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Submission to Committee on the Elimination of Discrimination Against Women

Eliminating Discrimination Against Women in Prison

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The Quaker United Nations Offices located in Geneva and New York represent Friends World Committee for Consultation (Quakers), an international non-governmental organisation with General Consultative Status at the UN. QUNO works to promote the peace and justice concerns of Friends (Quakers) from around the world at the United Nations and other global institutions. It is supported by the American Friends Service Committee, Britain Yearly Meeting, the worldwide community of Friends, other groups and individuals.

Women in Prison Project

What we are doing

A research project to:

- * understand why increasing numbers of women are being imprisoned;
- * develop an understanding of the impact that imprisonment has on women;
- * identify the conditions in which women prisoners are kept around the world;
- * find out what provision is made for the children of women in prison, including those held in prison with their mothers and those outside;
- * understand the impact on children of their mother's imprisonment

Why we are doing it

- * To identify issues and make policy recommendations.
- * To lobby for change at an international level.
- * To highlight the social cost of women's imprisonment.
- * To identify and disseminate examples of better practice.

Who we are

- * **Quaker United Nations Office (QUNO)**, Geneva - representing Quaker concerns in the fields of human rights, disarmament, and trade at the United Nations.
- * **Quaker Council for European Affairs (QCEA)**, Brussels - speaking Truth to Power as Quakers see it in matters of peace, human rights and the right sharing of world resources in a European context.
- * **Quaker Peace and Social Witness (QPSW)** - working with and on behalf of Quakers in Britain to translate our faith into action.

Continuing research

During the course of this project, we have begun conducting research into women's imprisonment worldwide. We have a number of questionnaires devised to elicit information from prisoners, ex-prisoners, prisoners' families, prison staff, prison visitors, and government agencies. If you would like to contribute to further research on this topic and are in a position either to complete such a questionnaire yourself or to distribute them to others, please contact us at this address:

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Executive Summary

The core problem of accommodation of women in [the] penitentiary system is that the conditions of serving the sentence ... reflect neither psychological nor physiological features inherent in women, i.e., women are kept as men or, more precisely, as certain averaged-out human beings without regard to sexual, age-related, or other individual characteristics.¹

Women who are in prison suffer systemic discrimination in the exercise of their rights under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

CEDAW does not specifically refer to the situation of women deprived of their liberty. However, the Human Rights Committee has affirmed that: “Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.”² The same applies with regard to the rights set forth in CEDAW: women in prison enjoy the same rights not to be subjected to gender-based discrimination as other women.

The following obligations enunciated in CEDAW require particular attention in relation to imprisoned women:

- a) the obligation under **Article 2(d)** to ensure that public authorities and institutions refrain from discrimination against women, as concerns the use of **pre-trial detention**;
- b) the obligation under **Article 10** to ensure to women equal rights with men in the field of **education**, and the obligation under **Article 11** to eliminate discrimination against women in the field of **employment**;
- c) the obligation under **Article 12** to eliminate discrimination against women in the field of **health care**; including to ensure appropriate services in connection with pregnancy, confinement and the post-natal period, and adequate nutrition during pregnancy and lactation;
- d) the obligation under **Article 16** to eliminate discrimination against women in all **matters relating to marriage and family relations**, including to ensure the same rights and responsibilities during marriage, and the same rights and responsibilities as parents; and
- e) the obligation under **Articles 2 and 3** to eliminate **gender-based violence** (as detailed in the Committee on the Elimination of Discrimination Against Women’s General Recommendation 19³).

¹ Conclusions of a monitoring project in six facilities for women undertaken by the Center for Assistance to Criminal Justice Reform in 1999, reported in Alpern, L. *Women and the System of Criminal Justice in Russia: 2000-2002*, at <http://www.mhg.ru/english/1F4FF6D> (accessed 20 December 2004).

² Forty-fourth session, 1992: Article 10: Replaces general comment 9 concerning humane treatment of persons deprived of liberty, para 3, U.N. Doc. HRI/GEN/1/Rev.7 at 153 (2004).

³ Eleventh session, 1992: Article 19: Violence Against Women, A/47/38, U.N. Doc. HRI/GEN/1/Rev.7 at 246 (2004).

Recommendations to the Committee on the Elimination of Discrimination Against Women

Friends World Committee for Consultation (Quakers) urges the Committee on the Elimination of Discrimination Against Women to:

1. Consider how the Convention on the Elimination of All Forms of Discrimination Against Women applies to women in prison and pre-trial detention;
2. Request States parties to provide data and information on their policies and practice in relation to women in prison (paying particular attention to the situation of foreign women and, where applicable, indigenous women) including:
 - a) **Pre-trial detention:**
 - How decisions about pre-trial detention of women take account of women being (on average) poorer than men, women's roles as mothers and carers, and the best interests of any children;
 - b) **Education and employment:**
 - Whether women in prison (including mothers with babies or children in prison with them) have the same access to education, vocational training and employment opportunities as men in prison;
 - How programme design takes account of women prisoners' interests and needs;
 - Whether women in prison are paid the same wages as men in prison for the same or similar work;
 - c) **Health care:**
 - How the health of women in prison compares to that of women outside prison, and that of men in prison;
 - Healthcare facilities for women in prison, and how these compare to those of women outside prison, and men in prison; and in particular, mental and sexual health services for women in prison;
 - Sentencing and custodial policies concerning pregnant women;
 - Provisions for women who are incarcerated during pregnancy, childbirth, the post-natal period or lactation, and for their babies;
 - d) **Matters relating to marriage and family relations**
 - How sentencing decisions take account of women's roles as mothers and carers, and the best interests of any children;
 - Facilities and programmes to allow women prisoners to maintain family relationships, including as mothers, and access to conjugal visits;
 - Whether babies and/or young children reside in prison with their mothers, and if so, to what age, and with what provisions for their care and development?
 - What non-custodial sentencing strategies are in place for mothers;

e) Gender-based violence

- Data concerning violence against women in detention centres and prisons, and measures taken to investigate, prosecute and punish offenders;
 - Whether women prisoners are kept separately from male prisoners;
 - Whether women prisoners are interrogated and guarded only by women and, if not, what procedures are in place to protect women prisoners from abuse by male staff;
 - What training prison staff receive as regards the rights and needs of women prisoners;
3. Urge States parties to more vigorously explore alternatives to imprisonment for women, particularly mothers. These might include suspended sentences, community orders and probation;
4. Consider elaborating a General Comment or guidelines for States Parties to comply with their obligations under Articles 2 and 3 of CEDAW with regard to women in prison, which will:
- counter the increase in imprisonment of women through use of alternatives to imprisonment;
 - limit the use of pre-trial detention;
 - eradicate discrimination against women in prison in education and employment;
 - eradicate discrimination against women in prison in health care;
 - eradicate discrimination against women in prison in matters relating to marriage and family relations; and
 - eradicate gender-based violence against women in prison.

Introduction

The increasing numbers of women in prison

The human rights of women prisoners have been largely overlooked, on the assumption that women are a small minority of the prison population. Whilst women are globally only about 5% of the total prison population⁴, in at least ten states women comprise over 10% of prisoners.⁵ Furthermore, in many countries the rate of women's imprisonment is increasing *far faster* than the rate of men's imprisonment.⁶ The Committee on the Elimination of Discrimination Against Women (Committee) drew attention to this trend in its Concluding Observations regarding the most recent State report of the United Kingdom (UK), where it recommended that the Government "intensify its efforts to understand the causes for the apparent increase in women's criminality and to seek alternative sentencing and custodial strategies for minor infringements."⁷

The dramatic increase in female prison populations has led to increased concern regarding the rights of women prisoners. The United Nations General Assembly's *Plans of action for the implementation of the Vienna Declaration on Crime and Justice* concerning 'Action on the special needs of women in the criminal justice system' include the recommendation that States:

... endeavour, as appropriate, to support the following actions:

- (a) Reviewing, evaluating and, if necessary, modifying their legislation, policies, procedures and practices relating to criminal matters, in a manner consistent with their legal systems, in order to ensure that women are treated fairly by the criminal justice system;
- (b) Developing national and international crime prevention and criminal justice strategies that take into account the special needs of women as criminal justice practitioners, victims, witnesses, prisoners and offenders...⁸

The 2004 Commission on Human Rights' resolution on *Human rights in the administration of justice, in particular juvenile justice* highlighted "the need for special vigilance with regard to the specific situation of children, juveniles and women in the administration of justice, in particular while deprived of their liberty, and their vulnerability to various forms of violence, abuse, injustice and humiliation" and invited "Governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women and

⁴ International Centre for Prison Studies (2002) *A Human Rights Approach to Prison Management* p.133; Penal Reform International (2003) *Human Rights and Vulnerable Prisoners*, p. 65.

⁵ International Centre for Prison Studies, at <http://www.prisonstudies.org/> (accessed 6 December 2004).

⁶ For example, HEUNI *Report on the Sixth United Nations Survey on Crime Trends and Criminal Justice Systems*, analysing data from 32 mostly European States and Territories, showed an increase in number of convicted females in the prison population from 4.5 per 100,000 inhabitants in 1995, to 5.5 per 100,000 inhabitants in 1997. In Australia, New Zealand, the United States and England and Wales, the female prison population has, since 1995, increased faster than the male prison population (Australian Bureau of Statistics (2004) *Australian Social Trends*). In Australia, between 1984 and 2003, there was a 75% increase in the imprisonment rate per 100,000 male adults for men, whereas the equivalent rate for women soared by 209% (Australian Institute of Criminology, at <http://www.aic.gov.au/topics/women/stats/corrections.html>, accessed 29 December 2004).

⁷ United Kingdom of Great Britain and Northern Ireland, CEDAW, A/54/38/Rev.1 part II (1999) 71 at para. 313.

⁸ GA Resolution 56/261 of 31st January 2002, *Plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*, Annex, para 41.

girls in prison, including issues relating to the children of women in prison, with a view to identifying the key issues and ways in which they are addressed”.⁹

The Quaker United Nations Office, Geneva, and the Quaker Council for European Affairs, Brussels, have embarked upon research into women in prison. Through distributing questionnaires to each Member State of the United Nations, organisations that work with prisoners, and associations of ex-prisoners around the world, we are gaining a clearer understanding of the experiences and needs of women prisoners.

Equality of rights between men and women deprived of their liberty

In many countries, women in prison and other places of detention are victims of gender-based violence. The Committee has highlighted violence against women in prisons and detention centres in a number of its Concluding Observations.¹⁰

However, the Committee has not yet given detailed attention to other forms of discrimination against women in prison. Even in those countries where women’s prison conditions are not violent, prison programmes are almost invariably designed for the majority male prison population, and discrimination flows from a lack of women-orientated programming. Whilst problems such as overcrowding, poor hygiene and inadequate visitation facilities affect prisoners of either gender, there are many concerns which are specific to women prisoners, or which affect women prisoners in a harsher way. Women prisoners are, as compared to male prisoners, discriminated against in decisions made as to pre-trial detention, opportunities for education and employment, healthcare, and in the exercise of marital and parental rights.

Louise Arbour (now United Nations High Commissioner for Human Rights), on conducting an inquiry into Kingston Prison for Women in Canada, summarised many of the key problems in women’s imprisonment in many countries:

Women ... [serve] their sentences in harsher conditions than men because of their small numbers. They have suffered greater family dislocation than men, because there are so few options for the imprisonment of women. They have been over-classified or, in any event, they have been detained in a facility that does not correspond to their classification. For the same reasons, they have been offered fewer programs than men, particularly in the case of women detained under protective custody arrangements... They have had no significant vocational training opportunities... few opportunities for transfer, and very little access to a true minimum security institution.¹¹

The Human Rights Committee’s General Comment 28 gives guidance as to what non-discrimination against women requires for women in prison:

15. As regards articles 7 and 10, States parties must provide all information relevant to ensuring that the rights of persons deprived of their liberty are protected on equal terms for men and women. In particular, States parties should report on whether men and

⁹ [E/CN.4/2004/L.66](#)

¹⁰ For example: Peru, CEDAW, A/50/38 (1995) 79 at para. 445; Bangladesh, CEDAW, A/52/38/Rev.1 part II (1997) 117 at para. 443; India, CEDAW, A/55/38 part I (2000) 7 at para. 72; Egypt, CEDAW, A/56/38 part I (2001) 33 at para. 344; Russian Federation, CEDAW, A/57/38 part I (2002) 40 at paras. 391 and 392; Tunisia, CEDAW, A/57/38 part II (2002) 102 at para. 194.

¹¹ Arbour, L. (1996) *Commission of Inquiry into certain events at the Prison for Women in Kingston* (Public Works and Government Services Canada) p.180.

women are separated in prisons and whether women are guarded only by female guards. States parties should also report about compliance with the rule that accused juvenile females shall be separated from adults and on any difference in treatment between male and female persons deprived of liberty, such as, for example, access to rehabilitation and education programmes and to conjugal and family visits. Pregnant women who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times surrounding the birth and while caring for their newly-born children; States parties should report on facilities to ensure this and on medical and health care for such mothers and their babies.¹²

This information would seem to be equally appropriate for assessing the fulfilment of obligations under CEDAW.

Discrimination against women in the use of pre-trial detention (Article 2(d))

Whilst the International Covenant on Civil and Political Rights makes clear that detention of a person before their trial “shall not be the general rule”, in many countries it is. In Paraguay, for example, an estimated 92.7% of the total prison population is awaiting trial; in Turkey 51%; in Algeria 36.1%; in Croatia 32.4%; and in Italy 37%.¹³

Whilst policies regarding pre-trial detention may appear to be based on gender-neutral criteria, they are likely to impact disproportionately harshly upon women. As noted by the International Commission of Jurists, pre-trial detention “may have a significantly more severe effect on women because they are, on average, poorer than men. Indeed, women frequently have financial difficulties to secure bail, surety or release, have no access to legal advice and are unaware of the possibility of bail.”¹⁴

Issues for consideration:

Do decisions about pre-trial detention discriminate, directly or indirectly, against women? For example, do they:

- **disadvantage women because of their economic situation;**
- **take into account the personal circumstances of each woman, including whether she has children or other carer responsibilities; or**
- **require the consent of a husband or other male relative?**

Are decisions about pre-trial detention of women who are mothers made only after considering the best interest of their children?

¹² Sixty-eighth session, 2000: Article 3: Equality of Rights Between Men and Women, para. 15, U.N. Doc. HRI/GEN/1/Rev.7 at 180 (2004).

¹³ International Centre for Prison Studies, World Prison Brief, at http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/highest_to_lowest_rates.php (accessed 20 December 2004).

¹⁴ International Commission of Jurists (2004) *Human rights of women in conflict with the criminal justice system: submission to the Committee on the Elimination of Discrimination against Women*, p. 11.

Discrimination against women in prison in education (Article 10) and employment (Article 11)

Women's prisons, compared to men's prisons, tend to provide less access to educational or vocational training, counselling, and drug/alcohol dependency programmes, and less access to work programmes. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) has observed that female detainees are all too often "offered activities which have been stereotyped as "appropriate" for them (such as sewing or handicrafts), whilst male juveniles are offered training of a far more vocational nature."¹⁵

This reflects a more general trend whereby, because women prison populations are smaller, there is a lack of programmes designed or adapted specifically for women. The accelerated growth of the female prison population has led to a corresponding decrease in female prisoners' access to educational and other rehabilitative programmes.

For example, in Spain it has been reported that the "inferior facilities" for women prisoners make it "practically impossible for them to pursue occupational, educational or professional training".¹⁶ A Human Rights Watch report concerning United States (US) prisons detailed that:

Female prisoners sued the department alleging they were provided substantially inferior educational and vocational programming, compared with those provided to male prisoners, and were being paid lower wages for similar work... Women incarcerated in Illinois have historically been allocated fewer resources, educational services and been provided with vocational training for the low-paying jobs traditionally held by women. For example, college courses for women leading to a bachelor's degree were not offered until 1985, more than a decade after similar programs were instituted for men.¹⁷

For women prisoners in India: "In most jails there is no scheme for proper and appropriate vocational training and non elementary education for women prisoners. In some jails education means being taught the alphabet with little emphasis on its applicability."¹⁸

Where women have their children in prison with them, a lack of childcare facilities may exclude the women from participation in educational and work programmes. In Styal Prison, in the UK, women in the mother-baby unit "could not attend education because they could not take their babies to the classes and there were no crèche facilities to leave the children".¹⁹

¹⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT Standards, CPT/Inf/E (2002) 1, Rev. 2004, p. 65.

¹⁶ Cruz Blanco, "Las cárceles se llenan de mujeres" in *El País.es* (21 October, 2001), quoted in Quaker United Nations Office (2004) *Women in Prison and Children of Imprisoned Mothers: A Preliminary Research Paper*, p. 10.

¹⁷ Human Rights Watch (1996) *All Too Familiar: Sexual Abuse of Women in US State Prisons*, p. 271.

¹⁸ Shankardass, R, Roy, H and Seshadri, V (2000) *Workshop on new models of accessible justice: The India experience (Special focus on Women and Juveniles)* (Penal Reform and Justice Association and Penal Reform International), p. 5.

¹⁹ Prison Services Working Group (1999) *Report of a Review of Principles, Policies and Procedures for Mothers and Babies/Children in Prison*, p. 74.

Issues for consideration

- **Do women in prison have the same access to education, vocational training and employment opportunities as men in prison?**
- **Are education, vocational training and employment programmes for women prisoners matched to their interests and needs, rather than being based on stereotypical ideas of what those interests and needs are or should be?**
- **Are women in prison paid the same wages as men in prison for the same or similar work?**
- **Are programmes and child-care facilities designed to ensure that women with children are not excluded from education, vocational training and employment programmes?**

Discrimination against women in prison in health care (Article 12)

Standards of medical care within prisons vary greatly, both from country to country and from prison to prison, but are often inadequate. In many countries, no thought is given to women's particular health needs. For example, in Russia, "legislators have provided for no requisite hygienic materials to be issued to female inmates", so women are not issued any materials for menstruation.²⁰

Women prisoners suffer poor physical and mental health, often at rates and with a severity far exceeding those of male prisoners or of women in the general population. For example, recent Australian research examining the health of incarcerated parents in the state of New South Wales found that the main health problems facing incarcerated mothers are Hepatitis C (68% of all mothers in prison are infected), and mental illness (81% of mothers) including drug and alcohol use disorders (62% of mothers). On top of this, 29% of mothers had previously attempted suicide and 19% had self-harmed. The comparable rates for fathers in prison were lower than those for mothers: 42% were Hepatitis C positive, 60% suffered from mental illness, and 23% had in the past attempted suicide.²¹

Mental health

These Australian statistics are consistent with research in other countries indicating that women prisoners suffer mental health problems to a much higher degree than male prisoners. Research in UK prisons concluded that:

... 7 per cent of male sentenced and 10 per cent of female sentenced prisoners had harmed themselves during their present prison term while 34 per cent of sentenced women compared to 20 per cent of men had entertained suicidal thoughts within the last year.

A large proportion of all prisoners were found to have several mental disorders but the

²⁰ Alpern, L. *Women and the System of Criminal Justice in Russia: 2000-2002*, at <http://www.mhg.ru/english/1F4FF6D> (accessed 20 December 2004).

²¹ NSW Corrections Health Service; Inmate Health Survey Report; 2003, quoted in correspondence from Dr. Simon Quilty (MB BS, MPhilPH) to the Quaker United Nations Office, Geneva, on behalf of Defence for Children International, Australia, 15 December 2004.

prevalence of functional psychosis, such as schizophrenia and manic depression, and neurotic symptoms and disorders was notably higher for female than male prisoners.²²

The reasons for this are no doubt complex, and may be related to the higher proportion of women imprisoned for drug-related crime. It is also likely that women's roles as carers exacerbate the mental trauma of imprisonment. A former prisoner in Britain testifies:

I believe women are in far more danger of becoming mentally ill during their incarceration: especially those that are family carers and have close family ties. The prison system is not prepared properly for this, for the complexity of women and their issues that do affect them deeply, mentally rather than physically.²³

Similarly, the Revolving Doors Agency, a UK charity concerned with mental health and the criminal justice system, has stated that: "Mental health can be further damaged by women's anxiety over the safety of their children. Forty-two women in [British women's prison] Holloway had no idea who was looking after their children. Nineteen children under 16 were looking after themselves."²⁴ British research concludes that:

...women prisoners pose little security risk to others but are far more likely to self-harm. They therefore suffer from the inevitable drain on resources to meet security needs which are the priority. Yet for female prisoners these resources would be much better spent on rehabilitative or therapeutic support which would address the risks of re-offending.²⁵

Drug problems

Women are also, it seems, more likely than men to enter prison with drug problems. UK research testifies that:

A larger proportion of women than men were dependent on opiates (i.e. heroin and non-prescribed methadone). Opiate dependence in the year before coming to prison, either alone or together with dependence on stimulants, was reported by 41% of the women in the remand group and 23% of those in the sentenced group compared with 26% of the male remand and 18% of the male sentenced group.²⁶

Given the high levels of drug and alcohol addiction found amongst women prisoners, there is a clear need for in-prison rehabilitative programmes, but in many cases these are absent.

HIV/AIDS and other sexually transmitted diseases

Women in prison are at particular risk of HIV infection, in part due to their vulnerability to sexual violence, and of receiving inadequate treatment if infected or if suffering from AIDS.

²² Wedderburn, D. (2000) The Report of the Committee on Women's Imprisonment: *Justice for Women: The Need for Reform* (Prison Reform Trust) p. 11.

²³ Rickford, D. (2003) *Troubled Inside: Responding to the mental health needs of women in prison* (Prison Reform Trust) p. 1.

²⁴ Revolving Doors Agency (2002) *Bad Girls? Women, mental health and crime*, cited in Rickford, D. (2003) *Troubled Inside: Responding to the mental health needs of women in prison* (Prison Reform Trust) p. 8.

²⁵ Fawcett Society Commission on Women and the Criminal Justice System (2003) *Interim Report on Women and Offending*, p. 10.

²⁶ *Statistics on Women and the Criminal Justice System*. A Home Office publication under Section 95 of the Criminal Justice Act 1991 (2002) p. 36.

Research in women's prisons in Brazil has found that HIV/AIDS strikes a higher percentage of incarcerated women than men. Twenty percent of the women prisoners tested for the AIDS virus at the Women's Penitentiary in São Paulo were found to be HIV positive.²⁷ It is estimated that in Russia "between one third and one half of women arrive at institutions of confinement infected with venereal diseases, syphilis in particular."²⁸

Pregnancy, childbirth, the post-natal period and lactation

Article 12 requires States to ensure "appropriate services in connection with pregnancy, confinement and the post-natal period, and adequate nutrition during pregnancy and lactation". Rule 23 of the UN *Standard Minimum Rules for the Treatment of Prisoners*²⁹ prescribes that "[i]n women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment". However, these types of services for women prisoners are often inadequate.

Women who are pregnant or breastfeeding in prison obviously have particular health and nutrition needs. US estimates are that the percentage of pregnant women in prisons ranges from 4 to 9 percent,³⁰ but one would expect the figure to be much higher in countries with higher birth rates. Pregnant women in some cases are held separately from the rest of the prison population, which may lead to them suffering from isolation and lack of access to facilities. Where pregnant women are integrated with the rest of the prison population, they may be at greater risk of disease, violence, or of having their needs overlooked.

A specialist on pregnancy in prison has noted that:

...pregnancy during incarceration must be understood as a high-risk situation, both medically and psychologically, for inmate mothers and their children.... deficiencies in the correctional response to the needs of pregnant inmates include lack of prenatal and postnatal care, including nutrition, inadequate education regarding childbirth and parenting, and inadequate preparation for the mother's separation from the infant after delivery.³¹

A prison worker in Brazil reports that infrequent blood tests for pregnant women lead to the possibility of passing on HIV through breast-feeding, there is no pre-natal care for pregnant women in pre-trial detention and inadequate care in prisons, and no clear policy on post-natal care.³² A similar lack of healthcare provision was reported by a former prisoner in Jamaica: "Pregnant prisoners don't get regular scans, they would only allow you a scan if there was a problem. We were also denied any sort of vitamin supplement".³³

²⁷ Human Rights Watch (1998) *Behind Bars in Brazil*, p. 2.

²⁸ Alpern, L. *Women and the System of Criminal Justice in Russia: 2000-2002*, at <http://www.mhg.ru/english/1F4FF6D> (accessed 20 December 2004).

²⁹ 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.

³⁰ Owen, B: "Understanding Women in Prison" in Ross, Jeffrey and Richards, Stephen (eds) (2003) *Conflict Criminology* (Thomson Wadsworth), pp. 231-246, p. 240.

³¹ Acoca (1998), quoted in Owen, B: "Understanding Women in Prison" in Ross, Jeffrey and Richards, Stephen (eds) (2003) *Conflict Criminology* (Thomson Wadsworth), pp. 231-246, p. 240.

³² Howard, C: *Main issues facing Brazil's women prisoners* (unpublished, 2003).

³³ *Prisoners Abroad News*, Vol 12. Issue 1, Winter 2001, p. 3.

Adequate medical attention during birth is clearly essential for mother and child. Depending upon the country and the prisoner, women may give birth either in prison or at a public hospital (discussed further below under *External provision of health care services*).

In some countries, women prisoners are shackled during childbirth. A woman prisoner in the US reported that “when she went into labor, she was placed in leg irons and belly chains to go to the hospital. Once at the hospital, the doctor told her to walk to assist her labour. She was required to do so by the guards while still in leg irons.”³⁴ A similar case was reported in the UK in 1996, regarding a pregnant prisoner who was chained and handcuffed at times during her twelve-hour labour.³⁵ The Human Rights Committee’s General Comment 28 recommended that “[p]regnant women who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times, and in particular during the birth and while caring for their newborn children.”³⁶ The ECPT has stated that: “pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations and/or delivery... is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment.”³⁷

External provision of health care services

Health care facilities may be within the prison or may be provided externally. Although external facilities may be better, being taken to public health facilities often presents particular problems for women. Shortages of appropriate female staff may mean that women are not taken for medical care when it is required, or that male prison staff accompany female prisoners and are present during examination and treatment. This compromises standards of doctor-patient confidentiality, and may compromise the woman’s treatment. Human Rights Watch research in the US documents that in one instance a prisoner:

...filed a grievance over the lack of privacy during gynecological exams, stating that she felt uncomfortable discussing her medical condition or undressing in front of the male officer. She asked the officer if he would step outside while she was examined, but he refused. [The woman] pursued the grievance until it was reviewed by the warden, who told her that it was prison policy for the officer to keep the prisoner in his sight, and that the prisoner could have refused the outside medical visit. In other words, the prisoner was expected to choose between foregoing medical treatment or undressing in front of a male officer.³⁸

Issues for consideration

Regarding health care generally

- **Do women in prison have as high a standard of health care as women and men outside prison? Is particular attention paid to mental health services and prevention of and treatment for sexually transmitted diseases?**
- **Do women in prison have access to:**
 - **drug and alcohol rehabilitation programmes;**

³⁴ Human Rights Watch (1996) *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* p. 286.

³⁵ Human Rights Watch (1996) *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* p. 286.

³⁶ Sixty-eighth session, 2000: Article 3: Equality of Rights Between Men and Women, para. 15, U.N. Doc. HRI/GEN/1/Rev.7 at 180 (2004).

³⁷ CPT Standards, CPT/Inf/E (2002) 1, Rev. 2004, p. 71.

³⁸ Human Rights Watch (1996) *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* p. 286.

- psychiatric services;
- gynaecological and other women's health services;
- facilities appropriate to female hygienic needs, including materials for menstruation;
- proper care during menopause?
- Are women prisoners able to consult a doctor and be examined without male staff being present?

Regarding pregnancy, childbirth, the post-natal period and lactation

- What consideration is given to non-custodial alternatives for women who are pregnant at the time of arrest, trial or sentencing, in particular for non-violent offenders?
- If a woman in prison becomes pregnant, is her sentence reviewed and non-custodial alternatives considered, taking into account the best interest of the child?
- Where legislation provides for prison sentences to be deferred until after pregnancy, is the sentence reviewed before being executed, in order to take into account the best interest of the child?
- If a woman is incarcerated during pregnancy, childbirth, the post-natal period or lactation, how is provision ensured for her proper care and nutrition, and appropriate accommodation (with or separate from other prisoners)?
- Are measures of physical restraint, such as handcuffs, shackles and straightjackets, used on women who are receiving gynaecological care, pregnant or in labour?

Discrimination against women in prison in matters relating to marriage and family relations (Article 16)

The right to maintain family relationships

Article 16 requires that States parties ensure that men and women have the same rights and responsibilities as parents in matters relating to their children. Where a parent is imprisoned, this requires that male prisoners and female prisoners have the same rights to maintain contact with and maintain a relationship with their children. The reality, however, is that women prisoners suffer greater family dislocation than men.

Women imprisoned far from home

In some countries, such as Poland, legislation specifies that a woman has the right to serve their sentence close to their home. In general, however, because there are far fewer women's prisons, women are imprisoned further away from their homes and families than are male prisoners. This makes visiting more difficult, aggravating the damage to family ties caused by imprisonment.

Statistics from the US show that "more than 60 percent of all women are incarcerated more than one hundred miles from their child's place of residence."³⁹ In the UK, "the geographical dispersion of the women's estate and the increase in the number of women in prison no doubt account for the finding ... that only half the women who had lived

³⁹ Human Rights Watch (1996) *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* p. 22.

with their children or been in contact with them before imprisonment had seen them since coming into prison”.⁴⁰ The negative effects of such geographical isolation have been recognised by a Canadian court: in considering living conditions in the federal penitentiary for women in 1991, the court found that incarcerating the defendant there would constitute cruel and unusual punishment because of its geographical distance from her home.⁴¹

The geographical isolation of women’s prisons causes particular problems for indigenous women. Researchers in Canada stressed that, “The dislocation and isolation of imprisonment is worsened by the difficulties encountered by relatives who have to travel from distant, often remote communities, to visit.”⁴²

Maintaining contact with children is also particularly difficult for women imprisoned outside their own country. UK data records that only 11% of foreign national women in prison had received a visit from their children, compared to 60% of the British prisoners.⁴³

Women’s particular carer relationships

Women prisoners are more likely than men prisoners to have been the sole or primary carer for young children and other family members prior to imprisonment. For example:

- in Brazil’s largest women’s prison, 87% of women prisoners are mothers;⁴⁴
- in the US, 80% of women prisoners are mothers, with three-quarters having children under 18 years of age;⁴⁵
- in Russia, 80% of convicted women are mothers;⁴⁶
- in the UK, 66% of women prisoners are mothers, 55% have at least one child under 16, and 34% were single parents before going into prison.⁴⁷

Imprisoned mothers often experience a high degree of emotional trauma as a consequence of concern for their children, exhibiting “anger, anxiety, sadness, depression, shame, guilt, decreased self-esteem and a sense of loss”.⁴⁸

When fathers are imprisoned, typically the mother cares (or continues to care) for the children. In contrast, when a mother is imprisoned, there is a much higher likelihood of family break-up. Human Rights Watch data examining children of incarcerated drug offenders in New York, for example, showed that:

⁴⁰ Wedderburn, D. (2000) *The Report of the Committee on Women’s Imprisonment: Justice for Women: The Need for Reform* (Prison Reform Trust) p. 11, citing Caddle and Crisp (1997).

⁴¹ *R. v. Daniels*, [1990] 4 C.N.L.R. 51 (Sask.Q.B.), referred to in Arbour, L. (1996) *Commission of Inquiry into certain events at the Prison for Women in Kingston* (Public Works and Government Services Canada) p. 216.

⁴² Arbour, L. (1996) *Commission of Inquiry into certain events at the Prison for Women in Kingston* (Public Works and Government Services Canada) p. 198.

⁴³ Caddle, D and Crisp, D (1997) *Mothers in Prison*, Home Office Research, Development and Statistics Directorate, Research Findings No.38, p. 3.

⁴⁴ Estimate of local prisoners’ rights NGO’s quoted in Howard, C: *Main issues facing Brazil’s women prisoners* (unpublished, 2003).

⁴⁵ Owen, B: “Understanding Women in Prison” in Ross, Jeffrey and Richards, Stephen (eds) (2003) *Conflict Criminology* (Thomson Wadsworth), pp. 231-246, p. 244.

⁴⁶ Alpern, L *Women and the System of Criminal Justice in Russia: 2000-2002*, at <http://www.mhg.ru/english/1F4FF6D> (accessed 20 December 2004).

⁴⁷ *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.

⁴⁸ Stanley, E and Byrne, S: *Mothers in Prison: Coping with Separation from Children*, paper presented at the Women in Corrections: Staff and Clients Conference, Adelaide, 31 October – 1 November 2000, p. 3.

- 88.8% of children of imprisoned fathers lived with their mother or stepparent;
- 0.7% of children of imprisoned fathers went into state care;
- 20.4% of children of imprisoned mothers lived with their father or stepparent;
- 18.1% of children of imprisoned mothers went into a foster home or state agency.⁴⁹

This means that when women are imprisoned, it is more difficult for their right as a parent to maintain contact with their children (and the child's right to maintain a relationship with their mother) to be realised. Sentencing policies and practices, and programmes and facilities for family visits, need to take account of these differences.

This dislocation of carer relationships not only causes substantial distress for the woman prisoner and her children whilst she is in prison, but makes her reintegration into society after prison more difficult. Prisoners who maintain family ties while in prison display fewer disciplinary problems and have better physical and mental health while in prison, are more likely to reintegrate successfully into the community upon release, and are less likely to re-offend.⁵⁰

Furthermore, when a mother leaves prison, her ability to re-establish family relationships may be aggravated by practical difficulties, such as obtaining suitable housing. One UK study found that “half the mothers nearing release were not expecting to return to their previous accommodation, almost four out of 10 had lost their homes and there was an increase in the number expecting to be homeless”.⁵¹ Lack of housing may prevent a woman re-gaining custody of her children. These problems would be less prevalent in male prisoner populations, where the mother of their children is more likely to have continued to care for the family together during their incarceration. Research in the UK showed that only 5% of children of imprisoned mothers were able to remain in their own home during their mother's prison sentence.⁵² 10% of mothers interviewed who had lived with their children before being in prison did not expect to do so after release.⁵³

In some countries, babies and/or young children may reside in prison with their mothers. This requires special provisions to ensure that the child's rights (including those enunciated in the Convention on the Rights of the Child) are promoted and protected whilst they are living in prison, and through any separation from their mother that may follow. Programmes should also be in place to promote and protect the rights of those children of women in prison who do not reside in prison with their mothers.

We would highlight, in this regard, the findings of the Special Rapporteur on Prisons and Conditions of Detention in Africa:

⁴⁹ Human Rights Watch (2002) *Collateral Casualties: Children of incarcerated drug offenders in New York*, p. 6.

⁵⁰ Harrison (1997) cited in Stanley, E and Byrne, S: *Mothers in Prison: Coping with Separation from Children*, paper presented at the Women in Corrections: Staff and Clients Conference, Adelaide, 31 October – 1 November 2000, p. 3.

⁵¹ Wedderburn, D. (2000) *The Report of the Committee on Women's Imprisonment: Justice for Women: The Need for Reform* (Prison Reform Trust) p. 9.

⁵² Gampell, L (2003) *Submission in response to the Green Paper Consultation 'Every Child Matters'* (Action for Prisoners' Families) p. 4.

⁵³ Caddle, D and Crisp, D (1997) *Mothers in Prison*, Home Office Research, Development and Statistics Directorate, Research Findings No.38, p. 4.

Prison is not a safe place for pregnant women, babies and young children and it is not advisable to separate babies and young children from their mothers. However, it is possible to find solutions so that these women are not imprisoned: use of bail for remand prisoners, non-custodial sentences or conditional/early release, parole, probation, suspended sentences for convicted prisoners.”⁵⁴

Conjugal visits

The Article 16 requirement that men and women have the same rights and responsibilities during marriage would require that male and female prisoners have the same rights to conjugal visits. However, women prisoners generally face more restrictions on conjugal visits than male prisoners.

Evidence from Venezuela and Brazil shows that whilst male prisoners enjoy fairly ready access to conjugal visits, women do not. For a female prisoner to be allowed such a visit (in the few facilities which allow them at all) they must comply with numerous requirements (such as having an excellent conduct record), both partners must submit to various medical and psychological tests, and the man must be the prisoner’s husband or long-term ‘stable’ partner. These conditions are not required for male prisoners to receive visits. Human Rights Watch research in Brazil found that, in effect, very few women are allowed conjugal visits: “At the Porto Alegre women’s prison, only nine of 146 women inmates were allowed such visits; at the João Pessoa prison, only five of sixty-five inmates were allowed.”⁵⁵

Issues for consideration

- **Are sentencing decisions concerning women made only after consideration of the effect that imprisonment of a woman will have on her children? Are non-custodial sentencing options prioritised in relation to mothers?**
- **Where a woman is incarcerated, are facilities and programmes designed to maximise the woman’s right to maintain family relationships, and after consideration of the best interest of her children?**
- **Are there facilities for prison visits and periods outside of prison to facilitate contact between a woman prisoner and her children and other family members? For example, are there physical barriers during visits; is touching permitted; and are there facilities for children to play with their mother?**
- **Do babies and/or young children reside in prison with their mothers, and if so, to what age, and with what provisions for their care and development?**
- **Do women prisoners have the same access to conjugal visits as men prisoners?**

⁵⁴ Chirwa, V(b): *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa: Prisons in Malawi 17-28 June 2001* p 36.

⁵⁵ Human Rights Watch (1998) *Behind Bars in Brazil*.

Gender-based violence against women in prison (Articles 2 and 3)

Women in prisons all around the world are at risk of rape, sexual assault and torture. In some countries, gender-based violence is endemic in places of detention. Women who report such violence may suffer further violence in retaliation.

Sexual violence against women in prisons has received attention in the past from the Committee and from other human rights treaty bodies:

The CEDAW Committee, in its Observations to Turkey, ‘noted with the gravest concern the practice of forced gynaecological examinations of women in the investigation of allegations of sexual assault, including of women prisoners while in custody... The Committee emphasized that such coercive practices were degrading, discriminatory and unsafe and constituted a violation by state authorities of the bodily integrity, person and dignity of women’. The Human Rights Committee has expressed serious concern under Article 7 of the Covenant (which prohibits torture and cruel, inhuman and degrading treatment or punishment) concerning allegations of rape and torture of detained women and asked that the perpetrators be brought to justice... Similarly, the Committee against torture has expressed concern regarding ill-treatment of women in prisons. The Special Rapporteur on violence against women also notes the many reports on ill-treatment of women in prisons.⁵⁶

Mixed-sex facilities

Rule 8 of the *Standard Minimum Rules for the Treatment of Prisoners* requires that men and women be detained separately. However, as a result of the lack of facilities for women’s detention, women and girls are in some countries imprisoned in mixed-sex facilities. This places women at an unacceptable risk of violent and/or sexual assault by male prisoners.

Male staff

Rule 53 of the *Standard Minimum Rules for the Treatment of Prisoners* requires that women prisoners be attended and supervised only by women officers, and no male staff enter women’s facilities unless accompanied by a woman officer. The importance of this rule has been reaffirmed by the Human Rights Committee (in General Comment 28, extracted above), the Special Rapporteur on violence against women,⁵⁷ and the African Commission on Human and Peoples’ Rights.⁵⁸

In contrast, the ECPT’s Standards suggest that “The presence of both male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention”, with the proviso that “persons deprived of their liberty should only be searched by staff of the same gender and that any search

⁵⁶ International Commission of Jurists (2004) *Human rights of women in conflict with the criminal justice system: submission to the Committee on the Elimination of Discrimination against Women*, p. 31 (references omitted).

⁵⁷ Report of the Special Rapporteur on violence against women on the mission to Haiti, E/CN.4/2000/68/Add.3, 27 January 2000, para 84; 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, 4 January 1999, paras 57, 58; Report of the Special Rapporteur on violence against women on International, regional and national developments in the area of violence against women (1994-2003), Addendum 1, E/CN.4/2003/75/Add.1, 27 February 2003, 1656 (Greece).

⁵⁸ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, DOC/OS(XXX)247, para M (c).

which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender.”⁵⁹

Issues for consideration

- Has the State party provided data concerning violence against women in detention centres and prisons, and measures taken to investigate, prosecute and punish offenders?
- In order to provide basic protection for women in prison from gender-based violence, are women prisoners kept separately from male prisoners?
- Are women prisoners only interrogated and guarded by women?
- Are procedures in place to protect women prisoners who have contact with male prison staff, including that a female prison officer always be present?
- Are women ever forced or required to undress in front of or be searched by male prison staff?
- Are procedures in place to allow women to report harassment or violence without fear of retaliation?
- Are complaints of harassment or violence promptly and fully investigated and, where substantiated, prosecuted and punished?
- Are all prison staff provided with adequate training and guidance in the rights and needs of women prisoners, appropriate behaviour, and the consequences of violations?

⁵⁹ CPT Standards, CPT/Inf/E (2002) 1, Rev. 2004, p. 64.