39 states who conducted custody evaluations indicated that domestic violence was not considered by most to be a major factor in making custody determinations. Conversely, three-quarters of the custody evaluators recommended denying sole or joint custody to a parent who "alienates the child from the other parent by negatively interpreting the other parent's behavior."

**Bemiller, Michelle. (2008). When Battered Mothers Lose Custody: A Qualitative Study of Abuse at Home and in the Courts. Journal of Child Custody, 5(3/4), 228-255.**

Available [here](#) (\$)

Abstract: The following study adds to research that examines child custody cases involving a history of interpersonal violence. This study contributes to past research by providing qualitative accounts of women's experiences with intimate partner violence prior to custody loss,

*institutional abuse at the hands of the family court, and abuse experienced after custody loss. Data come from a convenience sample of 16 noncustodial mothers from northeastern Ohio. Findings support past research, which finds corruption, denial of due process, and gender bias in the family court system. Policy recommendations are made and future research directions suggested.*

**Bourke, D. (1995). *Reconstructing the patriarchal nuclear family: Recent developments in child custody and access in Canada. Canadian Journal of Law and Society, 10(1), 1-24.***

*Even if a woman is awarded custody by a court, a court will generally determine that it is in the "best interests of the child" for the ex-partner to be awarded access. According to the results of one study, in nearly every case, and eclipsing virtually all other factors, access of the non-custodial parent (usually the father) was considered paramount to the "best interests of the child". This was irrespective of the quality or regularity of his parenting.*

**Chesler, P. (1991, 1986). *Mothers on Trial: The Battle for Children and Custody. NY: Harcourt Brace Jovanovich, Publishers.***

*Phyllis Chesler interviewed 60 mothers involved in a custody dispute and found that fathers who contest custody are more likely than their wives to win (p. 65). In 82% of the disputed custody cases fathers achieved sole custody despite the fact that only 13% had been involved in child care activities prior to divorce (p. 79 tbl. 5). Moreover, 59% of fathers who won custody litigation had abused their wives, and 50% of fathers who obtained custody through private negotiations had abused their wives (p. 80 tbl. 6).*

**The Committee for Justice for Women and the Orange County, North Carolina, Women's Coalition. (1991). *Contested Custody Cases In Orange County, North Carolina, Trial Courts, 1983-1987: Gender Bias, The Family And The Law. Author.***

*The Committee for Justice for Women studied custody awards in Orange County, North Carolina over a five year period between 1983 and 1987. They reported that:*

*"...in all contested custody cases, 84% of the fathers in the study were granted sole or mandated joint custody. In all cases where sole custody was awarded, fathers were awarded custody in 79% of the cases. In 26% of the cases fathers were either proven or alleged to have physically and sexually abused their children."*

**Depner et al. (1992). *Building a uniform statistical reporting system: A snapshot of California Family Court Services. Family and Conciliation Courts Review, 30. 185-206.***

*Among custody litigants referred to mediation, "[p]hysical aggression had occurred between 75% and 70% of the parents . . . even though the couples had been separated. . . [for an average of 30-42 months]". Furthermore, [i]n 35% of the first sample and 48% of the second, [the violence] was denoted as severe and involved battering and threatening to use or using a weapon."*

**Dragiewicz, M. (2010). *Gender bias in the courts: Implications for battered mothers and their children. In M. Hannah & B. Goldstein (Eds.), Domestic violence, abuse, and child custody: Legal strategies and policy issues (§ 5.1-5.18). Kingston, NJ: Civic Research Institute.***

*Dragiewicz provides a comprehensive summary of gender bias reports pertaining to custody decisions. In addition to the tendency to disbelieve or minimize women's reports of abuse, or to disregard evidence for it, Dragiewicz also describes other problems uncovered during investigations. These include mothers being punished for reporting abuse, unfair financial settlements, and mothers being held to higher standards than fathers.*

**Emery, R. E., Otto, R. K., & O'Donohue, W. T. (2007). Custody Evaluations: Limited Science and a Flawed System. *Psychological Science in the Public Interest*, 6(1), 1-29.**

Theoretically, the law guides and controls child custody evaluations, but the prevailing custody standard (the "best interests of the child" test) is a vague rule that directs judges to make decisions unique to individual cases according to what will be in children's future (and undefined) best interests. Furthermore, state statutes typically offer only vague guidelines as to how judges (and evaluators) are to assess parents and the merits of their cases, and how they should ultimately decide what custody arrangements will be in a child's best interests. In this vacuum, custody evaluators typically administer to parents and children an array of tests and assess them through less formal means including interviews and observation. **Sadly, we find that (a) tests specifically developed to assess questions relevant to custody are completely inadequate on scientific grounds; (b) the claims of some anointed experts about their favorite constructs (e.g., "parent alienation syndrome") are equally hollow when subjected to scientific scrutiny; (c) evaluators should question the use even of well-established psychological measures (e.g., measures of intelligence, personality, psychopathology, and academic achievement) because of their often limited relevance to the questions before the court; and (d) little empirical data exist regarding other important and controversial issues (e.g., whether evaluators should solicit children's wishes about custody; whether infants and toddlers are harmed or helped by overnight visits), suggesting a need for further scientific investigation.**

**Erickson, Nancy S. (2005, Spring). Use of the MMPI-2 in Child Custody Evaluations Involving Battered Women: What Does Psychological Research Tell Us? *Family Law Quarterly* vol 39, no. 1, p. 87-108.**

Erickson notes:

The effects of domestic violence on survivors, who are primarily women, may be severe. Battered women's advocates often note that, in custody cases, the batterer often "looks better" to the court than the victim does because he is confident and calm, whereas she is still suffering the effects of his abuse and therefore may appear hysterical, weepy, angry, or otherwise not "together."

When a custody evaluation is conducted by a psychologist, the revised version of the Minnesota Multiphasic Personality Inventory (MMPI-2) is often used as part of the evaluation process. The MMPI-2, like other traditional psychological tests, was not designed to be used in custody evaluations and arguably should not be used for such purpose except "when specific problems or issues that these tests were designed to measure appear salient in the case."

If it used, Erickson notes that "great care must be taken" as "a misinterpretation could result in placing custody of a child with a batterer, which could put the child at severe risk."

Erickson reviews research on the use of MMPI evaluations with battered women and found that that the psychological stress that battered women suffer may result in MMPI scores that do not accurately evaluate their ability to parent.

**Faller, K. C., & DeVoe, E. (1995). Allegations of sexual abuse in divorce, *Journal of Child Sexual Abuse*, 4(4), 1-25.**

The authors examined 214 allegations of sexual abuse in divorce cases that were evaluated by a multidisciplinary team at a university-based clinic. 72.6% were determined likely, 20% unlikely, and 7.4% uncertain. The temporal relationship between allegations and divorce were analyzed and results revealed that in cases where CSA was judged to be likely or uncertain, in 18% of these cases divorce followed discovery of sexual abuse, in 32% cases discovery of sexual abuse



*followed divorce, in 34% of cases sexual abuse followed divorce, and 16% of allegations were found to be unrelated to divorce. Of the 20% of cases that were judged to be false or possibly false cases, only approximately a quarter (n = 10) were determined to have been consciously made. The remainder were classified as misinterpretations.*

*Faller and DeVoe found that 40 concerned parents experienced negative sanctions associated with raising the issue of sexual abuse. These sanctions included being jailed, losing custody to the alleged offender, a relative, or foster care, limitation or loss of visitation, admonitions not to report alleged abuse again to the court, Protective Services or the police, and prohibitions against taking the child to a physician or therapist because of concerns about sexual abuse in the future. None of the parents experiencing these sanctions were ones who were judged to have made calculated false allegations. In fact, sanctioned cases tended to score higher on a composite scale of likelihood of sexual abuse, and were more likely to have medical evidence than cases without sanctions.*

**Goelman, D. M., Lehrman, F. L., & Valente, R. L. (Eds.). (1996). *The impact of domestic violence on your legal practice: A lawyer's handbook*. Washington D.C.: ABA Commission on Domestic Violence.**

*"Custody litigation frequently becomes a vehicle whereby batterers attempt to extend or maintain their control and authority over the abused parents after separation... Be aware that many perpetrators of domestic violence are facile manipulators, presenting themselves as caring, cooperative parents and casting the abused parent as a diminished, conflict-inciting, impulsive or over-protective parent."*

**Johnston, J. R., Lee, S., Olesen, N. W., Walters, M. G. (2005) "Allegations and Substantiations of Abuse in Custody-Disputing Families." *Family Court Review*, 43, 283–294.**

**Johnson, N. E., Saccuzzo, D. P., & Koen, W. J. (2005). *Child custody mediation in cases of domestic violence: Empirical evidence of a failure to protect*. *Violence Against Women*, 11(8), 1022-1053.**

*This study shows that victims of domestic violence (DV) are greatly disadvantaged when states require mediation of child custody disputes. The investigators empirically evaluated outcomes and found that mediators failed to recognize and report DV in 56.9% of the DV cases. The court's screening form failed to indicate DV in at least 14.7% of the violent cases. Mediation resulted in poor outcomes for DV victims in terms of protections, such as supervised visitation and protected child exchanges. As a result, the capacity of mediators to focus on the child's best interest is called into question.*

**Kernic, M.A., Monary-Ernsdorff, D. J., Koepsell, J. K., & Holt, V. L. (2005). *Children in the crossfire: Child custody determinations among couples with a history of intimate partner violence*. *Violence Against Women*, 11(8), 991-1021.**

*This retrospective cohort study examined the effects of a history of interpersonal violence (IPV) on child custody and visitation outcomes.*

*The investigators analyzed documentation on more than 800 local couples with young children who filed for divorce in 1998 and 1999. These included 324 cases with a history of domestic violence and 532 cases without such a history. The researchers estimate that at least 11.4% of Seattle divorce cases involving couples with dependent children involve a substantiated history of male-perpetrated domestic violence. The findings reveal a lack of identification of IPV even among cases with a documented, substantiated history, and a lack of strong protections being ordered even among cases in which a history of substantiated IPV is known to exist.*

- In 47.6% of cases with a documented, substantiated history, no mention of the abuse was found in the divorce case files.
- "The court was made aware of less than one fourth of those cases with a substantiated history of intimate partner violence."
- Mothers in cases with a violent partner were no more likely to obtain custody than mothers in non-abuse cases. Fathers with a history of committing abuse were denied child visitation in only 17% of cases.

**Logan, T. K., Walker, R., Jordan, C. E., & Horvath, L. S. (2002). *Child custody evaluations and domestic violence: Case comparisons. Violence & Victims, 17(6), 719-42.***

*This study is one of the first to examine characteristics of disputed custody cases and their custody evaluation reports differences between domestic violence and non-domestic violence cases. This study selected a 60% random sample of cases with custody evaluations in Fiscal Year 1998 and 1999 (n = 82 cases). Out of the 82 cases, 56% (n = 46) met criteria for classification into the domestic violence group and 44% (n = 36) did not. In general, results indicated that although there were some important differences in court records between cases with and without domestic violence, there were only minor differences between custody evaluation reported process and recommendations for the two groups.*

**Lowenstein, S. R. (1991). *Child sexual abuse in custody and visitation litigation: Representation for the benefit of victims. UMKC Law Review, 60, 227-82.***

*Sharon Lowenstein examined 96 custody and visitation disputes involving allegations of child sexual abuse from 33 states. Visitation was the principal issues in 36 cases. The father was alleged to have sexually molested their child in each of these 36 cases. Yet in two-thirds (24) of these cases fathers were granted unsupervised visitation.*

*Custody was the principle issue in 56 cases. In 27 of the 56 cases (48%) mothers lost custody. In 17 of these cases (63%) the mother lost custody to a father alleged to be a perpetrator. In two cases (3.6%) fathers lost custody. No father lost custody to a mother whose household included an alleged perpetrator (either the mother, a stepfather, the mother's boyfriend, or one of mother's relatives).*

**Meier, J. S. (2003). *Domestic violence, child custody, and child protection: Understanding judicial resistance and imagining the solutions. American University Journal of Gender, Social Policy, and Law, 11, 657-731.***

*Joan Meier surveyed the 2001 case law and identified 38 appellate state court decisions concerning custody and domestic violence. She found that 36 of the 38 trial courts had awarded joint or sole custody to alleged and adjudicated batterers. Two-thirds of these decisions were reversed on appeal. These cases included a case in which the perpetrator had been repeatedly convicted of domestic assault (In re Custody of Zia, 736 N.E. 2d 449 [Mass. App. Ct. 2000]); in which a father was given sole custody of a 16-month old despite his undisputed choking of the mother resulting in her hospitalization and his arrest (Kent v. Green, 701 So. 2d 4 [Ala. Civ. App. 1996]); in which the father had broken the mother's collarbone (Couch v. Couch, 978 S.W.2d 505 [Mo. App. 1998]); had committed "occasional incidents of violence" Simmons v. Simmons, 649 So. 2d 799, 802 [La. App. Ct. 1995]); and had committed two admitted assaults (Hamilton v. Hamilton, 886 S.W.2d 711, 715 [Mo. App. 1994]). More such instances can be found in the article.*

**Neustein, A., & Goetting, A. (1999). *Judicial Responses to Protective Parents*, *Journal of Child Sexual Abuse*, 4, 103-122.**

<http://www.haworthpressinc.com/store/SampleText/J070.pdf> (go to page 109 of pdf)

*This study examined judicial responses to protective parents' complaints of child sexual abuse in 300 custody cases with extensive family court records. The investigators found that only in 10% of cases was primary custody was given to the protective parent and supervised contact with alleged abuser. Conversely, 20% of the cases resulted in a predominantly negative outcome where the child was placed in the primary legal and physical custody of the allegedly sexually abusive parent. (see p. 108). In the rest of the cases, the judges awarded joint custody with no provisions for supervised visitation with the alleged abuser.*

**Neustein, A., & Leshner, M. (2005). *From Madness to Mutiny -- Why Mothers are Running from Family Court and What Can Be Done About It*. (Northeastern University Press.**

*This scholarly book documents case after case where accusations of sexual abuse by a child resulted in forced contact with the alleged abuser, and sometimes complete termination of parental contact with a loving parent who seeks only to protect the child.*

**Morrill, A. C., Dai, J., Dunn, S., Sung, I., & Smith, K. (2005). *Child custody and visitation decisions when the father has perpetrated violence against the mother*. *Violence Against Women*, 11(8), 1076-1107.**

*This research evaluated the effectiveness of statutes mandating a presumption against custody to a perpetrator of domestic violence (DV) and judicial education about DV. Across six states, the authors examined 393 custody and/or visitation orders where the father perpetrated DV against the mother and surveyed 60 judges who entered those orders. With the presumption, more orders gave legal and physical custody to the mother and imposed a structured schedule and restrictive conditions on fathers' visits, except where there was also a "friendly parent" provision and a presumption for joint custody. Thus it appears that a presumption against custody to a perpetrator of DV is effective only when part of a consistent statutory scheme.*

**Polikoff, N. D. (1992). *Why are mothers losing: A brief analysis of criteria used in child custody determinations*. *Women's Rights Law Reporter*, 14, 175-184.**

*Finding that judges evidence a strong "paternal preference" in contested custody cases. When sole custody is awarded, it is awarded to the father in 50-63% of cases.*

**Rosen, L. N., & Etlin, M. (1996). *The hostage child: Sex abuse allegations in custody disputes*. *Bloomington, IN: Indiana University Press.***

*This book challenges the presumption that allegations of child sexual abuse that arise during custody disputes are usually fabricated. Five cases are described in which children were not protected from their abuser during custody disputes, despite the existence of medical evidence of sexual abuse. In these cases, the allegations were not believed, and the children were returned to the parent who abused them.*

**Rosen, L. N., & O'Sullivan, C. S. (2005). *Outcomes of custody and visitation petitions when fathers are restrained by protection orders: The case of the New York family courts*. *Violence Against Women*, 11(8), 1054-1075.**

*A random sample of custody and visitation petitions filed in New York City Family Courts in 1995 was used to examine outcomes of mothers' Order of Protection (OP) Petitions in relation to parents' custody and visitation petitions. Fathers restrained by OPs were more likely to secure visitation orders (64%) than not. In contrast, 80.8% of fathers' custody petitions were dismissed when they were restrained by OPs. Fathers' custody petitions were most likely to be ordered*

when mothers' OP petitions were withdrawn. Mothers were most likely to secure custody when their OP petitions were ordered or withdrawn. Courts rarely denied petitions. Those that did not result in court orders were either withdrawn by the petitioner or dismissed by the court (most likely because of failure of the petitioner to appear in court). This pattern has negative implications for battered women who may be vulnerable to pressure or threats from abusive ex-partners.

**Saccuzzo, D. P., & Johnson, N. E. (2004). Child custody mediation's failure to protect: Why should the criminal justice system care? *National Institute of Justice Journal*, 251, 21-23.**

Available at <http://ncjrs.org/pdffiles1/jr000251.pdf>

The researchers looked at mediations in which the parties could not reach a mutual agreement. They compared 200 mediations involving charges of DV with 200 non-DV mediations. Joint legal custody was awarded about 90% of the time, even when domestic violence was an issue. Mothers alleging domestic violence only received primary physical custody 35% of the time. Attorneys who represented mothers at these proceedings said that they often advised their clients not to tell the mediator about domestic abuse. After looking at the results of such mediations, the researchers determined that the attorneys' advice may well be justified; women who informed custody mediators that they were victims of domestic violence often received less favorable custody awards.

**Stahly, G. B. (1990, April). Battered women's problems with child custody. In G. B. Stahly (Chair), *New directions in domestic violence research. Symposium conducted at the annual meeting of the Western Psychological Association, Los Angeles.* [Cited in Liss, M. B., & Stahly, G. B. (1993). *Domestic violence and child custody.* In M. Hansen, & M. Harway (Eds.), *Battering and family therapy: A feminist perspective* (175-187). Thousand Oaks, CA : Sage.]**

Sociologist Geraldine Stahly, PhD., surveyed battered women's shelters in order to gather information on extent of custodial problems encountered by women seeking shelter services. Of the more than 100,000 women reported on by the shelter staff, 34% reported the batterer threatened to kidnap their children; and 11% of batterers had actually kidnapped a child. In 23% of cases batterers had threatened legal custody action, and in 7% of the cases known to the shelter staff, such actions had already been filed.

In 24% of the cases, the battering man used court-ordered visitation as an occasion to continue verbal and emotional abuse of the woman, and in 10% of the cases, physical violence continued. Shelter staff reported numerous cases in which courts granted unsupervised visitation in spite of evidence of physical abuse of the child (12,401 reported cases) and child sexual abuse (6,970 reported cases).

**Stahly, G. B., Krajewski, L., Loya, B. Uppal, K., Farris, W., Stuebner, N., Evans, K., German, G., & Frias, F. (n.d.). *Family violence impacts child custody: A study of court records.***

Researchers at California State University, San Bernardino, examined the relationship between custody disputes and allegations of family violence in 147 randomly selected family court files of divorce involving children. The cases examined occurred during 1998-2002 in four courts in three counties of Southern California. They found that violent fathers were less likely to seek sole custody than battered mothers. However, violent fathers were just as likely as nonviolent fathers to file for sole custody. Surprisingly, in the cases where violent fathers did pursue sole custody they were more likely to prevail than were non-violent fathers.

**Stahly, G. B., Krajewski, L., Loya, B. Uppal, K., German, G., Farris, W., Hilson, N., & Valentine, J. (2004). *Protective Mothers in Child Custody Disputes: A Study of Judicial Abuse.* In *Disorder in***

**the Courts: Mothers and Their Allies Take on the Family Law System (a collection of essays), electronic download available at [http://store.canow.org/products.php?prod\\_id=3](http://store.canow.org/products.php?prod_id=3)**

To better understand the problems that protective parents face in the legal system, researchers at California State University, San Bernardino, are performing an on-going national survey. To date, over 100 self-identified protective parents have completed the 101-item questionnaire. The study found that prior to divorce, 94% of the protective mothers surveyed were the primary caretaker and 87% had custody at the time of separation. However, as a result of reporting child abuse, only 27% were left with custody after court proceedings. 97% of the mothers reported that court personnel ignored or minimized reports of abuse and that they were punished for trying to protect their children. 45% of the mothers say they were labeled as having Parental Alienation Syndrome (PAS). Most protective parents lost custody in emergency ex parte proceedings (where they were not notified or present) and where no court reporter was present. 65% reported that they were threatened with sanctions if the "talked publicly" about the case. The average cost of the court proceedings was over \$80,000 and over a quarter of the protective parents reported being forced to file bankruptcy as a result of filing for custody of their children. 87% of the protective parents believe that their children are still being abused; however, 63% have stopped reporting the abuse for fear that contact with their children will be terminated. Eleven percent of the children were reported to have attempted suicide.

**Stahly, G. B., Oursler, A., & Takano, J. (1988, April). Family violence and child custody: A survey of battered women's fear and experiences. Paper presented at the annual meeting of the Western Psychological Association, San Francisco.** [Cited in Liss, M. B., & Stahly, G. B. (1993). Domestic violence and child custody. In M. Hansen, & M. Harway (Eds.), *Battering and family therapy: A feminist perspective* (175-187). Thousand Oaks, CA : Sage.]

In this pilot study of battered women's experiences with child custody (n = 94), mothers reported that their batterer frequently used threats against the children in an attempt to keep the woman from leaving them. Twenty-five percent of battered women reported that their batterer threatened to hurt the children, 25% reported that he threatened to kidnap the children, and 35% reported that the batterer threatened to take the children away through a custody action.

**Suchanek, J., & Stahly, G. B. (1991, April). The relationship between domestic violence and paternal custody in divorce. Paper presented at the annual meeting of the Western Psychological Association, San Francisco.**

Suchanek and Stahly examined 150 randomly selected files of marital dissolution from a Southern California district courthouse between 1980 and 1989. They found that dissolution cases in which violence toward the woman had been asserted (usually in support of a restraining order) were significantly more likely to include custody disputes. In fact, when there were allegations of violence perpetrated by the father, he was twice as likely to seek sole physical and legal custody of the children and just as likely to win. Thus, violence did not appear to make a difference in how courts determined custody. Fathers who were alleged to be violent were no less likely to win custody than fathers with no allegations of violence.

**Sutherland, T.J. (2004). High-conflict divorce or stalking by way of family court? The empowerment of a wealthy abuser in family court litigation. Linda v. Lyle – A case study. Massachusetts Family Law Journal, 22(1&2) 4-**

**16. <http://www.mincava.umn.edu/reports/linda.asp>**

Virtually all coverage of high-conflict divorce assumes both parents are the source of the conflict. This article argues that some high-conflict divorces are actually the manifestation of stalking

behaviors by wealthy domestic abusers. Provides a case analysis of *Linda v. Lyle* - Linda was married to Lyle for 22 years. He was a violent spousal and child abuser. Despite the fact that a volume of CPS reports had accumulated against Lyle, he obtained sole custody of their son. Linda was given visitation but Lyle frequently prevented her from seeing her child. To date, the case has litigated for approximately 6 years without respite. Lyle is quite wealthy and Linda, who was a homemaker, has been left homeless and is a pro per litigant facing two attorneys. The court blamed her for the protracted litigation because she attempted to reestablish a relationship with her child.

**Waits, K. (1998). *Battered women and their children: Lessons from one woman's story*. *Houston Law Review*, 35, 29-108.**

<http://www.omsys.com/fivers/Rkw18349#Rkw18349>

Documents in detail the personal story of one battered woman's experience in the family court system. Shows how a man who had abused both his wife and kids ended up with full custody of his young son and unsupervised visitation of his other children. The nonabusive mother (who had previously been the children's primary caretaker) was given probationary custody of her daughter and other son. The judge threatened the mother saying "If you do one thing to disrupt visitation, I'll take your daughter and give your ex-husband custody of her too." The mother regained custody of her son only after her ex-husband's new girlfriend reported him to the police for physically abusing the boy. Notes that many judges, psychologists and lawyers want to believe in a just world and thus allow themselves to be fooled by batterers.

**Walker, L. & Edwall, G. (1987). *Domestic violence and determination of visitation and custody in divorce*. In D. J. Sonkin (Ed.), *Domestic violence on trial: Psychological and legal dimensions of family violence* (pp. 127-152). New York: Springer.**

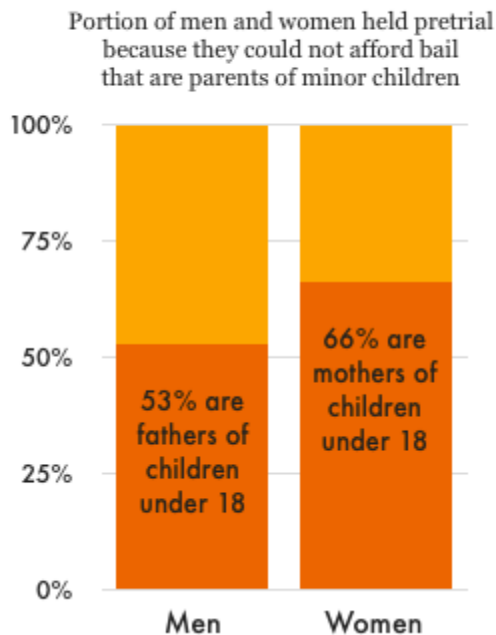
### 3. Ability to pay bail: -

The Prison Policy Institute offers insight into how unaffordable money bail affects families and women, in their report "How does unaffordable money bail affect families?" (2018) by Wendy Sawyer, and I quote,

***Using a national data set, we find that over half of the people held in jail pretrial because they can't afford bail are parents of minor children.***

Every day, [465,000 people](#) are held in local jails even though they have not been convicted; legally, they are presumed innocent. Many are there because they cannot afford the money bail bond set for them. The harms of pretrial detention are well-known, both for [defendants](#) and for the [jurisdictions](#) that lock them up. But what about the harms of pretrial detention for families? [Previous research](#) has estimated the number of incarcerated parents and the number of children who have parents behind bars. It's a bit trickier, however, to estimate how many of these families are impacted specifically by pretrial detention or, even more specifically, by unaffordable money bail. We set about to answer this question.

## Parents caught in the trap of unaffordable money bail



We analyzed the most recent [Survey of Inmates in Local Jails](#) to find that **over half of the people in jail who could not make bail were parents** of children under 18. Of the women who could not meet bail conditions, two-thirds were mothers of minor children, while just over half of the men were fathers. (See a table with all of our findings below.) Although this survey was last conducted in 2002, it remains the most recent national data on the subject available. These results are generally consistent with national estimates of parents in the prison population. The Bureau of Justice Statistics (BJS) [reports](#) that 52% of people in state prison and 63% of those in federal prison were parents of minor children in 2007, although the share of mothers among women in pretrial detention is slightly greater than among women in prison.

Two smaller but more recent studies suggest that **the impact of pretrial detention on families may be even greater** than the two national BJS surveys indicate. Because of their small sample sizes, these studies are not generalizable, but they offer a glimpse of the how changes in jail populations may have impacted families since 2002, when the national data was last collected. In particular, since 2000, [pretrial detention has increased](#) by 31% to make up about two-thirds of the overall jail population, while the number of convicted people held in jail has actually fallen. Over the same 16 years, the [jail incarceration rate for women](#) has risen 26% while the rate for men has fallen by 5% — a significant trend when we consider that women are more often the [primary caregivers](#) of children.

As pretrial detention has grown, the number of impacted children has almost certainly grown, too.

First, in a 2016 study, researchers from George Mason University [surveyed pretrial defendants](#), including both defendants who were detained because they did not post money bond and those

who were released to pretrial supervision. Their analysis ([summarized](#) by the Pretrial Justice Institute) found that 56% of the detained defendants were parents. Alarming, 40.5% of those in this study said that pretrial detention would change — or already had changed — the living situation for a child in their custody. An additional 16.5% didn't know whether it would change their child's living situation.

The Robina Institute recently published the results of a 2017 [study of parents in Minnesota jails](#) and their children, finding an even greater proportion of jailed parents. Although the study did not distinguish between the pretrial and sentenced populations, it found that 69% of adults in local jails were parents of minor children. This study adds an additional detail missing in most others: 6% of the mothers reported being pregnant, and 9% of the fathers reported having a pregnant partner.

One missing, but essential data point is the number of children separated from a parent because of unaffordable bail. Our analysis of the 2002 survey data shows that at the time of the survey, over 150,000 children had a parent in jail because they couldn't afford their bail bond. That means **more children than adults were impacted by unaffordable money bail**. Because of the significant changes in the jail population since 2002, we won't attempt to extrapolate what the number of impacted children might be today. But as pretrial detention has grown, the number of children [harmed by parental incarceration](#) because of the money bail system has almost certainly grown, too.

#### **Summary of findings from the 2002 Survey of Inmates in Local Jails**

Our analysis of the Bureau of Justice Statistics' Survey of Inmates in Local Jails (2002), including all people who had bail bond set and said they were not released on bond because they could not afford it. Estimates are based on a sample and have been rounded. For more details, see the methodology section of our report [Detaining the Poor](#), which focused on the same population.

## 4. Main Drivers for Increasing Female Prison Population

### **Question**

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)?

### **Response**

The report, [The Gender Divide: Tracking Women's State Prison Growth](#) provides insight into increasing female prison populations in the USA, and I quote,

*Context: What's behind women's prison growth?*

*While no single factor explains the gender divide, some of the variation between men's and women's incarceration trends has to do with the offenses that put them behind bars.*

*Drug offenses*



*When state prison populations were expanding most, in the “tough on crime” 1980s and 1990s, drug convictions had an even greater effect on women’s prison growth than on men’s prison growth. In fact, they were the primary reason for women’s incarceration in the 1990s. By contrast, drug offenses have never surpassed violent offenses as the top driver of state prison growth for men.*

*During the 1980s, the estimated number of women in state prisons whose most serious offense was a drug crime grew nearly tenfold. That increase alone was responsible for 40% of the total growth of women in state prisons during that time. In the 1990s, when the prison population was expanding most, incarceration for drug offenses continued to drive women’s prison growth more than any other offense category. This growth was due largely to changes in law enforcement and sentencing under the “War on Drugs” and the “tough on crime” political climate of the 1980s and 1990s, and had devastating effects on vast numbers of women who posed little threat to public safety. As the failings of the drug war became clear and political winds shifted, incarceration for drug offenses levelled off in recent years for both men and women.*

#### *Violent offenses*

*Although drug offenses were a major factor in the growth of women’s incarceration, incarceration for violent offenses has been the single most powerful driver of state prison growth over the past four decades. Over the entire period between 1978 and 2015, violent offenses have driven state prison growth among both men and women more than any other offense category. Incarceration for violent offenses accounts for about a third of the total growth of women’s state prison populations since 1978, and over half of the more recent growth since 2000. As [previous reports](#) have argued and other researchers have discussed at length, serious efforts to reduce prison populations will have to include policy changes to how we respond to violent offenses.*

#### *A closer look: Women, drugs, and pathways to prison*

*The increase in women’s incarceration for drug offenses was due largely to policy and practice changes in law enforcement — not necessarily to changes in offending. As the [Sentencing Project](#) explains, “[women’s] numbers in prison would not have grown as dramatically had it not been for changes in drug enforcement policies and practices.” The “War on Drugs” shifted resources and attention to stricter drug enforcement, and “proactive” (or “quality of life”) policing strategies targeted other low-level offenses; both changes had disparate impacts on women. A [recent report](#) by the Vera Institute of Justice discusses the effects of “broken windows” policing and drug law enforcement on women’s arrest rates and jail incarceration, noting that “between 1989 and 2009... the arrest rate for drug possession or use tripled for women — while the arrest rate for men doubled.” Meanwhile, sentences for drug crimes became much longer: “Between 1975 and 1995, all 50 states and the U.S. Congress reduced the discretion available to sentencing judges by passing laws requiring imprisonment for a wide variety of offenses” — these included, among others, the mandatory minimums, “truth in sentencing,” and “three strikes” laws.*

*So why were women so acutely affected by the “War on Drugs” and changes to policing? Women are more likely to engage in low-level rather than serious offenses, and the “War on Drugs” and “proactive” policing widened the net of criminal justice involvement to include more*

low-level offenders. As the Vera report details, the types of offenses for which women are typically charged often result in a plea deal, so women may plead guilty to secure release from jail, only to be arrested again when they fail to meet one of the conditions of their probation. In such an iterative process, even minor offenses can lead to significant criminal justice involvement that works against a woman when she finally faces a possible prison sentence. For other women, the expansion of drug conspiracy laws means that even those with minor or peripheral roles in the sale or manufacturing of drugs receive the same harsh sentences as those in charge of the operation. The increase in federal drug cases involving women has been tied to conspiracy laws, and many states have similar [conspiracy laws](#).

*The underlying causes of women's substance use and criminal behavior*

*Apart from the policy changes that fueled the arrest and incarceration of women for drug offenses, the underlying causes of many women's substance use and criminal behaviors are distinct from men's and suggest that many women in prison would be better served in treatment programs in the community. Previous research has found that:*

- *"Many women on the social and economic margins of society struggle to survive outside of legitimate enterprises, which brings them into contact with the criminal justice system. ... The most common pathways to crime are based on survival (of abuse and poverty) and substance abuse."*
- *"[A] large proportion of justice-involved women have abused substances or have engaged in criminal behavior while under the influence and/or to support their drug use." More than two-thirds of women in state prisons meet the criteria for [drug dependence or abuse](#), and about half used drugs at the time of the offense for which they were incarcerated.*
- *Many women use drugs to self-medicate in response to victimization and trauma, which can lead to justice system involvement: "substance use among justice involved women may be motivated by a desire to cope with or mask unpleasant emotions stemming from traumatic experiences and ensuing mental health problems." According to a 2006 [report](#), of the 73% of women in state prisons who had mental health problems, three-quarters also met the criteria for substance dependence or abuse, and more than two-thirds (68%) had a history of physical or sexual abuse. A 2005 [study](#) found that 98% of women in jails had been exposed to trauma during their lifetime; 74% had drug or alcohol problems.*
- *Treatment for women in prison is typically inadequate to address their needs. Less than half of women in state prisons with a history of a substance use disorder receives treatment, and less than one in four with severe psychiatric disorders receives mental health services. One expert flatly concludes, "specialized services tend to be the exceptions rather than the rule.... While in the correctional system, women have little access to gender-responsive substance abuse and mental health services."*

## II. Other institutions

### 1. Institutions Outside of Justice System Where Women and Girls are Institutionalized

#### Question

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.

### **Response**

There are multiple 'cottage' industries which have been created by the failure of judicial systems which have been produced in order to 're-educate' children. Internment of children in work-camps and 're-education' centers is 'Big-Business' as are other forms of 're-education' such as 're-birthing therapy'. Re-birthing therapy is as follows:

#### [Just What Is 'Rebirthing' Therapy?](#)

*June 28, 2000 -- Alternative therapies must follow a long and arduous road to get into the mainstream, often for good reason. Nonconventional medications and therapies can sometimes be useful, but at their worst, they can be dangerous, even life-threatening.*

*Take the process called "rebirthing." One such procedure recently proved lethal to a 10-year-girl in Colorado. But a different technique that goes by the same name has many believers who say it has changed their life.*

*Before the tragic incident in Evergreen, Colo., this April, few people had even heard of rebirthing therapy. But the process made national headlines after the girl died while undergoing what was termed a rebirth.*

*She was an adoptee named Candace Newmaker, and she was being rebirthed to overcome a mental condition called reactive attachment disorder, in which children lack the ability to develop a loving, intimate relationship with a guardian.*

*The rebirthing therapists reportedly pushed Candace's body against pillows and wrapped a blanket around her head to simulate the womb. She was told to push against the pillows and blanket, to recreate her birth in an effort to heal her past and begin anew with her adopted mother. Instead, she suffocated. Four workers at the rebirthing clinic, along with the girl's mother, are now facing charges in her death...*

And, journalist Maia Szalavitz provides an examination of 'workcamps' for teens in the USA, in her book, [Help at Any Cost: How the Troubled-Teen Industry Cons Parents and Hurts Kids](#),

*The troubled-teen industry, with its scaremongering and claims of miraculous changes in behavior through harsh discipline, has existed in one form or another for decades, despite a dearth of evidence supporting its methods. And the growing number of programs that make up this industry are today finding more customers than ever.*

*Maia Szalavitz's **Help at Any Cost** is the first in-depth investigation of this industry and its practices, starting with its roots in the cultlike sixties rehabilitation program Synanon and Large Group Awareness Training organizations likeest in the seventies; continuing with Straight, Inc., which received Nancy Reagan's seal of approval in the eighties; and culminating with a look at the World Wide Association of Specialty Programs-the leading force in the industry today-which has begun setting up shop in foreign countries to avoid regulation. Szalavitz uncovers disturbing findings about these programs' methods, including allegation of physical and verbal abuse, and*

*presents us with moving, often horrifying, first-person accounts of kids who made it through-as well as stories of those who didn't survive. The book also contains a thoughtfully compiled guide for parents, which details effective treatment alternatives.*

*Weaving careful reporting with astute analysis, Maia Szalavitz has written an important and timely survey that will change the way we look at rebellious teens-and the people to whom we entrust them. **Help at Any Cost** is a vital resource with an urgent message that will draw attention to a compelling issue long overlooked.*

Additionally, the article "[6 Shocking Realities of the Secret 'Troubled Teen Industry'](#)" by Robert Evans and Victoria Jane,

*When I was 14, I lived with my grandparents in a wealthy gated community and went to a very prestigious private school. This was the first time I had access to the Internet on a daily basis, and it changed my life forever. I discovered metal music and culture, which inspired me to learn the guitar. My yearbook ambitions quickly went from "become a judge like my grandfather" to "become a rock star."*

*This was not a popular change in Tori Jane, and before long my grandparents decided the best way to reverse it was to ship my ass off to a camp for "troubled" teens in Montana. In short order I learned some terrifying truths about an industry dedicated to taking America's at-risk youth and fucking them up in the worst way possible.*

*Your Parents Can Hire People to Take You Away*

*One night in August 2004, I awoke to a man and a woman in my room whom I had never seen before telling me that they were "escorts" and we were going to a place called "wilderness." I was not allowed to bring any belongings or tell anyone where I was going. I didn't know what "escorts" and "wilderness" were, and I was terrified. It was like being Liam Neeson's daughter in Taken, if it had turned out later that Liam Neeson arranged the whole thing.*

*His very particular set of skills includes paranoia and child endangerment.*

*The escorts drove me to an airport where the three of us got on a plane to Boise, Idaho. I didn't try to run, and running wouldn't have done me much good: Kids who resist have been pepper-sprayed and hog-tied. The actual snatching and transporting of kids destined for programs like the one I was headed to is handled by companies like Center for Safe Youth, which emphasizes the element of surprise on their FAQ page:*

*Should I tell my child in advance (even the night before)?*

*No. Prior knowledge will only serve to increase the child's anxiety, heighten defenses, and force the child into a bad decision, such as running away. Running away is bad. Children could wind up with strangers somewhere unfamiliar and scary.*

*So what kind of crime does a kid have to commit to wind up subjected to this? Anything -- kids can be sent away for drug use, depression, eating disorders, really any behavioral issue you can dream up. Some were sent away for bad grades, or for not following the family religion, or for being gay. It is an industry that survives on parents' fear that their kid is "at risk."*

*Your Parents Give You Up to a Private Company*

*At this point you're probably wondering, "How could this possibly be legal?" Couldn't any sufficiently rambunctious kid just flip out when he and his escorts get to a public place and trust the police to take care of the rest? Nope. As much as it looks and feels like a kidnapping, those escorts have the absolute legal right to transport you against your will, even if that means carrying you through the street, handcuffed to hell and back.*

*All children are technically criminals until they come of age.*

*There is a legal process where parents can sign over custody of kids who need residential care, which makes sense, because if a kid has to be housed in a mental health facility, the staff needs to be able to make all of the day-to-day decisions for her care. But that same process works for "unruly" teens like me, which meant the company that ran my camp had total legal control over where I went and what I did.*

*Even phone calls to my grandparents were a privilege I had to earn. I was allowed five minutes, and a staff member sat next to me the entire time, listening in. If during the call I complained about being unhappy, that was "manipulative behavior," and they'd end the call. They read the letters from my grandparents to me, word for word. Packages my friends sent were destroyed right in front of me, because ... tough love?*

*Kids Die in Their Care*

*I had been sent to a "wilderness program" (they're very popular), which attempts to solve behavioral problems via the time-honored educational tradition of hiking. It didn't matter your age or gender or physical ability; we were all lumped in together.*

*The summer heat was sweltering, and the packs were about a third of my 14-year-old body weight. This wasn't like a camp-out, where you hike 5 or 10 miles to a campground or canoe along a river for two or three days. We were out there for weeks, and the adults responsible for us weren't exactly competent woodsmen. A girl in my group had to wrap fresh gauze and bandages across a third-degree burn on her arm every morning because she had passed out on the rocks in the hot summer sun. Our counselors thought she was faking and decided that the safest course of action was to leave her there. She was later rushed to the hospital and had to get skin grafts.*

*Still, at least neither of us died, as happens with some regularity ("untrained staff" and "lack of adequate nourishment" are the leading causes of death). If you're going to lead children in week-long hikes through the woods, you should know about things like the sun and treating burns. If this kind of shit happened at a Boy Scout camp, you can bet it'd be on the news.*

*There Is Literally No Regulation*

*If you spend any time studying these programs, you'll notice that they all tend to be located in states like Utah and Montana. This is because those states don't have any pesky regulations for how these programs are required to treat their kids. This is a multimillion-dollar industry, with tens of thousands of American teens being herded through these programs systematically like cattle. Montana is one of the last states in the country with no oversight of the controversial teen help industry, and their legislators show no inclination to change.*

*Their roads also had no speed limits back in the '90s.*

*If these "schools" run off private funding and do not accept government aid, the government is not required to intervene. Somehow this also means the government isn't allowed to give two shits that the people "taking care" of the children have police records or simply no credentials. Not that any of this comes cheap: Teen treatment facilities are the flipside of the "rich kid" coin. It's nice that your parents can afford to pay for college, but they can also afford \$8,505 per month to mold their imperfect 14-year-old into the son or daughter they've always wanted.*

*In 2006, a journalist named Maia Szalavitz published *Help at Any Cost*, an expose so shocking, it prompted a congressional inquiry and a Government Accountability Office investigation. The GAO found thousands of cases of abuse and at least 10 deaths between 1990 and 2004. Shocked by the terrible truth, Congress leaped into action and proposed a bill to regulate (not even ban) these facilities. After that bill died in committee, they proposed it again the next year. It died again in 2011, and again in 2013. After all, when's the last time a troubled teen ever donated a bunch of cash to a political campaign? In fairness, though, Congress in those years killed all bills, period.*

#### *The Treatment Methods Are Insane (and Ineffective)*

*Since they didn't have any standards to abide by, our counselors were free to go with whatever "treatment" sounded like it might work. Once they took all the girls who had eating disorders and made them eat dinner in front of the boys without using their hands or any utensils. They would make kids role-play characters from memories of rape and abuse, forcing them to relive childhood horrors. Complaining got you put on work assignments, or lost you the privilege of a five-minute phone call home. I'll remind you that this was billed as a treatment facility, not a prison or a punishment.*

*They tailored their abuse to exactly what kind of child you were. My father left me when I was little. The counselors asked if I thought he left me because I was inadequate, if I believed he thought I was unintelligent, ugly, or fat. None of those things had ever occurred to me before, but having them shouted at me in a therapy room full of other kids really turned me around on the whole "not being terribly depressed" thing. It doesn't matter if you're a healthy kid when you walk in there -- spend a few hours deprived of sleep, food, and the ability to use the restroom while adults call you fat. You'll walk out with a condition.*

*Once I was put on a work assignment: digging a huge tree stump out of the ground. Alone. If you've never removed a stump, you should know it's generally a task people accomplish via a goddamn truck and some heavy chains (or even high explosives). I had a shovel and a bow saw. And beat the urge to use them on the counselors' necks.*

*By this time it was December in Montana, and it was freezing. I sat out there every day trying to dig out that damn stump. I could go inside to sleep at night, but as soon as I woke up I was out there again. It took weeks to get that accursed ent-spawn out of the ground. Spending \$700 a day so your child can dig tree stumps out of the ground seems absurd, but (apparently) nothing says therapy like giving a depressed child some sharp objects and training her in their use.*

#### *The Brainwashing Stays With You Forever*

*The bullshit stays with you, even once you leave the camp. Whenever I felt depressed, my grandparents would genuinely ask if I wanted to go back to Montana. I'm sure in their heads*

*something that expensive couldn't have been a bad experience, no matter how desperately I tried to convince them otherwise. It's the sunk costs fallacy as applied to child abuse. They'd spent tens of thousands of dollars treating me. How could it all be crazy bullshit? So they went the other way, and every time I was accepted to college, received a scholarship, or won an award, my success was always directly attributed to their decision to send me there.*

*I still find myself saying "intentions are irrelevant," a mantra I was taught in the program that a grand total of zero people in the real world agree with. I was so terrified of being shipped away again that I didn't even touch alcohol until after I was 21. I still wake up from nightmares of being dragged out of my house and forced to board a plane. I kept a suitcase packed for a long time, just in case. I also have this ridiculous coin they gave me, which translates from Latin to say "we demand greatness, not compliance."*

*I'm sure you can read plenty of testimonials by parents who are completely happy with their brainwashed little minion who is now free from the horrors of metal music, homosexuality, or legitimate mental illness. Alternatively, you can also read reports that catalog the absurdity of "get tough" treatment programs, with ramifications including post-traumatic stress disorder, as well as causing many teenagers' original problems to worsen. I never forget that my story is not unique. Between 10,000 and 20,000 teens wind up in these programs every year, and they'll continue to do so. Because even in the 21st century, society is baffled by adolescence and will resort to desperate, horrific measures in hopes of finding a cure.*

## 2. Decision-making Process for the Institutionalization of Women and Girls

### Question

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?

### Response

No information available

## III. Forced confinement in private contexts

### 1. Forms of Forced Confinement of Women and Girls

#### Question

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.?

#### Response

One of the most common tactics used in domestic abuse and oppression of victims is their isolation and ostracization. Not only do perpetrators attempt to isolate and confine victims, but families and communities also ostracize and marginalize them in efforts to intimidate and silence them.

Additionally, due to the fact that lawyers, judges and labor markets do not recognize the work women do within the home and family as 'legitimate' work, women within the home and family are effectively

slaves with no rights and liberties; in courts and societies. Even though a wide variety of very lucrative industries (human resource management, psychological and career counseling, legal advice, administrative functions, events-planning, cooking and catering, house-cleaning, home decoration and maintenance, childcare, etc.) have been created by the void created by the mass employment of upper and upper-middle class women, societies, workplaces, government officials and family court systems are not recognizing the hard-work women within homes and families do on a daily basis for no pay, no vacations, and no time-off or holidays. The fact that multi-million dollar industries exist which pay workers very handsomely for the same work women do in the home and family, but consider women who do these same tasks as nothing other than parasites upon their husbands and society in general is clearly discriminatory and relegates women to the status of slaves in violation of:

- art. 7 of the Roma Statutes - Crimes against humanity
- art. 8 of the Convention of Civil and Political Rights
- art. 11 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

And, under the case-study of Spain (and principles of Universal Jurisdiction, recognizing the Spanish legal structure under its Constitution as an almost utopian structure with its integration of human rights and international conventions and codification of women's rights within the home and marriage in its civil code) the effective status of 'enslavement' of women in the home and marriage is in violation of:

*Spanish penal code - Article 177 bis*

*1. Whoever, using violence, intimidation or deceit, or abusing a situation of superiority or need, or the vulnerability of a national or alien victim, were to induce, transport, transfer, receive or house such a victim for any of the purposes described below, within Spain, from Spain, in transit or with destination therein, shall be convicted of human trafficking and punished with the penalty of five to eight years imprisonment,:*

*a) Imposing on the victim forced work or services, slavery or practices similar to slavery or servitude or begging;*

*b) Sexual exploitation....*

The UN report "UN Project on a Mechanism to Address Laws that Discriminate Against Women" clearly shows that failure to respect and recognize women's property rights during and in the dissolution of marriage is discriminatory and disenfranchises women in marriage, and I quote from the report,

*Property:*

*Key to women's legal disenfranchisement in many legal systems is the limitation placed on their ability to own or manage property on death or divorce.*

*Post divorce property settlement*

*In spite of many pronouncements by human rights bodies, the recognition that women have a right to share equally in the proceeds of matrimonial property after divorce is in many legal systems a fairly recent development. In England and Wales it was not until 2000 that the House of Lords pronounced in the case of White v. White that there should be no discrimination between the home maker and the money earner in the post division of assets. It took until 2003 before a home making wife was given half of the matrimonial property. This points to a common*



*difficulty experienced by women, many of whom do not participate in the paid labour market and who are therefore unable to contribute in monetary terms to the acquisition of family assets. The non-recognition or minimisation of the unpaid work done by women in the home and community results in legal disenfranchisement. Nyamu-Musembi notes that in Kenya 95% of land is held in the name of the man and that "even co-ownership of the matrimonial home is a rarity." She then cites the case of Tabitha Wangeci Nderitu v. Simon Nderitu Kariuki where a judge described a stay at home wife who was seeking to claim a share of matrimonial assets after divorce as "sitting on her husband's back with her hands in his pocket" seemingly forgetting that the "cock bird can feather his nest because he does not have to spend all day sitting on it" or put differently, that a man is enabled to go out into the paid workforce because his wife is taking care of hearth and home for him...*

*Moreover, as seen in the section on divorce and also in the reservation of certain States parties, some legal systems may see the husband's duty to give dower for the wife and to maintain her during the course of the marriage as entitling him to unilaterally divorce her and also keep the matrimonial assets on the dissolution of the marriage....*

*Any common property or property acquired jointly is shared. In dividing common property it is provided that: "The utmost care shall be taken to give each spouse things which are most useful to him." The separate property regime, although seemingly respecting the autonomy of each party, ignores the fact that often women enter into marriage with very little. Their home-making role [] makes it unrealistic to think that they will be able to acquire any meaningful property during the course of the marriage. Operating on the principle of "take what you have paid for" negates a women's domestic contribution, for all she is able to point to, are the clothes on her back and maybe a few pots and pans. Moreover, even when women are able to earn, the division of labour in the home means that her money is used to pay for consumables such as food. How many people keep grocery receipts for 20 years "just in case we divorce?" Indeed in light of the criticism made of the Labour Code of the DRC which requires that married women seek the permission of husbands before joining the labour market, how many women are able to decide how money that they earn is spent?*

*Some systems recognize these potential pitfalls and provide for the exercise of judicial discretion in the division of matrimonial assets after divorce... However, practice suggests that in many discretion base systems, there is a reluctance to do this meaning, again, that wives are left disadvantaged.*

Unfortunately, even though slavery (and servitude) are clearly illegal courts are flagrantly violating the rights of women during divorce proceeding and failing to recognize property rights is rendering these homemakers nothing other than slaves in society with no rights. As seen in the case-study of Spain, rights and obligations in marriage are codified in their civil code under articles,

*Article 97. The spouse for whom the separation or divorce should give rise to an economic imbalance in relation with the other's position, involving a deterioration of his situation prior to the marriage, shall be entitled to compensation, which may consist of a temporary or indefinite allowance or a lump sum settlement, as determined in the settlement agreement or in the judgement In the absence of an agreement between the spouses, the Judge shall determine, pursuant to a judgement, the amount thereof, taking into account the following circumstances: 1. Agreements reached by the spouses. 2. Age and state of health. 3. Professional qualifications*

*and likelihood of getting a job. 4. Past and future dedication to the family. 5. Collaboration by working in the other spouse's commercial, industrial or professional activities. 6. The duration of the marriage and of their marital cohabitation. 7. The possible loss of pension rights. 8. Economic wealth and resources and the needs of each spouse. The judicial resolution shall set the bases to update the allowance and any guarantees to ensure its effectiveness.*

*Article 98. The spouse in good faith whose marriage has been declared null and void shall be entitled to compensation if there has been marital cohabitation, attending to the circumstances provided in article 97.*

*Article 99. At any time the parties may agree to replace the allowance set by the Judge in accordance with article 97 by the constitution of a life annuity, usufruct over certain property or payment of a capital sum in the form of property or cash.*

*Article 100. After the setting of the allowance and the bases to update it in the separation or divorce judgement, it may only be amended as a result of material alterations in the fortune of one or the other spouse.*

*Article 101. The right to receive the allowance shall be extinguished as a result of the removal of the cause which motivated it, or as a result of the creditor's marrying again or living with another person in a situation akin to marriage. The right to receive the allowance shall not be extinguished by the mere fact of the debtor's death. Notwithstanding the foregoing, the latter's heirs may request the Judge to reduce or suppress it if the estate cannot satisfy the requirements of the debt or if it should affect their right to a forced share.*

*On the rights and duties of the spouses*

*Article 66. The spouses are equal in rights and duties.*

*Article 67. The spouses must respect and assist each other and act in the family interest.*

*Article 68. The spouses are obliged to live together, to be faithful to one another and to come to one another's aid. They must, furthermore, share domestic responsibilities and the care and attendance of parents and descendants and other dependents in their charge.*

*Article 69. It shall be presumed, unless there is evidence to the contrary, that the spouses live together.*

*Article 70. The spouses shall set the marital domicile by common consent and any discrepancy shall be resolved by the Judge, taking into account the family interest.*

*Article 71. Neither spouse may attribute to himself the representation of the other unless it is conferred.*

*Article 1,316. In the absence of marriage articles, or if these should be ineffective, the regime shall be the community of joint assets (sociedad de gananciales).*

*Article 1,317. The amendments of the marriage property regime performed during the marriage shall in no event prejudice rights already acquired by third parties.*

*Article 1,318. The property of the spouses is subject to the payment of household expenses. Where one of the spouse is should breach his duty to contribute to the payment of these expenses, the Judge, at the request of the other, shall issue any precautionary measures deemed*

*convenient, to ensure payment thereof, and the necessary advances, or to provide for future needs. When a spouse should lack sufficient property of his own, the necessary expenses caused in litigation against the other spouse, without bad faith or temerity, or against a third party if they inure to the benefit of the family, shall be charged to the common property and, in the absence thereof, shall be debited to the other spouse's own property, when the latter's economic position prevents the former from obtaining legal aid, pursuant to the provisions of the Civil Procedural Law.*

*Article 1,319. Either spouse may perform acts addressed to attending the ordinary needs of the family entrusted to his care, in accordance with local custom and with the circumstances of the family. The common property, the property belonging to the spouse who contracts the debt and, on a subsidiary basis, the property of the other spouse shall be liable for debts contracted in the exercise of this power. The spouse who should have contributed his own property for the discharge of such needs shall be entitled to reimbursement in accordance with his marriage property regime.*

*Article 1,320. The consent of both spouses or, as the case may be, judicial authorisation shall be required to dispose of rights over the marital home and the furniture ordinarily used by the family, even if such rights should belong to a single spouse. The erroneous or false declaration concerning the nature of the home by the person who disposes of it shall not prejudice the acquirer in good faith.*

*Article 1,321. Upon the death of one of the spouses, the clothes, furniture and fittings constituting the appurtenances of the common marital home of the spouses shall be delivered to the surviving spouse, without counting it as part of his assets. The appurtenances shall not be deemed to comprise any jewellery, artistic and historic objects and others of extraordinary value.*

*Article 1,322. Where the Law should require that one of the spouses must act with the other's consent for an act of administration or disposal, acts performed without it and which are not confirmed in an express or implied manner, may be annulled at the request of the spouse whose consent was lacking, or of his heirs. Notwithstanding the foregoing, acts pursuant to gratuitous title over common property shall be null and void in the absence of the consent of the other spouse.*

*Article 1,323. The husband and wife may transfer to one another property and rights pursuant to any title and enter into all kinds of contracts with each other.*

*Article 1,324. In order to prove between spouses that certain property is the property of one of them, the confession of the other shall be sufficient, but such confession in itself shall not prejudice the forced heirs of the spouse who makes the confession, or creditors, whether they are creditors of the community or of each of the spouses.*

*On the community of joint assets*

## **SECTION ONE**

### **General provisions**

*Article 1,344. The community of joint assets makes any gains or profits obtained indistinctly by either spouse common to the spouses, and shall be allocated by halves upon dissolution thereof.*

*Article 1,345. The community of joint assets shall begin upon entering the marriage or, subsequently, upon agreement thereof in marriage articles.*

#### *SECTION 2ª*

##### *On exclusive property and property held in common*

*Article 1,346. The following property is exclusive to each of the spouses: 1. Property and rights which belonged to him at the start of the community. 2. Those which he acquires subsequently pursuant to gratuitous title. 3. Those acquired at the cost of or as a replacement for exclusive property. 4. Those acquired pursuant to a right of pre-emption pertaining to a single spouse. 5. Patrimonial property rights inherent to the person and which are not transferable inter vivos. 6. Compensation and damages to the person of one of the spouses or to his exclusive property. 7. Clothes and objects for personal use which are not of extraordinary value. 8. The instruments necessary for the conduct of his profession or work, unless they form integral part of or are appurtenances of an establishment or undertaking held in common. Property mentioned in sections 4 and 8 shall not lose its nature as exclusive property if its acquisition was made with common funds; however, in this case, the community shall be the creditor of the spouse who owns it for the value paid for it.*

*Article 1,347. The following property is property held in common: 1. Property obtained pursuant to the work or industry of either spouse. 2. Fruits, income or interest generated by exclusive and common property. 3. Property is acquired for valuable consideration charged to the assets held in common, irrespective of whether the acquisition is made to the community or for only one of the spouses. 4. That which is acquired pursuant to a right of pre-emption held in common, even if it should be acquired with funds held on an exclusive basis, in which case the community shall owe the spouse for the value paid. 5. Undertakings and establishments founded during the life of the community by either spouse at the expense of common property. If, at the time of creation of the Undertaking or establishment both exclusive and common capital should be used, the provisions of article 1354 shall apply.*

*Article 1,348. Whenever an amount or credit payable in a certain number of years belongs exclusively to one of the spouses, any sums collected for any instalments payable during the marriage shall not be common property, but shall be deemed to be capital of the husband or wife depending on who the credit belongs to.*

*Article 1,349. The right of usufruct or to an allowance belonging to one of the spouse is shall form part of his exclusive property; however, the fruits, allowances or interest accrued during the marriage shall be common property.*

*Article 1,350. The heads of livestock which, upon dissolution of the community, should exceed from the number contributed by each of the spouses on an exclusive basis shall be deemed property held in common.*

*Article 1,351. Profits obtained by either spouse from gambling or those resulting from other causes which are exempt from the obligation to return them shall belong to the community of joint assets.*

*Article 1,352. New shares or other securities or participations subscribed as a result of the holding of other securities held on an exclusive basis shall also be exclusive property. Likewise,*

*amounts obtained as a result of the disposal of subscription rights shall also be exclusive property. If common funds should be used to pay the subscription or if the shares should be issued against profits, the value paid for them shall be reimbursed.*

*Article 1,353. Property given or left by will to the spouses jointly and without special designation of shares shall be deemed to be property held in common, if the community subsists, provided that the liberality was accepted by both of them and that the donor or testator has not provided otherwise.*

*Article 1,354. Property acquired in exchange for a price or for valuable consideration, which is in part held in common and in part exclusive property, shall correspond pro indiviso to the community of joint assets, and to the spouse or spouse is in proportion to the value of their respective contributions.*

*Article 1,355. The spouses may, by common consent, give the condition of common property to property acquired for valuable consideration during the marriage, whatever the origin of the price or consideration and the form and instalments in which it is paid. If the acquisition is made jointly and without allocation of shares, their intention shall be presumed favourable to the common nature of such property.*

*Article 1,356. Property acquired by one of the spouses, while the community remains in force, in instalments, shall be property held in common if the first payment should be of such nature, even if the remaining instalments are paid with money held on an exclusive basis. If the first payment should be made with exclusive property, the property shall have this nature.*

*Article 1,357. Property purchased in instalments by one of the spouses before the community begins shall always be exclusive property, even if the whole or part of the forward price is paid with money held in common. The family home and appurtenances shall be excepted from the foregoing, in respect of which article 1354 shall apply.*

*Article 1,358. Where, in accordance with this Code, the property is considered to be held exclusively or in common, irrespective of the origin of the funds with which the acquisition is performed, the value paid and charged, respectively, to the community property or to exclusive property must be reimbursed, by returning the amount thereof, updated as of the date of liquidation of the community.*

*Article 1,359. Buildings, plantations in any other improvements made to common property and to exclusive property shall have the nature corresponding to the property which they affect, without prejudice to the reimbursement of the value paid for them. Notwithstanding the foregoing, if the improvement made in exclusive property should be due to the investment of common funds or to the activities of either spouse, the community shall be owed the increase in value experienced by the property as a result of the improvement, at the time of dissolution of the community or disposal of the improved property.*

*Article 1,360. The same rules of the preceding article shall apply to patrimonial gains of a business, commercial establishment or other kind of undertaking.*

*Article 1,361. Property existing in the marriage shall be deemed to be held in common unless it is proved that it belongs exclusively to one of both spouses.*

### SECTION 3<sup>a</sup>

#### *On the expenses and obligations of the community of joint assets*

*Article 1,362. Expenses originated by any of the following causes shall be borne by the community of joint assets: 1. Maintenance of the family, food and education of children in common and insurance expenses adjusted to custom and to family circumstances. Food and education for the children of only one of the spouses shall be borne by the community of joint assets when they should live in the family home. Otherwise, expenses resulting from these items shall be paid by the community of joint assets, but shall give rise to reimbursement at the time of liquidation thereof. 2. The acquisition, holding and enjoyment of common property. 3. The ordinary administration of the exclusive property of either spouse. 4. The regular exploitation of businesses or the conduct of the profession, art or trade of each spouse.*

*Article 1,363. Amounts given or promised by both spouses by common consent shall also be borne by the community, unless it should have been agreed that they are to be paid with the exclusive property of one of them in whole or in part.*

*Article 1,364. The spouse who has contributed exclusive property for expenses or payments to be borne by the community shall be entitled to reimbursement of their value, charged to the common property.*

*Article 1,365. The common property shall be directly liable to the creditor for debts contracted by a spouse: 1. In the exercise of domestic powers or the management or disposal of common property to which he is entitled pursuant to the law or to marriage articles. 2. In the ordinary practice of his profession, art or trade or in the ordinary administration of the property itself. If one of the spouses should be a merchant, the provisions of the Commercial Code shall apply.*

*Article 1,366. The marriage property community shall be liable for and shall bear the expense of any noncontractual obligations pertaining to a spouse as a result of his actions for the benefit of the community or within the scope of the administration of the property, unless they are due to wilful misconduct or gross negligence on the part of the debtor spouse.*

*Article 1,367. Common property shall in any event be liable for obligations entered into by both spouses jointly or by one of them with the express consent of the other.*

*Article 1,368. Common property shall also be liable for obligations entered into by only one of the spouses, in the event of de facto separation, to attend to maintenance, insurance and education expenses of the children for whom the community of joint assets is responsible.*

*Article 1,369. The property belonging to the community shall also be joint and severally liable for the debts of a spouse which are likewise debts of the community.*

*Article 1,370. Without prejudice to the liability of any other property according to the rules of this Code, the common property acquired by a spouse without the other's consent shall always be liable for its forward price.*

*Article 1,371. Amounts lost and paid during the marriage by either spouse in any kind of gambling shall not reduce their respective part of the common property, provided that the amount of such loss may be considered moderate in accordance with custom and family circumstances.*

*Article 1,372. Where the law provides an action to claim what has been won by gambling, the exclusive property of the debtor shall be exclusively liable for amounts lost and not paid by either of the spouses.*

*Article 1,373. Each spouse shall be liable with his personal property for his own debts and, if his exclusive property should not be sufficient to repay them, the creditor may request the attachment of common property, which shall be immediately notified to the other spouse, and the latter may request that in the attachment the common property be replaced by the part held by the debtor spouse in the community of joint assets, in which case the attachment shall entail dissolution of the community. If the attachment should affect common property, the debtor spouse shall be deemed to have received the value thereof on account of his share when he should pay with other funds of his own or at the time of liquidation of the community of joint assets.*

*Article 1,374. After the dissolution mentioned in the preceding article, the property separation regime shall apply, save if, within three months, the debtor's spouse should choose in a public instrument to start a new community of joint assets.*

*On the administration of the community of joint assets*

*Article 1,375. In the absence of an agreement made pursuant to marriage articles, the management and disposal of common property shall correspond jointly to the spouses, without prejudice to the provisions of the following articles.*

*Article 1,376. Where the consent of both spouses should be necessary for the performance of acts of administration, and one of them should be unable to give it or should unreasonably refused to do so, the Judge may give it in his stead if he should find the request to be well founded.*

*Article 1,377. The performance of acts of disposal for valuable consideration over common property shall require the consent of both spouses. Of one of them should refuse or should be unable to give it, the Judge, after summary information proceedings, may authorise one or several acts of disposal when he should consider it to be in the interest of the family. Exceptionally, he shall provide any limitations or precautions deemed convenient.*

*Article 1,378. Acts pursuant to gratuitous title shall be null and void unless both spouses consent to them. However, each of them may perform the accustomed liberalities with common property.*

*Article 1,379. Each of the spouses may dispose of half of the common property by testament.*

*Article 1,380. The testamentary disposition of a piece of common property shall have full force and effect if the property is adjudicated to the estate of the testator. Otherwise, the bequest shall be deemed to refer to its value at the time of his death.*

*Article 1,381. Fruits and gains of exclusive property and the gains obtained by any of the spouses shall form part of the assets of the community and shall be subject to the payment of the expenses and liabilities of the community of joint assets. Notwithstanding the foregoing, each spouse, as administrator of his exclusive property, may for this sole purpose dispose of the fruits and products of his property.*

*Article 1,382. Each spouse may, without the other's consent, but always with his knowledge, take in advance any common money which he needs, in accordance with custom and family circumstances, for the practice of his profession or the ordinary administration of his property.*

*Article 1,383. The spouses must inform each other on a regular basis on the status and returns of any economic activity they undertake.*

*Article 1,384. Acts of administration of property and acts of disposal of money or securities performed by the spouse in whose name they appear or who has them in his possession shall be valid.*

*Article 1,385. Credit rights, whatever their nature, shall be exercised by the spouse in whose name they appear. Either spouse may exercise the defence of common property and rights by bringing actions or opposing them.*

*Article 1,386. The consent of only one of the spouses shall be sufficient to make necessary urgent expenses, even if they are extraordinary expenses.*

*Article 1,387. The administration and disposal of the property pertaining to the community of joint assets shall be transferred by operation of law to the spouse who is the guardian or legal representative of his consort.*

*Article 1,388. The Courts may confer the power of administration to only one of the spouses where the other should be unable to give his consent or should have abandoned the family, or in the event of de facto separation.*

*Article 1,389. The spouse responsible for administration pursuant to the provisions of the two preceding articles shall have full powers for such purposes, unless the Judge, if he considers it to be in the interest of the family, and after summary information proceedings, should establish any precautions or limitations. In any event, he shall require judicial authorisation to perform acts of disposal over immovable property, commercial establishments, precious objects or securities, save for preferred subscription rights.*

*Article 1,390. If, as a result of an act of administration or disposal performed by only one of the spouses the latter should have obtained a benefit or profit of an exclusive nature, or should have caused, by wilful misconduct, damage to the community, he shall owe the community the amount thereof, even if the other spouse should not challenge the effectiveness of the act within the applicable period.*

*Article 1,391. Where a spouse should have performed an act in fraud of the rights of his consort, the provisions of the preceding article shall in any event apply and, likewise, if the acquirer should have acted in bad faith, the act shall be capable of rescission.*

*On the dissolution and liquidation of the community of joint assets*

*Article 1,392. The community of joint assets shall end by operation of law: 1. When the marriage is dissolved. 2. When the marriage is declared null and void. 3. When the separation of the spouses is judicially decreed. 4. When the spouses agree upon a different marriage property regime in the manner provided in this Code.*



*Article 1,400. When there should not be sufficient cash to pay the debts, allocations of common property may be offered in lieu of payment, but, if any participant or creditor should request it, they shall be disposed of and payment shall be made with the proceeds.*

*Article 1,401. Until the debts of the community have been paid in full, the creditors shall keep their credits against the debtor spouse. The non-debtor spouse shall be liable with the property adjudicated to him, if an inventory should have been duly drafted in or out of court. If, as a result thereof, one of the spouses should have paid an amount exceeding the amount attributable to him, he may recover it from the other.*

*Article 1,402. The creditors of the community of joint assets shall have upon its liquidation the same rights acknowledged by the Laws in respect of the partition and liquidation of estates.*

*Article 1,403. After paying the community's debts and expenses, any compensations and reimbursement owed to each spouse shall be paid, up to the amount of the property that has been subject to inventory, performing any applicable setoffs when the spouse owes any debts to the community.*

*Article 1,404. After making any deductions to the property subject to inventory as provided in the preceding articles, the residue shall constitute the net assets of the community of joint assets, which shall be divided by halves between the spouses or their respective heirs.*

*Article 1,405. If one of the spouses should be, at the time of liquidation, a personal creditor of the other, he may demand satisfaction of his credit by being adjudicated common property, unless the debtor should pay voluntarily.*

*Article 1,406. Each spouse shall be entitled to request the inclusion as part of his assets, on a preferential basis and up to the full amount thereof: 1. Property of personal use not included in number 7 of article 1,346. 2. The economic undertaking he effectively manages. 3. The premises where he has been conducting his profession. 4. In the event of death of the other spouse, the dwelling which where he has his habitual residence.*

*Article 1,407. In the cases provided in numbers 3 and 4 of the preceding article, the spouse may, at its discretion, request to be allocated the ownership of property or to have constituted in his favour a right of use or habitation. If the value of the property or the right should exceed the assets corresponding to the spouse who is allocated the property, he must pay the difference in money.*

*Article 1,408. The spouses or, as the case may be to the surviving spouse and children, shall be provided with support from the common property while the liquidation of the property subject to inventory takes place and until they are given their assets; however, such support shall be deducted from their assets in the part exceeding the amounts which would have corresponded to them as fruits and rents.*

*Article 1,409. Whenever liquidation of the joint community of assets of two or more marriages entered into by the same person is to be performed simultaneously, in order to determine the capital corresponding to each estate all kinds of evidence shall be admitted in the absence of inventories. In the event of doubt, common property shall be allocated to the different communities proportionally, attending to their duration and to the property and income of the respective spouses.*

*Article 1,410. For matters not provided in this chapter concerning the drafting of the inventory, the rules regarding appraisal and sales of property, division of the property, adjudications to the participants and others which are not expressly determined herein, the provisions regarding partition and liquidation of estates shall be observed On the participation regime*

*Article 1,411. In the participation regime each spouse acquires a right to participate in the gains obtained by his consort during the time that such regime has remained in force.*

*Article 1,412. Each spouse shall have the administration, the enjoyment and the free disposal of both the property which belonged to him at the time of marrying and of any which he may acquire subsequently pursuant to any title.*

*Article 1,413. For all matters not provided in this chapter, the rules relating to separation of property shall apply during the term of the participation regime.*

*Article 1,414. If persons married pursuant to the participation regime should jointly acquire any property or right, it shall belong to them pursuant to the ordinary pro indiviso regime.*

*Article 1,415. The participation regime shall be extinguished in the same cases provided for the community of joint assets, applying the provisions of articles 1,394 and 1,395.*

*Article 1,416. One spouse may request termination of the participation regime when the irregular administration performed by the other should seriously compromise his interests.*

*Article 1,417. Upon termination, any gains shall be calculated by the difference between the initial and final net assets of each spouse.*

*Article 1,418. The initial net assets of each spouse shall be deemed to consist of: 1. The property and rights belonging to him at the start of the regime. 2. Those acquired subsequently as inheritance, gift or legacy.*

*Article 1,419. The obligations of the spouse at the start of the regime and, as the case may be, obligations inherent to the inheritance or encumbrances inherent to the gift or legacy, to the extent that they do not exceed the amount of the property bequeathed or given.*

*Article 1,420. If the liabilities should exceed the assets, there shall be no initial net assets.*

*Article 1,421. The property constituting the initial net assets shall be estimated according to its condition and value at the start of the regime or, as the case may be, at the time of its acquisition. The amount of the appraisal must be updated to the date on which the regime should cease.*

*Article 1,422. The final net assets of each spouse shall comprise the property rights of which he is the titleholder at the time of termination of the regime, deducting any outstanding obligations.*

*Article 1,423. The value of the property disposed of by one of the spouses pursuant to gratuitous title without his consort's consent shall be included in the final net assets, unless it should refer to accustomed liberalities.*

*Article 1,424. The same rules shall apply in respect of acts performed by one of the spouses in fraud of the rights of the other.*

*Article 1,425. The property constituting the final net assets shall be estimated according to its condition and value at the time of termination of the regime, and property disposed of as gifts or fraudulently, according to its condition on the date of its disposal and for the value it would have had if it had been kept until the date of termination.*

*Article 1,426. Credits held by one of the spouses against the other, pursuant to any title, even as a result of having attended to or performed obligations of the former, shall be computed also as final net assets of the creditor's spouse, and shall be deducted from the estate of the debtor spouse.*

*Article 1,427. Where the difference between the final and initial net assets of both spouses should show a positive result, the spouse whose net assets have experienced a lower increase shall receive half of the difference between his own increase and that of the other spouse.*

*Article 1,428. Where only one set of net assets should show positive results, the rights of participation shall consist of half of such increase in favour of the spouse who is not the titleholder of such net assets.*

*Article 1,429. At the time of constitution of the regime, the spouses may agree on a different participation than the one provided in the two preceding articles, but it must apply similarly and in the same proportion in respect of both sets of net assets and in favour of both spouses.*

*Article 1,430. If there are descendants who are not common to both, the only participation that may be agreed upon shall be by halves.*

*Article 1,431. The participation credit must be paid in money. If there are serious difficulties to make an immediate payment, the Judge may grant a deferral, provided that it does not exceed three years, and that the debt and its legal interest are sufficiently secured.*

*Article 1,432. The participation credit may be paid by adjudication of specific property, by agreement between the interested parties or if the Judge should allow it, upon duly grounded request by the debtor.*

*Article 1,433. If there should not be sufficient property in the debtor's net assets to realise the right of participation in his gains, the creditor spouse may challenge any disposals he has made pursuant to gratuitous title without his consent and those which should have been made in fraud of his rights.*

*Article 1,434. The actions to challenge mentioned in the preceding article shall be lapsed by peremption two years after the participation regime is extinguished, and may not be initiated against third party acquirers for valuable consideration in good faith.*

However, as *Wilcox vs. Spain*, demonstrates not only are women not accorded the right to be consulted in the administration of common property assets, but they are systematically defrauded of their assets during a divorce. Not only are women denied access to common property assets in paying for services (legal and otherwise) during a divorce, but they are denied access to records of common property assets during their marriage. While this 'habitual custom' is in total violation of the afore mentioned articles of the Spanish civil code, the Spanish Bar Association of Madrid claims that it is the "right of lawyers to violate the rights of their clients under the principle of judicial independence."

As demonstrated in the table below lawyers and courts are habitually violating the rights of women in a wide variety of ways under the Spanish Constitution, penal and civil codes, Spanish law and international conventions, with regulatory agencies turning a blind-eye to the violations with LUDICRIOUS excuses for the negligence of court actors.

# Violation of Rights & Criminal Infractions of Judicial Actors in the Failure to Protect Victims of Domestic Abuse

**Table 1: Violation of Rights & Infractions by Judicial Actors & US Embassies in their Failure to Protect**

Case Study: Wilcox vs. Spain – [www.warondomesticterrorism.com/](http://www.warondomesticterrorism.com/)

## The Hierarchy of Spanish Judicial Norms

Judicial Actors & Govt. Official	Complaint	Spanish Constitution	(CEDH) (CEVCM) (CEDAW) (ICCPR) (ICESCR) (DJVCAP) (CRC)	Penal Code	Civil Code	Equality Act	Statutes for Lawyers Decreto 658/2001	Deontological Code
						(AI) Gender Violence (CVG) Judicial Power Law (ODJ)		
		Art.	Art.	Art.	Art.	Art.	Art.	Art.
LEGAL COUNSEL, JUDGES, COURT PSYCHOLOGIST & EVALUATORS, COURT PERSONNEL, LAW ENFORCEMENT, REGULATORY AGENCIES & IN TL. CASES - CONSULAR AFFAIRS & EMBASSY OFFICIALS*	Prevent the commission of a crime that affects the life of a person, their integrity, health, liberty or sexual liberty. Occult evidence of abuse & criminal acts on the part of abusive spouse as well as negligence/abuses of power by legal counsel of victim.	9, 10, 13 14, 15, 24 & 45.1	<b>CEDH</b> <b>CEVCM</b> <b>CEDAW</b> <b>ICCPR</b> <b>ICESCR</b> <b>1, 6, 7, 10 &amp; 11</b>	10, 11, 22 27, 28, 29 195, 450 451, 465 467.2, 511 512 & 607bis	6, 7, 8, 27, 348, 349 1088, 1089, 1091, 1092 1093, 1094, 1097, 1098 1101, 1102, 1104, 1106 1107, 1254, 1255, 1262 1271, 1279, 1347, 1362 1365, 1369, 1375, 1383 1386, 1390 & 1391	<b>AI</b> 1, 2, 3, 4, 6, 9, 10, 11, 12 & 13 <b>CVG</b> 1, 2, 17, 18, 19 37, 38 & 39 <b>ODJ</b> 1, 5, 6, 9, 11 & 17	1, 4, 5 6, 7, 11 12, 17, 21 22, 23, 87 87bis & 87ter	1, 2, 3 4, 5, 6 9, 10, 11 12 & 13
	Failure of women to access common property assets & solicit common property documents. & Failure of legal counsel to exhibit due diligence in assuring the defense of right to access fin. records & property render them responsible for all & any financial damages incurred.	33.3, 34 35, 38, 14 & 24	<b>CEDH</b> 1, 4.1 & 14 <b>CEVCM</b> 3 <b>CEDAW</b> 2, 3, 4, 5 11, 13, 15 & 16 <b>ICCPR</b> 1, 2, 3, 17, 23 & 26 <b>ICESCR</b> 1, 6, 7, 10, 11 <b>DJVCAP</b> 8 annex	10, 11, 22 29, 110 111, 112 113, 116 117, 120 173, 195 199, 208, 250, 450, 451.2 465, 467.2, 510, 512 & 607bis	103, 137, 138 6, 7, 8, 27 348, 349, 1088, 1089 1091, 1092, 1093, 1094 1097, 1098, 1101, 1102 1104, 1106, 1107, 1254 1255, 1262, 1271, 1279 1347, 1362, 1365, 1369 1375, 1383, 1386, 1390 & 1391	<b>AI</b> 1, 2, 3, 4 6, 9, 10, 11 12 & 13 <b>CVG</b> 1, 2, 17 18, 19, 37 38 & 39 <b>ODJ</b> 1, 5, 6, 9 11 & 17	1, 4, 5 6, 7, 11 12, 17, 21, 22, 23, 87 & 87ter	1, 2, 3 4, 5, 6 9, 10 11, 12 & 13
	Violation of the right to an effective defense, the right to privacy & the right not to testify against oneself.	24 & 18	<b>CEDH</b> 1, 2, 3, 5, 6, 8, 13 & 14 <b>CEVCM</b> 3 & 4 <b>ICCPR</b> 9, 17, 23 & 24 <b>ICESCR</b> 1, 6 & 10	11, 12, 22, 29, 109, 110, 116 195, 450 451.3 510, 511 & 607bis	6, 7, 8, 27, 348, 349 1088, 1089, 1091, 1092 1093, 1094, 1097, 1098 1101, 1102, 1104, 1106 1107, 1254, 1255, 1262 1271, 1279, 1347, 1362 1365, 1369, 1375, 1383 1386, 1390 & 1391	<b>AI</b> 1, 2, 3, 4, 6, 9 10, 11, 12 & 13 <b>CVG</b> 1, 2, 17, 18 19, 37, 38 & 39 <b>ODJ</b> 1, 5, 6, 9, 11 & 17	1, 4, 5 6, 7, 11 12, 17, 21 22, 23, 87 87bis & 87ter	1, 2 3, 4 5, 6 9, 10 11, 12 & 13
	Introduction of false information, falsified documents &/or false testimony to the courts	1, 9 10, 24 & 45.1	<b>CEDH</b> <b>CEVCM</b> <b>CEDAW</b> <b>ICCPR</b> <b>ICESCR</b> <b>DJVCAP</b>	22, 28b 390.3, 390.4 393, 396 429, 450 451, 461 464, 465 467.2, 510 511, 512 & 607bis	6, 7, 8 27, 348 349, 1088, 1089, 1091 1092, 1093, 1094, 1097 1098, 1101, 1102, 1104 1106, 1107, 1254, 1255 1262, 1271, 1279, 1347 1362, 1365, 1369, 1375 1383, 1386, 1390 & 1391	<b>AI</b> 1, 2, 3, 4, 6 9, 10, 11 12 & 13 <b>CVG</b> 1, 2, 17, 18 19, 37, 38 & 39 <b>ODJ</b> 1, 5, 6, 9, 11 & 17	1, 4, 5, 6 7, 11, 12 17, 21, 22 23, 87 87bis & 87ter	1, 2, 3 4, 5, 6 9, 10, 11, 12 & 13

**Convenios Internacionales**

- European convention on human rights (CEDH)
- Convention on the Elimination of Violence Against Women (CEVCM)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Intl. Covenant on Civil & Political Rights (ICCPR)
- Intl. Covenant on Economic, Social & Cultural Rights (ICESCR)
- Declaration of Basic Principle of Justice for Victims of Crimes & Abuses of Power (DJVCAP)

**\* Under 22CFR § 10.735–215 - Consular Affairs officials are “obligated to obey the laws of the country in which the employee is present.”**

## 2. Most Affected Groups of Women and Girls

### Question

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

### Response

The group most affected are victims of domestic abuse (physical, sexual, and psychological) as it is they who are targeted.

## 3. Role of Law and Policy

### Question

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

### Response

The prevalent attitude of policy-makers and implicated judicial actors is that “nothing can be done.” However, it is precisely the JOB of civil servants and public authorities in the 3-branches of government to assure that the checks-and-balances are executed with diligence, transparency and accountability. The failure of these people to assure good-governance is rendering them complicit to crimes against humanity under their obligation to protect.

## IV. Migration and crisis situations

### 1. Risks of Detention by Women Seeking Asylum, Displacement and Migration

#### Question

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?

#### Response

Victims of domestic violence re-victimized by court systems are fleeing the violence and abuse, crossing borders (state and international) in their quests for refuge. However, since these women and children are violating court-ordered custody decisions they are being pursued by authorities (ie. the FBI) with mothers incarcerated and children returned to abusers upon their capture. The trend towards granting asylum to women and children victims of domestic abuse and a ‘failure to protect’ of their home country is counter-productive from a public-policy perspective. A much more effective line of action would be to assure good-governance of government agencies, rather than citizens being obligated to flee their incompetence and negligence.

### 2. Policies Relating to Detention of Migrant Women and their Children

#### Question

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

#### Response

Under the Trump Administration the American government has pursued a policy of separating children from their parents during the deportation process of illegal immigrants. Not only are there widespread reports of sexual and other forms of abuse of children in detention centers, but there are also reports of missing children. This is particularly alarming given the elevated level of child-trafficking by child protection services agents and adoption services in the USA.

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