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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**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.

[19 February 2007]

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

Pre-trial detention

Friends World Committee for Consultation (Quakers) welcomes the attention given to the issue of the overuse of pre-trial detention ('remand in custody' as it is called in some jurisdictions) by the UN Working Group on Arbitrary Detention and other Special Procedures of the Human Rights Council, as well as by the Human Rights Treaty Bodies.

As part of on-going work on women in prison and children of imprisoned mothers, the Quaker UN Office, Geneva, has recently published a study on *Pre-Trial Detention of Women and its Impact on Their Children* (available in English, French and Spanish), which looks at the general overuse of pre-trial detention, and its excessive length, as well as the gender-specific aspects of the problem.

Under international standards,¹ detention pending trial is a measure of last resort and is only permitted if the following conditions are met:

- the person concerned is reasonably suspected of having committed an offence; and
- there is legal provision for such pre-trial detention; and
- there is a risk of the suspect either:
 - (a) absconding (failing to appear for trial), or
 - (b) interfering with witnesses, evidence or other trial processes, or
 - (c) committing further offences; and
- there is no alternative way the risk can be addressed other than detention.²

Furthermore, the standards specify that pre-trial detention should not be used in the case of alleged offences which would not themselves carry a custodial sentence.

However, in too many countries too many people, including women, are held in pre-trial detention for too long. The overuse of pre-trial detention is part of the global phenomenon of over-incarceration, is not limited to any one country or region, and has specific aspects and issues which need consideration.

Over-use of pre-trial detention falls into two categories:

- Too frequent recourse to such detention
- Detention for too long a period of time

The main reason is the failure to provide or use alternatives to custody which can be used individually or in combination in order to address the specific risks identified in the individual case. Such alternatives should include:

¹ International Covenant on Civil and Political Rights, Article 9 (3); Human Rights Committee General Comment 8, and subsequent case law and concluding observations; UN Standard Minimum Rules for Non-custodial Measures (The Tokyo rules), adopted by UN General Assembly Resolution 45/110, 14 December 1990, rule 6.1; UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing rules), adopted by UN General Assembly resolution 40/33 of 29 November 1985, Rule 13.1; and Convention on the Rights of the Child, Article 37(b); Committee on the Rights of the Child General Comment 10

² Recommendation Rec(2006)13 of the Committee of Ministers of the Council to Europe to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse (adopted 27 September 2006,) para. 7

Undertakings, such as to appear before a judicial authority as and when required, not to interfere with the course of justice, or not to engage in particular conduct (including that involved in a profession or particular employment);

Reporting requirements, for example on a daily or periodic basis to a judicial authority, the police or other authority;

Supervision by an agency appointed by the judicial authority; or **electronic monitoring**;

Residence at a specified address, with or without conditions as to the hours to be spent there;

Restrictions on leaving or entering specified places or districts without authorisation; on meeting specified persons without authorisation;

Surrendering documents such as passports or other identification papers; and

Providing or securing **financial or other guarantees** as to conduct pending trial.

However, none of the requirements placed on women should put them in danger, such as requiring residence at an address where the woman has been subjected to abuse.

Where alternatives do exist, they may not be used because the judicial authorities do not know about them, because they do not have confidence in their effectiveness, or because they are not permitted to use them (for example, certain offences may require mandatory pre-trial detention). In other circumstances, it may be that there are not sufficient alternatives, such as insufficient places in bail hostels, or that the distribution does not cover all areas of the country.

When considering individual decisions, the specific circumstances of the individual accused person should be considered in relation to the specific risk identified. Often, the ability to provide a financial guarantee, or whether the person has secure employment or secure accommodation, are factors in considering whether the individual is likely to abscond before trial. However, these are areas in which women may be at a disadvantage since most female offenders are in low-income groups, are less likely to have secure full-time employment, to own or rent accommodation in their own name, and to be able to provide financial sureties. These may be factors in the disproportionate pre-trial detention of women and girls.

Since most female offenders are the sole or main carer of minor children, this is a factor which should be taken into consideration in decisions about detention pending trial. Caring responsibilities may be evidence of being less likely to abscond. At the same time, the negative impact on children of their mother being detained should be taken into account and be an added incentive to use non-custodial alternatives to pre-trial detention. Not only is there the question of physical separation, but also the emotional impact, the likelihood that rented accommodation and/or employment will be lost, and that children will be taken into care. The cumulative effect may lead to permanent separation even if the mother is

then acquitted. Furthermore, worrying about their children is one of the factors that leads to the high incidence of mental health problems and self-harm amongst female detainees.

In addition to over-use, the actual conditions and regime under which pre-trial detainees are held raise concerns. Although they have not been found guilty of any offence, their conditions of detention are often more restrictive than those of convicted prisoners. This affects both male and female pre-trial detainees but certain aspects, such as limitations on visiting and family contact, may have a disproportionate impact on female detainees who have caring responsibilities. In addition, access to mental health, drug and substance abuse programmes, as well as education or work programmes, tends to be much more limited for pre-trial detainees.

Finally, the excessive duration of pre-trial detention, often lasting years, sometimes longer than the maximum custodial sentence for the alleged offence, requires urgent attention, including requirements to regularly review the continued need for detention in individual cases, impose maximum time limits for pre-trial detention, and review judicial processes in order to speed up trials.

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

1. remind States that pre-trial detention is a last resort;
2. encourage the development of alternatives to custody pending trial; and
3. take account of the particular circumstances of female accused, including their caring responsibilities for children, in weighing reasons for possible pre-trial detention against non-custodial measures.
