



Women in Prison & Children of Imprisoned Mothers:

**Recent Developments in the United Nations
Human Rights System**

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Women in Prison and Children of Imprisoned Mothers – Project Background

The project aims to gain a clearer understanding of the particular problems faced by women prisoners and children of imprisoned mothers, and how these problems can be better addressed.

This paper was produced as part of a joint project on Women in Prison and Children of Imprisoned Mothers being undertaken by:

- Quaker United Nations Office, Geneva,
- Friends World Committee for Consultation (Quakers) representation to the United Nations Commission on Crime Prevention and Criminal Justice,
- Quaker Council for European Affairs (Brussels),
- Quaker Peace and Social Witness (United Kingdom).

Other Quaker United Nations Office Publications

Women in Prison: a commentary to the Standard Minimum Rules for the Treatment of Prisoners, M. Bastick, (The Quaker United Nations Office, July 2005)

Babies and Small Children Residing in Prisons, M. Alejos, (The Quaker United Nations Office, March 2005)

Women in Prison and Children of Imprisoned Mothers: Preliminary Research Paper, R. Taylor, (The Quaker United Nations Office, July 2004)

This paper is available to download from our website: www.quno.org
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Part 1 of this paper reproduces a written statement presented by Friends World Committee for Consultation (Quakers) to the UN Commission on Human Rights, at the meeting of its Sub-Commission on the Promotion and Protection of Human rights in June 2005.

Part 2 of this paper is drawn from the following United Nations documents accessible from the Official Document System of the United Nations: www.ods.un.org

E/CN.4/2006/NGO/94: Statement on Women in Prison under Agenda Item 11(d) Civil and Political Rights: Independence of the Judiciary, Administration of Justice, Impunity

E/CN.4/2006/NGO/96: Statement on Women in Prison under Agenda Item 12 Integration of the Human Rights of Women and the Gender Perspective

E/CN.4/2006/NGO/97: Statement on Children of Imprisoned Mothers under Agenda Item 13 Rights of the Child

Introduction

Women are a small minority of the prison population, but a minority that is growing at a disproportionate rate, their needs, and indeed their rights, are frequently not fulfilled by prison regimes that are designed predominantly for male prisoners.

Imprisonment impacts on women differently than on men. The following are some of the key areas of concern:

- a) Problems with accommodation
- b) Inappropriate staffing
- c) Lack of family contact
- d) Lack of education and work programmes
- e) Lack of proper healthcare
- f) High proportion of women prisoners with a history of mental, physical or sexual abuse
- g) The adverse impact of imprisonment of mothers on their children
- h) Disproportionate representation of indigenous women and foreign women¹

It is clear from the brief list above that the needs of women prisoners are often overlooked by penal institutions, by governmental policy makers, and by the international community and that consideration needs to be given to every aspect of women's prison regimes as well as to the reasons for the increasing female prison population to ensure that their rights, as defined in international law, are met.

Children of Imprisoned Mothers

Most women in prison are mothers.² The imprisonment of a woman who is a mother can lead to the violation not only of her rights but also the rights of her children. When a mother is imprisoned, her baby and/or young children may go into prison with her or be separated from her and left on the 'outside'. Both situations can put the child at risk. As the Special Rapporteur on Prisons and Conditions of Detention in Africa stated:

*Prisons are not a safe place for pregnant women, babies and young children and it is not advisable to separate babies and young children from their mother.*³

There are no simple solutions but the complexity of the situation cannot be an excuse for failing to protect the rights of children who have a parent in prison. Our work in this area has focused on the impact of maternal imprisonment as part of a broader project on

¹ These issues are explored in Part 1 of this paper. For further elaboration of these issues please see: R Taylor, *Women in Prison and Children of Imprisoned Mothers* (The Quaker United Nations Office, 2004).

² For example in Brazil's largest women's prison, São Paulo, 87 per cent of women prisoners are mothers: Estimate of local prisoners' rights NGO's quoted in C Howard, *Main Issues Facing Brazil's Women Prisoners* (unpublished paper, 2003); in the US, 80 per cent of women prisoners are mothers, with three-quarters having children under 18 years of age: B Owen: "Understanding women in prison" in J Ross and S Richards (eds), *Convict Criminology* (Thomson Wordsworth, 2003) pp. 231-246, p. 244; in the UK, 66 per cent of women prisoners are mothers, 55 per cent have at least one child under 16; over one third have one or more children under 5 years old; and 34 per cent were single parents before going into prison: *Statistics on Women and the Criminal Justice System*. A Home Office publication under Section 95 of the Criminal Justice Act 1991 (2002), pp. 35 & 37.

³ V Chirwa, Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa: Prisons in Malawi (17-28 June 2001), p. 36.

women in prison. However, it should be noted that many of the same issues and problems arise for children of imprisoned fathers.

International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme

The International Scientific and Professional Advisory Council to the UN Criminal Justice Programme (ISPAC) decided at its biennial meeting in December 2005 to adopt a Friends World Committee for Consultation (Quakers) proposal for a project on women in prison and children of imprisoned mothers. ISPAC was established in 1991 to channel professional and scientific information to this area of the UN's work. It was set up in part in response to General Assembly Resolution 45/107, which called for increased involvement of NGOs

“in order to fully implement the mandates emerging from the crime prevention and criminal justice programme and to provide additional technical and scientific expertise and resources for matters of international co-operation in this field”.

The ISPAC project should raise the profile of the issue in the United Nations Commission on Crime Prevention and Criminal Justice.

In light of the lack of attention usually given to women in prison by the international community, it is worth highlighting the consideration that the United Nations human rights treaty bodies have given to the subject.

Part 1: Issues Faced by Women in Prison

Women in Prison – Discrimination Issues

Although not all aspects of female imprisonment relate to discrimination, many do. Because there are far fewer women's prisons, women tend to be imprisoned further away from their homes and families than do male prisoners, making it more difficult for them to maintain family contact. Because there are so few (or no) separate facilities for female juveniles, female juveniles are often detained with adult women. Prison regimes are almost invariably designed for the majority male prison population, and discrimination flows from a lack of women-orientated programming and facilities. For example, women with babies or young children in prison with them are often precluded from participating in education, training or work programmes because there are no childcare facilities.

Strip searching

Strip-searching is experienced in a discriminatory manner by women prisoners. Women prisoners, as a group, have a higher incidence of previous history of being victims of sexual assault than the general community and than of male prisoners. (Research among women prisoners in Australia found that 89% had been sexually abused at some point in their lives, and 70-80% were survivors of incest.⁴) Being strip-searched is thus often especially traumatic for women prisoners.

Harsher sentences

Attitudes towards 'women criminals' may lead to harsher sentences, including imprisonment for offences for which men would not be imprisoned. Contravening social *mores* may lead to women being criminalised. Particular groups of women, such as foreign nationals, indigenous, Roma, may be subject to additional discrimination.

Pre-trial detention

Keeping women in the same pre-trial detention facilities as men may be a form of discrimination, especially if there are male guards, and where the restrictions on contact with family, including children, apply (see Report of Working Group on Arbitrary Detention: Mission to Belarus, in E/CN.4/2005/6/Add.3, para 72).

Some of the discriminatory aspects in relation to women in the criminal justice system reflect the discrimination against women in society – or their marginalisation – rather than direct or overt discrimination in the justice system. For example, a person accused of a crime is more likely to be held in pre-trial detention if they have no fixed abode, and/or insufficient financial or other guarantees. This impacts on women where they are unable to own property, or are less likely to do so, and because women who enter the criminal justice system are often in the poorest and most marginalised sectors of society. In Latvia, the Working Group on Arbitrary Detention reported (E/CN.4/2005/6/Add.2, para 64) that they met "In police cells ... people who had been sentenced to fines for administrative offences and, because they had not paid the fines, were serving custodial sentences of up to 15 days. ... these people were generally not well-off and were serving the alternative sentence ... because they were insolvent."

⁴ Submission by Sisters Inside to the Anti Discrimination Commissioner for the Inquiry into the Discrimination on the Basis of Sex, Race and Disability Experienced by Women Prisoners In Queensland, at <http://www.sistersinside.com.au/media/adcs submission.pdf>

Women prisoners much more likely to be their children's sole carers

Even a short prison term has a particularly harsh effect on women, in causing intense family disruption. Most women who are imprisoned are mothers, and they are far more likely than male prisoners to be the sole carer of children. A woman living in insecure or rented accommodation will usually lose this when she enters prison. On release, obtaining secure accommodation is often problematic. A mother whose children have been placed in the care of the State or of another person usually cannot reclaim custody of her children unless she has accommodation. Therefore, even a short prison term may lead to permanent separation of families.

More generalised discrimination often follows women after release from prison: women who have been in prison are particularly stigmatised.

FWCC therefore calls for a full exploration of all aspects of discrimination against women and girls in the Sub-Commission Study on discrimination in the justice system.

Children of Imprisoned Mothers

In March 2005, the Quaker UN Office, Geneva, published a study by Marlene Alejos on *Babies and Young Children Residing in Prison*, including draft suggested Guidelines for drafting legislation, regulations, policies and programmes regarding babies and small children residing in prisons, and some examples of good practice. The full study is available in English, and the draft suggested Guidelines in English, French and Spanish, from the Quaker UN Office, or from its website: www.quno.org. The Quaker UN Office has invited comments and suggestions with regard to these draft suggested guidelines.

This study revealed how little attention has been given to children living in prison with their mothers, in particular from a child rights perspective, including:

- how the child's rights are considered in sentencing a mother;
- how decisions are taken about whether babies and young children accompany their mother into prison (or pre-trial detention);
- the impact of imprisonment on the child;
- the facilities to be provided;
- how any later separation of the child from the mother should be handled; and
- alternatives to, and different forms of, imprisonment that better support motherhood and child development.

The Committee on the Rights of the Child is now routinely requesting information on this subject from States during the reporting process. In the light of this, and comments received on the draft guidelines, it is hoped that there will be interest in further developing the guidelines for use by States.

FWCC therefore calls on the Sub-Commission's sessional Working Group on the Administration of Justice, to give consideration to and comment on the draft suggested guidelines for drafting legislation, regulations, policies and programmes regarding babies and small children residing in prisons.

Babies Born to Imprisoned Mothers

Women who are pregnant whilst in prison have particular health and nutrition needs. In some countries, women prisoners are shackled during childbirth, and/or are guarded by male prison guards.

The rights of both mothers and babies need to be considered in relation to pregnancy, childbirth, breastfeeding and post-natal care in prison. The presumption should be that babies should remain with their mothers unless there are compelling reasons for separating them. The inextricable link between anxiety and stress in the mother and the physical and emotional well being of the baby needs to be recognised and addressed.

Children Separated from their Imprisoned Mother/Parent

What rights does a child have if their mother is detained or imprisoned? Little attention has been given to this subject, despite the profound and permanent impact such an event has on the child. Applying the Convention on the Rights of the Child to such situations would lead to some clear conclusions about children's rights to be considered when decisions are made about their parents; to be consulted about separation from their parent and alternative care; to maintain contact with their imprisoned parent, including by visiting; to be specially protected and assisted by the state when deprived of parental care; and so on.

Lack of contact by detainees with their children

For example, the Working Group on Arbitrary Detention (E/CN.4/2005/6/Add.2, para. 63), reports the situation of pre-trial detainees in Latvia: "most are not allowed to telephone their families or receive visits. One detainee told the Group he had not been allowed to see his small daughter for over eight months. ... the Group finds it hard to comprehend why a detainee, even one accused of serious crimes, should be prevented from seeing his children."

The Working Group also expressed concerns about the severe restrictions on contact (telephone or visits) by family to those in pre-trial detention in Belarus (E/CN.4/2005/6/Add.3, paras. 22-24, 48), where pre-trial detention is the norm for alleged offenders, men, women and minors, rather than a measure of last resort in relation to serious crimes, and can last up to 18 months. The Working Group also raised concerns about the too restrictive nature of communications with the outside world in the female prison colonies (post-conviction detention), including with detainees' children when these are too old to stay in the colonies with their mothers (para. 72).

The Committee on the Rights of the Child has proposed the development of Guidelines for Children Deprived of Parental Care, and the Quaker UN Office has requested that these Guidelines should take account of the specific situation of, and problems faced by, children who are deprived of parental care because their parent is in detention or imprisonment.

Whose obligations?

Faced with these rights of the child, whose obligation is it to ensure them, and how? At what stage does it become part of the responsibility of the justice system to ensure that the rights of the child are guaranteed when considering detention or imprisonment issues? Is there an obligation to enquire about the existence of children before agreeing to pre-

trial detention? At the time of sentencing? To take steps or to ensure that steps have been or are being taken to provide for the rights of the child or children?

FWCC urges the Sub-Commission's Working Group on the Administration of Justice to give consideration to this aspect of the rights of children affected by the operation of the criminal justice system.

The UN Standard Minimum Rules for the Treatment of Prisoners

In the 50 years since the UN Standard Minimum Rules for the Treatment of Prisoners were adopted (in 1955), the understanding about gender has developed considerably. With this in mind, the Quaker UN Office, Geneva, is preparing a draft commentary on the Standard Minimum Rules from a gender perspective, which will be distributed to members of the Sub-Commission.⁵

⁵ This commentary has now been published as: M Bastick *Women in Prison: a commentary to the Standard Minimum Rules for the Treatment of Prisoners*, (The Quaker United Nations Office, 2005)

Part 2: The Special Procedures of the United Nations Commission on Human Rights consider the Issues Affecting Women Prisoners

In the last year a number of independent experts mandated by the UN have specifically considered the human rights situation of women in prison or have covered issues that impact on women in prison or children of imprisoned mothers.

The system of independent human rights monitors, collectively known as the ‘Special Procedures’, was developed by the UN Commission on Human Rights and has been transferred in its entirety to the Commission’s successor body, the Human Rights Council.⁶ Special Procedures are given the mandate to examine human rights in a specific country or to examine a particular theme. Their methods involve making country visits and responding to individual communications alleging human rights violations.

The problems faced by women in prison were addressed by a broad range of Special Procedures and are not considered to be exclusively within the mandate of the Special Rapporteur on Violence against Women. It is crucial that those Procedures whose mandates give rise to visits to places of detention visit places where women are detained and speak to women detainees. As outlined in the Introduction and Part 1 of this paper, women’s prison experience differs to men’s and it cannot be assumed that by visiting a male detention facility a monitor will be exposed to the same violations suffered by women prisoners.

Conditions of Detention

Access to Healthcare

The Special Rapporteur on the Right to Health has acted on communications relating the conditions faced by pregnant women in prison. **These violations of the right to health range from being held in unsanitary conditions to a miscarriage one woman allegedly suffered as a result of torture.**⁷

The Special Rapporteur on Torture also raised concerns about women prisoners’ access to healthcare, noting that in one detention facility that he **visited “although a doctor visited regularly, he prescribed only pain-relievers. The detainees complained that they did not have access to specialists, such as a gynaecologist.”**⁸

Appropriate Staffing

The Special Rapporteur on Torture “expressed concern that the conditions of detention fell far below international standards”⁹ in the Abkhazia region of Georgia where **women prisoners were not separated into pre-trial detainees and sentenced prisoners and there were no female guards at the facility.** The lack of female guards was also noted by the Special Rapporteur on Trafficking, during her visit to Lebanon.¹⁰ The Special

⁶ For more information on the Special Procedures and a complete listing of current and former mandates please see: www.ohchr.org.

⁷ Communications to and from Governments: Special Rapporteur on the Right to the Highest Attainable Standard of Health, E/CN.4/2006/48/Add.1, **Syrian Arab Republic, paragraph 61**

⁸ Report of the Special Rapporteur on Torture: mission to Georgia, E/CN.4/2006/6/Add.3, paragraph 52.

⁹ Report of the Special Rapporteur on Torture: mission to Georgia, E/CN.4/2006/6/Add.3, paragraph 54

¹⁰ Report of the Special Rapporteur on Trafficking: Mission to Lebanon, E/CN.4/2006/62/Add.3, paragraph 49.

Rapporteur on Violence against Women in her recommendations to the Russian Federation made it clear **that whenever a woman is arrested or detained a female officer should be present at all times.**¹¹

Maintaining Family Contact

Maintaining family contact can have important benefits for all prisoners, but takes on particular significance for women who are the primary or sole carer of children and, as mentioned previously, most women in prison are mothers. The Special Rapporteur on Violence against Women stated in her recommendations that the authorities must ensure that: **“female prisoners have access to their basic rights, including the right to family visits.”**¹² It is important that the *right* to family visits is recognised as such and that this is taken to include a prohibition on punitive denial of family contact, as this can violate the rights of prisoners and the rights of their children.

Leaving Prison

The Special Rapporteur on Violence against Women and the Special Rapporteur on the Right to Housing have both raised concerns about the safety of women leaving prison. After her visit to Afghanistan the Special Rapporteur on Violence against Women recommended **that the Government consider establishing transit houses for women who are released from detention and for their children.**¹³ The Rapporteur went on to clarify that these transit houses should be kept distinct from safe houses for victims of violence.¹⁴

In a study on women and adequate housing the Special Rapporteur on the Right to Housing identified that once women are released from prison their conviction can have a long-term impact on the possibility of finding secure housing.¹⁵ He recommended that **Governments: “ensure that homeless women are not discriminated against in accessing adequate housing on the grounds of a criminal record”.**¹⁶ The Special Rapporteur on the Right to Housing also recommended the adoption of alternatives to criminalisation for activities commonly associated with homelessness.¹⁷

Over-Incarceration

Some of the Special Procedures have noted the global trend of over-incarceration, this has two forms: the over-reliance on custodial sentences and the over-use of pre-trial detention, both of which are of excessive length in some places.¹⁸ The Working Group

¹¹ Report of the Special Rapporteur on Violence against Women: Mission to Russian Federation, E/CN.4/2006/61/Add.2, Recommendations.

¹² *ibid.*

¹³ Report of the Special Rapporteur on Violence against Women: Mission to Afghanistan, E/CN.4/2006/61/Add.5, paragraph 85.

¹⁴ Report of the Special Rapporteur on Violence against Women: Mission to Afghanistan, E/CN.4/2006/61/Add.5, Recommendations, paragraph v.

¹⁵ Study by the Special Rapporteur on the Right to Housing on women and adequate housing, E/CN.4/2006/118, Recommendations, paragraph h.

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ Report of the Working Group on Arbitrary Detention (E/CN.4/2006/7); Report of the Working Group on Arbitrary Detention: Mission to Canada, E/CN.4/2006/7/Add.2; Report of the Working Group on Arbitrary Detention: Mission to South Africa, E/CN.4/2006/7/Add.3; Report of the Special Rapporteur on Torture: Mission to Georgia (E/CN.4/2006/6/Add.3); Report of the Special Rapporteur on Torture:

on Arbitrary Detention has characterised the over-use and excessive length of pre-trial detention as endangering the right to the presumption of innocence.¹⁹ The Working Group has also raised the problems for accused belonging to vulnerable and marginalised groups in obtaining bail, stating that: “pre-trial detention disparately impacts on vulnerable social groups.”²⁰

Mission to Mongolia, E/CN.4/2006/6/Add.4.

¹⁹ For example: Report of the Working Group on Arbitrary Detention (E/CN.4/2006/7), paragraph 64.

²⁰ Report of the Working Group on Arbitrary Detention (E/CN.4/2006/7), paragraph 66; Mission to Canada: Working Group on Arbitrary Detention, E/CN.4/2006/7/Add.2, paragraphs 61-65.

Part 3: The United Nations Human Rights Treaty Bodies consider the Issues Affecting Women Prisoners

“How are the special needs of female prisoners taken into account?”
(Committee against Torture, 2005)²¹

In 2005 six of the seven United Nations human rights treaty bodies (marked with an asterisk below) raised or considered the issue of the human rights of women in prison or children of imprisoned mothers.

The seven main United Nations human rights treaties in force currently in force:

- International Convention on the Elimination of All Forms of Racial Discrimination*
- International Covenant on Civil and Political Rights*
- International Covenant on Economic, Social and Cultural Rights*
- Convention on the Elimination of All Forms of Discrimination against Women*
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment*
- Convention on the Rights of the Child*
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The implementation of each of these treaties is overseen by a committee of independent experts; these seven committees are referred to as the human rights treaty bodies. Their functions vary in some respects, but all treaty bodies receive and review periodic reports from States parties. Additionally, the Committees all have the capacity to issue statements of interpretation of the treaty, known as General Comments or General Recommendations.

Committee on the Elimination of Racial Discrimination (CERD)

The Committee on the Elimination of Racial Discrimination (CERD) is the body tasked with overseeing the implementation of the Convention on the Elimination of All Forms of Racial Discrimination. CERD adopted General Comment 31 on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System on 17 August 2005.

General Comment 31 raises issues affecting persons belonging to racial or ethnic groups, in particular non-citizens (including immigrants, refugees, asylum-seekers and stateless persons), Roma/Gypsies, indigenous peoples, displaced populations, persons discriminated against because of their descent, as well as other vulnerable groups which are particularly exposed to exclusion, marginalization and non-integration in society. **It highlights the multiple discrimination faced by women from these groups in two key areas:**

Within the broader context of over-reliance on pre-trial detention, CERD identified that bail guarantees and factors taken into consideration in remand decisions may be inherently discriminatory towards members of the groups in question. General Comment 31 calls on

²¹ List of issues to be considered during the examination of the second periodic report of Nepal by the Committee against Torture, 30/06/2005, CAT/C/35/L/NPL, paragraph 14.

States to ensure that:

“...the guarantees often required of accused persons as a condition of their remaining at liberty pending trial...are weighed in the light of the insecure situation which may result from their membership of such groups, particularly in the case of women and minors;”
(paragraph III.2.3)

The recognition that the criteria for such decisions may be weighted against women indicates that there is a growing understanding of the extent of the discrimination faced by women in the criminal justice system. This also highlights the importance of considering the reasons for the rapidly growing female prison population as well as their conditions of detention.

Human Rights Committee

In its Concluding Observations on country reports under the International Covenant on Civil and Political Rights, the Human Rights Committee has raised concerns about the situation of women in prison in general and specifically about employing male staff in contact positions.²² “Contact positions” are posts that permit or require prison guards to be in physical proximity to prisoners, often unsupervised by other staff. The Committee’s recommendation reaffirms Rule 53(3) of the UN Standard Minimum Rules for the Treatment of Prisoners, which states that women should only be supervised by women.²³ **The risk of violence posed by male prison guards in contact positions with women prisoners is obvious given the hierarchical nature of prisons and the unequal power relationship between prison guards and prisoners. This position was reinforced by the Special Rapporteur on Violence Against Women, who has stated that the presence of male corrections officers in housing units and elsewhere creates a situation in which sexual misconduct is more pervasive than if women are guarded by female officers.**²⁴

Committee Against Torture

The Committee against Torture, which monitors States parties to the Convention Against Torture, has raised the issue of the separation of prisoners by gender.²⁵ **Placing women and girls in mixed sex facilities creates a general risk that is heightened by the significant number of men in prison for committing violent or sexual offences.**

²² Concluding observations of the Human Rights Committee: Canada. 02/11/2005, CCPR/C/CAN/CO/5, paragraph 18.

²³ *Standard Minimum Rules for the Treatment of Prisoners*, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. For a detailed analysis of how the UN Standard Minimum Rules should be implemented to ensure the rights of women in prison please see: *Women in Prison: a commentary to the Standard Minimum Rules for the Treatment of Prisoners*, M. Bastick, (The Quaker United Nations Office, July 2005)

²⁴ Report of the Special Rapporteur on violence against women of the mission to the United States of America on the issue of violence against women in state and federal prisons, E/CN.4/1999/68/Add.2, paragraphs 55, 58.

²⁵ See for example: Conclusions and recommendations of the Committee against Torture, Bosnia and Herzegovina, CAT/C/BIH/CO/1/CRP.1, paragraph 14.

It has also condemned sexual violence committed by prison staff against women in prison and requested States to establish and promote a system for receiving and investigating complaints of such abuse.²⁶ **Recognition of gender-based violence committed in prison as a form of gender specific torture is particularly important in light of the high proportion of women in prison who have been subjected to physical or sexual abuse prior to their incarceration.**

Committee on the Rights of the Child

The Committee on the Rights of the Child is the body that monitors the implementation of the Convention on the Rights of the Child. **In 2005 the Committee began to regularly raise the impact of women’s imprisonment on the fulfillment of the rights of their children.** The Committee has taken this up both in respect of children who live in prison with their mothers and those who are separated from their mothers as a result of maternal imprisonment.

Considering the best interests of the child in sentencing and remand decisions

The recommendation of the Committee on the Rights of the Child arising from its Day of General Discussion on “Children Without Parental Care” calls for an expert meeting to produce Guidelines on Children Without Parental Care. The adoption of these guidelines could provide a useful tool in ensuring that the best interests of the child are considered in remand and sentencing decisions that could deprive the child of parental care.

In a number of its Concluding Observations the Committee on the Rights of the Child has stated clearly that the best interests of the child must be taken into consideration in sentencing and remand decisions concerning their primary or sole carer:

Where the defendant has child caring responsibilities, the Committee recommends that the principle of the best interests of the child (article 3) is carefully and independently considered by competent professionals and taken into account in all decisions related to detention, including pre-trial detention and sentencing, and decisions concerning the placement of the child.²⁷

*Children living in prison with their mother*²⁸

In its Concluding Observations the Committee on the Rights of the Child has expressed concern both at the fact that children are living in prison and at the conditions in which they live.

²⁶ See for example: Conclusions and recommendations of the Committee against Torture, Sri Lanka, CAT/C/ LKA /CO/1/CRP.2, paragraph 13; Conclusions and recommendations of the Committee against Torture, Nepal, CAT/C/NPL/CO/1/CRP.3, paragraph 28; Conclusions et recommandations du Comité contre la torture, République Démocratique du Congo, CAT/C/DRC/CO/1/CRP.1, paragraph 12.

²⁷ Consideration of the Reports Submitted by States Parties under Article 44 of the Convention on the Rights of the Child, Concluding observations: Thailand, CRC/C/THA/CO/2, paragraph 48. See also Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations: Philippines, CRC/C/15/Add.259, paragraphs 53-54.

²⁸ For a more detailed exploration of the issues that need to be considered when drafting legislation on children living in prison with their parents please see: M. Alejos, *Babies and Small Children Residing in Prisons*, (The Quaker United Nations Office, 2005).

The Committee recommends to the State party that it review the current practice of children living with their parents in prison, with a view to limiting the stay to instances in which it is in his/her best interest, and to ensuring that the living conditions are suitable for his/her needs for the harmonious development of his/her personality.²⁹

As regards children residing in prison with their mothers, the Committee recommends that the State party ensure that living conditions in prisons are adequate for the child's early development in accordance with article 27 of the Convention. The Committee encourages the State party to seek assistance from, among others, UNICEF and other United Nations bodies in this regard.³⁰

Children deprived of parental care through parental imprisonment

A study in the United Kingdom has shown that the detrimental impact on the behaviour of children deprived of parental care through parental imprisonment is greater than the impact on children who lose or are separated from their parent in other ways.³¹ The study only considered the impact of *paternal* imprisonment; however, other studies have indicated that *maternal* imprisonment is even more disruptive for children than paternal imprisonment.

The Committee on the Rights of the Child has also addressed the impact of separation through parental imprisonment on the realisation of the rights of the child:

[The Committee] recommends that alternative care for those children who are separated from their mothers in prison be regularly reviewed ensuring that the physical and mental needs of children are appropriately met. Furthermore, it recommends that the State party continue to ensure that alternative care allows the child to maintain personal relations and direct contact with the mother who remains in prison.³²

²⁹ Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations: Nepal, CRC/C/15/Add.261, paragraph 52.

³⁰ Consideration of the Reports Submitted by States Parties under Article 44 of the Convention on the Rights of the Child, Concluding observations: Thailand, CRC/C/THA/CO/2, paragraph 48. See also Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations: Philippines, CRC/C/15/Add.259, paragraphs. 53-54.

³¹ Murray J and Farrington DP, *Journal of Child Psychology and Psychiatry* 2005; 46, 12: 1269-1278

³² Consideration of the Reports Submitted by States Parties under Article 44 of the Convention on the Rights of the Child, Concluding observations: Thailand, CRC/C/THA/CO/2, paragraph 48. See also Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations: Philippines, CRC/C/15/Add.259, paragraphs. 53-54.

Part 4: Recommendations

Based upon the reports by Quaker bodies and the findings of the various UN human rights bodies, the following recommendations are made concerning women prisoners and the children of imprisoned mothers:

General

States should ensure that female prisoners are adequately protected from violent and sexual assault, in particular by prohibiting the inappropriate use of male correctional staff and the mixing of genders in prison facilities.

States should take note of and implement the Concluding Observations and General Recommendations of the Human Rights Treaty Bodies by:

- reviewing their use of pre-trial detention;
- ensuring that prison staffing policies and practices conform with the requirement that female prisoners be supervised by female guards;
- ensuring that female and male prisoners are detained separately;
- establishing a procedure for addressing complaints by women of physical and sexual violence experienced in prison;
- ensuring that the best interests of the child are considered in decisions on detaining or imprisoning their parent and giving serious consideration to the social cost of the increasing use of custodial sentences as punishment for non-violent offences committed by women, and to consider alternative, non-custodial sentences for non-violent female offenders;
- guaranteeing that children living in prisons are protected from violence and enjoy the full extent of their rights;
- ensuring that children deprived of parental care through parental imprisonment are able to enjoy the full extent of their rights, including by maintaining a relationship with their imprisoned parent;

and include information regarding women's imprisonment and report on measures they have taken to decrease the rate of women's imprisonment.

Non-custodial alternatives to imprisonment and pre-trial detention

States should consider alternatives to pre-trial detention for mothers of babies and dependent children, including clarifying how, when and by whom the existence of such children is ascertained and taken into account in considering whether pre-trial detention is necessary.

States should consider alternatives to imprisonment for mothers of babies and dependent children (and for fathers at least in the case where the father is the sole or primary carer of the child or children), including in particular restorative justice processes, as well as community orders, probation and suspended sentences.

States should give in-depth consideration to the social cost of the increasing use of custodial sentences as punishment for non-violent offences committed by women, taking into account the very serious consequences that imprisonment of women has for family relationships, and the importance of good family relationships as a key factor in crime prevention and consider alternative, non-custodial sentences for non-violent female offenders.

Collection and provision of statistical information

States should keep and provide disaggregated data on women and girls in prison and pre-trial detention, and provide this and other information on these topics in their reports to the United Nations Human Rights Treaty Bodies.

States should systematically collect age and gender disaggregated data on babies and dependent children of all persons held in detention or in prison, including those of foreign nationals detained or imprisoned outside their normal country of residence.

Protection from violence

States must ensure that female prisoners are adequately protected from violent and sexual assault, in particular by prohibiting the inappropriate use of male correctional staff and the mixing of genders in prison facilities.

States should ensure that women and girls in detention are protected from violence.

Measures to achieve this include:

- (a) drafting and implementation of policies and processes to prevent and investigate any physical, sexual or psychological violence whether committed by other prisoners or by prison staff and to hold to account those responsible;
- (b) dissemination of procedures for reporting violence committed by other prisoners or prison staff;
- (c) protection from intimidation and retaliation for those who report violence by committed by other prisoners or prison staff;
- (d) training for prison staff that incorporates sensitisation to the vulnerability of women prisoners to abuse by other prisoners or prison staff and the policies and procedures for preventing and responding to abuse;
- (e) separation of male and female prisoners, in accordance with Rule 8(a) of the UN Standard Minimum Rules for the Treatment of Prisoners;
- (f) separation of juvenile detainees from the adult prison population, in accordance with Rule 8(d) of the UN Standard Minimum Rules for the Treatment of Prisoners;
- (g) supervision of women and girl prisoners only by women prison guards, in accordance with Rule 53 of the UN Standard Minimum Rules for the Treatment of Prisoners.

Protection of children of imprisoned mothers

States should review their laws and practices in order to give greater consideration to the needs and rights of babies and children of detained or imprisoned mothers.

States should provide the UN Human Rights Treaty Bodies with information on their policy and practice in relation to children of imprisoned mothers, including how the existence of children is identified at the time of arrest or imprisonment, what provision is made to inform and consult children about decisions affecting them and how all the rights of the children are secured in these circumstances.

States should ensure that adequate provisions are made for the care of the children of incarcerated women, both those entering prison with their mother (through the provision of more and better quality facilities) and those remaining on the outside. Where children are in prison (or pre-trial detention) with their mother, careful provisions must be made and special facilities provided to promote their rights to survival, protection, development

and participation whilst in prison. Where children are not permitted to stay with their imprisoned mother, arrangements must be made that maintain the child's relationship with their mother, and address the trauma of separation. In countries where it is the norm for convicts to be taken directly to prison after sentencing consideration should be given to those who are the sole or primary caregiver of children: many women who do not expect to receive a custodial sentence do not make arrangements for their children in advance, and so face entering prison not knowing if someone will even collect their children from school. They should be given time to make adequate care arrangements, including the possibility of deferral of sentence until such provision has been made satisfactorily.

States should develop and implement policies and programmes concerning children living in prison with their mothers that implement international human rights standards, in particular, the Convention on the Rights of the Child, from a child rights perspective. In this regard, States should consider the "Suggested guidelines for drafting legislation, regulations, policies and programmes regarding babies and small children residing in prisons" contained in *Babies and Small Children Residing in Prisons*, M. Alejos, (The Quaker United Nations Office, 2005).

Girls in detention

States should develop and implement policies and programmes concerning girls in detention that implement international human rights standards, in particular, the Convention on the Rights of the Child, taking a child rights perspective, as well as the other standards on juvenile justice.

Women with a history of abuse

In the case of previously abused women and girl prisoners States should ensure:

- (a) accessibility of appropriately qualified personnel for any prisoner with problems arising from previous physical, sexual, or psychological abuse;
- (b) training for prison staff that incorporates sensitisation to issues that may arise from a prisoner's history of physical, sexual, or psychological abuse and the facilities the prison offers;
- (c) full consultation with regard to who may visit them.

'Protective custody'

States should ensure that women and girls who are victims of violence and women and girls at risk of violence are not denied their liberty, but are provided with the option of genuine protection in a location that does not put them at further risk of violence.

Women in Prison & Children of Imprisoned Mothers: Recent Developments in the United Nations Human Rights System

Based on written statements submitted to the United Nations Commission on Human Rights, this paper draws together advances in international attention and international law relating to women in prison and children of imprisoned mothers, with particular reference to:

- United Nations Human Rights Treaty Bodies
- Special Procedures of the United Nations Commission on Human Rights

If you are interested in learning more about the Women in Prison Project or would like to work with us on this issue please contact us. Our full contact details are printed on the inside cover.

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