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RIGHTS OF THE CHILD

**Written statement* submitted by Friends World Committee for Consultation
(Quakers) (FWCC), a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2006]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

Children of Imprisoned Mothers

Most women in prison are mothers.¹ 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.*²

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.³ Our work in this area has focused on the impact of maternal imprisonment as part of a broader project on women in prison.⁴ However, it should be noted that many of the same issues and problems arise for children of imprisoned fathers.

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

Friends World Committee for Consultation (Quakers) welcomes the recommendation of the Committee on the Rights of the Child arising from its Day of General Discussion on "Children Without Parental Care" calling for an expert meeting to produce Guidelines on Children Without Parental Care. We look forward to the adoption of these guidelines in the belief that they could provide a useful tool in ensuring that the best interests of the child are considered in remand and sentencing decisions that could deprive them 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:

¹ 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 Howard, C: *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: Owen, B: "Understanding women in prison" in Ross, Jeffrey and Richards, Stephen (eds): *Convict Criminology* (Thomson Wordsworth, 2003) pp231-246, p244; 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), pp35 & 37.

² Chirwa, V: Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa: Prisons in Malawi (17-28 June 2001), p 36.

³ For a more detailed introduction to the issues please see our statement to the 61st Session of the Commission on Human Rights, E/CN.4/2005/NGO/18.

⁴ The Quaker United Nations Office, Geneva, jointly with the Quaker Council for European Affairs, Quaker Peace and Social Witness and the Friends World Committee for Consultation Representation to the UN Commission on Crime Prevention and Criminal Justice in Vienna, is undertaking a project on women in prison and children of imprisoned mothers. The aims are to gain a clearer understanding of the particular problems faced by women prisoners and children of imprisoned mothers and how these can be better addressed. Key issues of concern are raised in our written statement to the 61st Session of the UN Commission on Human Rights, E/CN.4/2005/NGO/17.

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.⁵

Children living in prisons with their mother⁶

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.

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.⁷

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.⁸

Friends World Committee for Consultation (Quakers) also welcomes the strengthening of the provisions on children living in prison with a parent in the revised European Prison Rules adopted this year.⁹ The Rules have been rearranged, placing these provisions in a separate section, thus drawing attention to the issue. The language has also been changed to gender-neutral terminology, a significant development given that there are States that allow children to reside in prison with their father.

The rules make reference to the "best interests" of the child or children in question, making it clear that the rights of any such children are paramount. The term "infants" used in the Rules should not be interpreted to suggest an age limit past which the best interests of the child are not a primary consideration in deciding whether they should reside in prison or outside.

There is ample scope for improvement in the Rules and for the adoption of domestic

⁵ 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.

⁶ For a fuller exploration of the issues that need to be considered when drafting legislation on children living in prison with their parents please see: *Babies and Small Children Residing in Prisons*, Marlene Alejos (Quaker United Nations Office, 2005).

⁷ Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations: Nepal, CRC/C/15/Add.261, paragraph 52.

⁸ 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.

⁹ European Prison Rules, Rec(2006)2E of the Committee of Ministers of the Council of Europe, adopted on 11 January 2006.

measures that go beyond the limited provision of the Rules in this area. For further examination of the limitations of the European Prison Rules see *Gender Critique of the European Prison Rules 2006* by the Quaker Council for European Affairs, available from www.quaker.org/qcea/prison

Children deprived of parental care through parental imprisonment

A study in the UK 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.¹⁰ 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.¹¹

Women prisoners are more likely than their male counterparts to be held in higher security conditions than justified by their risk level. This can make contact between women prisoners and their children even more difficult. The revised European Prison Rules, noted above, reinforce the importance of family contact and contain a prohibition on the punitive denial of family contact, thus recognising that such action impacts on the realisation of the rights of any children the prisoner may have.¹²

Because there are fewer women's prisons many women are detained a long distance from home. The time and money involved in travelling long distances to visit a parent in prison can act as a deterrent. The European Prison Rules state that prisoners should be accommodated in prisons as close to their home as possible.¹³ However, women prisoners can be transferred for a number of reasons, including to relieve over-crowding. The best interests of the child should be one of the criteria used to decide which women prisoners should be transferred and to which prisons they are transferred.

Friends World Committee for Consultation (Quakers) calls on the Commission on Human Rights to:

1. Request its country and thematic Special Procedures to give attention to the

¹⁰ Murray J and Farrington DP, *Journal of Child Psychology and Psychiatry* 2005; 46, 12: 1269-1278

¹¹ 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.

¹² European Prison Rules, Rule 60.4

¹³ European Prison Rules, Rule 17.1

situation, rights and needs of children who live in prison with their parents or who are separated from their parents through parental detention;

2. Urge States to implement the Concluding Observations and General Recommendations of the Human Rights Treaty Bodies, including by:

- 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;

3. Request the Office of the High Commissioner for Human Rights to give consideration to the rights of children of imprisoned parents in their technical assistance work with States and follow-up to the Concluding Observations and Recommendations of the Human Rights Treaty Bodies and Special Procedures;

4. Urge Member States of the Council of Europe to implement the revised European Prison Rules as a matter of urgency;

5. Encourage Governments, the Office of the High Commissioner for Human Rights, other UN agencies, including UNICEF, the Special Procedures of the Commission on Human Rights and the Human Rights Treaty Bodies to take note of the provisions of the European Prison Rules governing children living in prison with their parents and the maintenance of family contact between prisoners and family members living outside the prison, whilst considering ways to develop them further.

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