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**ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY**

**Written statement\* submitted by the Friends World Committee for Consultation  
(Quakers), 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.

[1 July 2005]

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

## Women in Prison and Children of Imprisoned Mothers

Friends World Committee for Consultation (Quakers) regrets the fact that, contrary to Sub-Commission decision 2004/116, no working paper on the above subject has been provided to the Sub-Commission (E/CN.4/Sub.2/2005/12).

### 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. Women are frequently under harsher security regimes than their male equivalents because there are fewer female prisoners and so 'not enough' to make up the appropriate units in each prison. Because there are so few (or no) separate facilities for female juveniles, they are often detained with adult women. Thus diverse groups of women are put together due to their relatively small numbers.

Prison regimes are almost invariably designed for the majority male prison population, and discrimination flows from a lack of women-orientated programming and facilities. The effects of this are particularly detrimental for female drug addicts/substance abusers. 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. Women have a higher propensity to self-harm when in prison while men are more likely to riot, thus women suffer unnecessarily if security is prioritised when allocating resources. Women's self-harm and suicide attempts need to be understood in the context of the other problems, pressures and anxieties in their lives rather than treated as a disciplinary matter.

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 percent had been sexually abused at some point in their lives, and 70-80 percent were survivors of incest.<sup>1</sup>) Being strip-searched is thus often especially traumatic for women prisoners, even when carried out by female guards. Giving urine samples for drug testing also presents more privacy problems than for male prisoners. During transport to and from prison women prisoners, including pregnant ones, may be mixed with male prisoners, and accompanied by male guards. The use of male staff in relation to female prisoners raises many issues about privacy, and the potential for abuse or exploitation. For more on this, and other issues, see Rachel Taylor: *Women in Prison and Children of Imprisoned Mothers: Preliminary Research Paper* (Quaker UN Office, Geneva, July 2004).

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.

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

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<sup>1</sup> Submission of 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>

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.”

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](http://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.

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.

FWCC therefore calls on the Sub-Commission's Working Group on the Administration of Justice to discuss and provide comments on this draft Commentary.

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