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**CIVIL AND POLITICAL RIGHTS: INDEPENDENCE OF THE JUDICIARY,
ADMINISTRATION OF JUSTICE, IMPUNITY**

**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).

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Women in Prison and the Children of Imprisoned Mothers

“Prison conditions that infringe prisoners’ human rights are not justified by lack of resources”

(Rule 4, European Prison Rules)

“[T]he authorities shall play particular attention to the requirements of women ... when making decisions that affect any aspect of their detention.” (Rule 34.1, European Prison Rules)

Friends World Committee for Consultation (Quakers) welcomes the revised European Prison Rules (Rec(2006)2E), adopted by the Committee of Ministers of the Council of Europe on 11 January 2006.¹ These rules contain some important improvements in ensuring the human rights of women in prison and children of imprisoned mothers.

From the perspective of guaranteeing the rights of women in prison and children of imprisoned mothers the following developments and concerns are worthy of consideration outside of the European context as well as within it.

Recognising the Impact of 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.² Due to the high proportion of women in prison who have been abused before entering prison perhaps the most important development in the European Prison Rules is the inclusion of new Rule 25.4:

Particular attention shall be paid to the needs of prisoners who have experienced physical, mental or sexual abuse.

This should be read in conjunction with Rule 34.2:

Particular efforts shall be made to give access to special services for women prisoners who have needs as referred to in Rule 25.4

Prisoners who have been abused may have specific needs that impact on all aspects of their prison regime, this Rule requires States to take this into account in the planning and delivery of prison services. Implementation of this should not be limited to the provision of mental health services.

Women in prison who have experienced psychological, physical or sexual abuse before they enter prison may, for a variety of reasons, still be in contact with their abusers. The

¹ 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.

² L. Arbour, Commission of Inquiry into certain events at the Prison for Women in Kingston (Public Works and Government Services Canada, 1996), p. 181

provision of assistance and welfare support to prisoners who want help maintaining contact with the outside world guaranteed by Rule 24.5 should give women access to support when dealing with this.

Limiting the Potential for Abuse During Searches

Women prisoners are at risk of abuse from female prison staff, however, male prison staff commit the majority of staff-inmate abuse, this is particularly true in respect of sexual abuse. The introduction of a rule stating that: "Persons shall only be searched by staff of the same gender" (Rule 54.5) helps to protect women from abuse and fear of abuse that can take place during searches.

Similarly, the total prohibition of internal physical searches of prisoners' bodies by staff (Rule 54.6) is a very positive step forward in preventing inhuman and degrading treatment in prisons. Internal physical searches degrade all prisoners but have particularly harsh ramifications for the high proportion of female prisoners who have experienced abuse.

It has been documented that the traumatic effect of searches imposed on prisoners before and after visits have caused some female prisoners to stop receiving visitors, including their children. Rules 54.5 and 54.6 should both decrease the potential trauma of security measures connected to visits and enable women to make decisions about visits that are not based on fear of such trauma.

Maintaining Family Contact

Maintaining family contact can have important benefits for all prisoners, but takes on particular significance for women who are the primary or sole carer of children and most women in prison are mothers.³ In addition to measures, such as those above, which may indirectly serve to improve family contact, there are several provisions that expressly address family contact. These include the provision that prisoners shall be allocated places close to their homes (Rule 17.1) and that:

The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible. (Rule 24.4)

By creating a duty on the prison to provide appropriate welfare support to prisoners seeking to maintain adequate contact with the outside world (Rule 24.5), the Rules recognise that contact with those outside the prison can be difficult for prisoners. Women in prison often find it difficult to maintain relationships with their children from whom they are separated because of feelings of guilt or shame. The provision of welfare support by the prison in this context may enable them to remain involved in their children's lives.

³ 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 USA, 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.

The general provisions for maintaining communication with family have been strengthened, and the concept of an ‘acceptable minimum level of contact’ has been introduced (Rule 24.2). Rule 60.4 states that:

“Punishment shall not include total prohibition on family contact”

Therefore, although Rule 24.2 does not expressly mention family contact, when read with Rule 60.4 it is clear that this is not only a prohibition on incommunicado detention but also requires prisons to allow an acceptable minimum level of *family* contact. The prohibition on punitive denial of family contact is an important step in ensuring the rights of prisoners and of their children.

The Specific Needs of Women

“[T]he authorities shall pay particular attention to the requirements of women ... when making decisions that affect any aspect of their detention.” (Rule 34.1)

This Rule clarifies that the entire prison regime for women should be constructed to take account of their particular needs. The Rules make clear that the same treatment as male prisoners does not guarantee equality for female prisoners: differentiation is required where appropriate.

Children Living in Prison with their Parents

The inclusion of a distinct section on “Infants” makes the issues of children living in prison with a parent more visible. The reference in Rule 36.1 to the “best interests” of the infant(s) in question makes it clear that the rights of any such children are paramount when making decisions affecting them. The term “infants” should not be interpreted to suggest an age limit past which the best interests of the child are not the key factor in deciding whether they should reside in prison or outside.

Foreign Nationals (Rules 37.1-37.5) and Ethnic and Linguistic Minorities (Rules 38.1-38.3)

Ethnic and linguistic minorities tend to be over represented in the female prison population and in some countries a high proportion of the female prisoners are foreign nationals. Since these sections make no reference to women who are members of these groups, they need to be read in conjunction with the Rules specifically addressing women in order to combat multiple discrimination in prisons. It should be noted with concern that there is no specific mention of indigenous prisoners. Indigenous women are one of the fastest growing prison populations and their specific needs may not be met by the Rules in this section.

Areas of Continuing Concern

Despite the developments made in these Rules in respect of women in prison and children of imprisoned mothers, there are many provisions that could be further developed or supplemented by ancillary guidelines or rules. Notably:

- The section on ‘Contact with the outside world’ does not contain specific provisions on the many measures prison should take to enable children to visit prisoners, including for overnight visits, and to ensure their safety whilst visiting.

- There is no express mention of the treatment of pregnant prisoners. As a minority within a minority their needs are often not met. It should be recognised that appropriate care for pregnant prisoners extends beyond the provision of additional health care services and impacts upon all aspects of their prison regime.
- As with searching, transfer or transportation presents a situation in which women prisoners are particularly vulnerable to mental, physical, and sexual abuse. A provision guaranteeing that women prisoners be transferred only with other women prisoners and that they be supervised by women guards would limit the risk of abuse.
- Further consideration should be given to the specific measures that should be undertaken to ensure that children living in prison with their parents are not put at risk and that their rights are not violated.

These and other concerns are examined in more depth in *Gender Critique of the European Prison Rules 2006*, Quaker Council for European Affairs available from: www.quaker.org/qcea/prison

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

1. Urge Member States of the Council of Europe to implement these revised European Prison Rules as a matter of urgency; and
2. Encourage *all* Governments, the Office of the High Commissioner for Human Rights, other relevant UN bodies and agencies, including UNICEF and UNIFEM, the Special Procedures of the Commission on Human Rights and the Human Rights Treaty Bodies to take note of these new Rules and the important issues which they seek to address, whilst considering ways to develop them further.
