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Submission to the Study of the Secretary-General of the United Nations on Violence against Women

Violence against women and girls 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 nongovernmental 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.

Part 1: Overview of key concerns

In 2003, the Quaker United Nations Office, Geneva, began research on women in prison. Our aims were to better understand why increasing numbers of women are being imprisoned, identify the conditions in which women prisoners are kept around the world, and draw attention to the particular impact that imprisonment has on women. In July 2004, we published *Women in Prison and Children of Imprisoned Mothers: A Preliminary Research Paper*, we have since published *Babies and Small Children Residing in Prisons*, and, most recently, *Women in Prison: a commentary to the Standard Minimum Rules for the Treatment of Prisoners*.¹

This brief Submission seeks to draw the Study's attention to the vulnerability to violence of women and girls (female juveniles under 18 years of age) in prison following sentencing or in pre-trial detention and the detention of women victims of violence for reasons of "protective custody".

The key issues of concern in relation to prisons and violence against women and girls:

1. Vulnerability of women and girls in prison to violence, particularly in respect of:
 - i) History of abuse
 - ii) Abuse committed by other prisoners
 - iii) Abuse committed by staff
 - iv) Gender specific torture

2. Use of protective custody for women victims of violence

Part 2: Context – The increasing numbers of women in detention

The human rights of women prisoners have been largely overlooked, on the assumption that women are a small minority of the prison population. However, whilst women are globally only about 5% of the total prison population,² in at least ten states women comprise over 10% of prisoners.³ Furthermore, in many countries the rate of women's imprisonment is increasing *far faster* than the rate of men's imprisonment.⁴

Part 3: Lack of attention to the particular needs of women and girls in prison

In many countries, women and girls in prison are victims of gender-based violence.

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 and girl prisoners, or which affect female prisoners in a harsher way.

The lack of attention to the needs of women and girl prisoners may constitute violence in the form of neglect and maltreatment.

¹ Details of these publications are included at the end of this submission.

² 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.

³ International Centre for Prison Studies, at <http://www.prisonstudies.org/> (accessed 6 December 2004).

⁴ 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.

Part 4: Key Issues

Part 4.1: Vulnerability to violence of women in prison

Although male prisoners are vulnerable to torture and inhuman and degrading treatment, physical and sexual abuse and exploitation, women and juvenile female prisoners are particularly at risk, both from other prisoners and from prison guards. The seriousness and impact of violence against women in prison committed by other female prisoners and female prison staff should not be overlooked, however, women prisoners are at greatest risk of violence when held in mixed sex detention facilities or where male prison guards are hold “contact positions” over female prisoners.⁵

The UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules)⁶ seek to limit women and girls’ vulnerability to violence by stipulating separation of prisoners into appropriate categories:

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.⁷

4.1.i History of abuse

Women who have previously been abused are over represented in the prison population. In Canada, for example, *before* they arrived in prison 68% of women had been physically abused and 53% of women had been sexually abused.⁸ A history of abuse compounds any violence or fear of violence that the prisoner experiences and increases feelings of powerlessness to stop the abuse:

...being abused again in a situation where they are locked in with the abuser and without protection or redress adds an additional dimension of psychological terror above and beyond that of the abuse itself.⁹

In situations where the perpetrator is a prison guard this is exacerbated by the unequal power relationship between the guard and the prisoner.

The Study should consider the implications of the over-representation of previously abused women in prison as well as their increased vulnerability to violence and its heightened impact upon them.

4.1.ii Abuse committed by other prisoners

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. Despite Standard Minimum Rule 8, the lack of facilities for women’s detention means that in many countries women are detained with men or in facilities that lack sufficient separation, placing them at risk of violence.

⁵ “Contact positions” are posts that permit or require prison guards to be in physical proximity to the prisoners often unsupervised by other, female, staff.

⁶ For a gender analysis of the application of the Standard Minimum Rules see M. Bastick, *Women in Prison: a commentary to the Standard Minimum Rules for the Treatment of Prisoners*, (QUNO, July 2005).

⁷ *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

⁸ L. Arbour, *Commission of Inquiry into certain events at the Prison for Women in Kingston* (Public Works and Government Services Canada, 1996), p. 181

⁹ R. Taylor *Women in Prison and Children of Imprisoned Mothers: Preliminary Research Paper* (QUNO, 2004), p. 71

The lack of appropriate facilities is even more marked in relation to detention facilities for female juveniles. As a consequence it is not unusual for girls to be housed in adult prisons in violation of the Standard Minimum Rules. Their vulnerability to violence in such situations is manifest.

4.1.iii Abuse committed by staff

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. The need to minimise this risk is recognised in the Standard Minimum Rules:

53 (3) Women prisoners shall be attended and supervised only by women officers.¹⁰

However, all too often this is not implemented. In prison environments that are less overtly violent, improper touching during searches, being watched when dressing, showering or using the toilet – what the Special Rapporteur on Violence Against Women describes as “sanctioned sexual harassment” – is often prevalent. 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.¹¹

4.1.iv Gender specific torture

A further aspect of violence against women and girls in prison for the Study to consider is institutional torture. Whilst the use of torture is by no means confined to women prisoners, it does take on particular characteristics in this instance. The annual reports of the Special Rapporteur on violence against women cite numerous instances of gender-specific torture being used against women prisoners, in some instances as part of what appears to be an institutional policy. Forms of gender specific torture include abuse during pregnancy and childbirth, electric shocks to the breasts and genitals, rape and other sexualised forms of assault.

Part 4.2: Use of “protective custody” for women victims of violence

In addition to looking at conditions of detention that place women at risk of violence, we strongly encourage the Study to consider the issue of “protective custody” whereby women are held in prison nominally for their own safety. This can happen in the aftermath of a criminal offence being committed against them or simply when the threat of such action is present.

Because of the stigma that an Indian woman suffers if she has been raped, the authorities apparently fear that the victim will not show up in court to testify against her rapist. Accordingly, she is imprisoned to make certain that she is available to testify at trial... While not ostensibly designed to punish the victims, this is the effect of confinement in protective custody, which may last for two, three or four years.¹²

Such a policy, whilst protecting the victim from further assault and retribution by the defendant, puts them at risk of violence from others in the forms outlined above. Moreover, it causes substantial and unjustified suffering to the victim and serves to deter women from reporting violence committed against them.

¹⁰ *Standard Minimum Rules for the Treatment of Prisoners*, *ibid*.

¹¹ 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, paras. 55, 58.

¹² Asia Watch: *Prison Conditions in India* (April 1991), p. 26

Part 5: Suggested Recommendations

Part 5.1: Vulnerability to violence of women and girls in prison

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

Measures to achieve this should include:

- (a) drafting and implementation of policies and processes to prevent, investigate and punish any physical, sexual or psychological violence whether committed by other prisoners or by prison staff;
- (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 on 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 on 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 on the Treatment of Prisoners.

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.

Part 5.2: Use of “protective custody” for women victims of violence

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, they must be provided with the option of genuine protection in a location that does not put them at further risk of violence.

Part 6: Reports for Further Consideration

To supplement the brief overview of the issues in this document, we encourage the Study to consider the following publications:

Women in Prison: a commentary to the Standard Minimum Rules for the Treatment of Prisoners, M. Bastick, QUNO, July 2005

Babies and Small Children Residing in Prisons, M. Alejos, QUNO, March 2005

Women in Prison and Children of Imprisoned Mothers: Preliminary Research Paper, R. Taylor, QUNO, July 2004