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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

Working paper by Florizelle O'Connor on the issue of women in prison* **

* This working paper was submitted late in order to allow the expert sufficient time to complete her research.

** The endnotes are reproduced as received, in the original language only.

Summary

The Sub-Commission on the Promotion and Protection of Human Rights in its decision 2003/104 requested Florizelle O'Connor to prepare a working paper on women in prison, including issues relating to the children of women in prison. The present paper is submitted in accordance with that request.

In her working paper, Ms. O'Connor finds that little consideration has been given to the different needs and problems of imprisoned women relative to those of men. She notes that women constitute a relatively small percentage of the prison population worldwide, but that in some States this percentage is increasing. She notes that a substantial percentage of women prisoners are also mothers or primary carers of children. She draws attention to the situation of overcrowding experienced by women prisoners in different prisons, and in particular the negative consequences for hygiene. She observes that the problem of overcrowding exists in both developed and developing States. Ms. O'Connor also draws attention to the lack of adequate training programmes for prison staff working with female prisoners. Ms. O'Connor addresses the problems faced by women in mixed-sex facilities and the inherent risk of serious violence and sexual assault. In this regard, she also notes the increased risk of transmission of HIV/AIDS and other sexually transmitted diseases in mixed-sex prisons.

Ms. O'Connor also examines the impact on the families of women in prison, and considers issues relating to the conditions under which family visits take place. She also addresses the issue of children living with their mothers in prisons, and examines practices in different States on this subject. In this regard, she also considers the subject of childcare in prisons for women and how States have addressed this issue differently.

In her preliminary conclusions, Ms. O'Connor finds that the situation of women in prisons as revealed by her working paper demonstrates gross violations of almost all accepted human rights principles. Ms. O'Connor recommends that non-custodial options for women should be more extensively considered by States and that training - both in terms of professional skills as well as childcare skills - be incorporated in programmes for women in prison.

Introduction

1. In its decision 2003/104, the Sub-Commission on the Promotion and Protection of Human Rights decided to entrust Florizelle O'Connor with the preparation of a working paper on women in prison, including issues relating to the children of women in prison, and requested her to submit her working paper to the Sub-Commission at its fifty-sixth session. The present document is submitted in accordance with that request.
2. In its resolution 58/183 entitled "Human rights in the administration of justice" the General Assembly invited "Governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women in prison, including children of women in prison, with a view to identifying the key problems and ways in which they can be addressed and note[d] the proposal of the Sub-Commission on the Promotion and Protection of Human Rights [decision 2003/104] to prepare a working paper on this question."
3. Despite gains made in the struggle for women's and children's rights in recent times, the rights of women with children in prison have gone largely unnoticed. The representatives of the Society of Quakers are to be commended for having brought this matter to the attention of the Sub-Commission.
4. Given the length of time allocated for the production of this working paper, an overview is herewith given with recommendation that the study be extended for two years in order for more thorough investigation and research to be done, including visits to selected prisons and interviews with ex-inmates and their children, where possible.
5. Although both men and women are subjected to imprisonment, little consideration has been given to the different needs and problems of imprisoned women as opposed to those of men. This is reflected in the United Nations Standard Minimum Rules for the Treatment of Prisoners which in relation to imprisoned mothers only specify that:

"23 (1) In women's institutions there shall be special accommodation for all necessary prenatal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

"(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers."
6. References to female juveniles in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty are even more minimal, despite the fact that the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Caracas, 25 August-5 September 1980), had pointed out that female offenders normally receive less attention than their male counterparts and called in resolution 9 for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody.¹

7. This omission may be a reflection of the fact that women prisoners are a very small minority of the overall prison population. According to the International Centre for Prison Studies,² the percentage of female prisoners within the prison population varies from 0 to 26.6 per cent, with only nine countries reported as having over 10 per cent and most being under 5 per cent.

8. King's College London International Centre for Prison Studies online states that the world average of women prisoners constitutes 4 per cent of the total prison population. This percentage has been increasing in recent years. However, Owen,³ citing United States Bureau of Justice Statistics for 1999, opines that "[c]rime rates don't account for the huge upswing in the population of women's prisons ... the crime rate for women has risen only about 32 per cent in the last two decades, whereas the imprisonment rate has increased 159 per cent". This indicates that increase in female convicts is due not to an increase in the quantity or severity of crimes committed by women, but rather to a change in sentencing policies and law enforcement priorities.

9. This analysis would seem to be supported by the fact that increased incarceration rates relate most noticeably to drug and drug-related offences in both developed and developing countries at a time when the growth of the international drug trade has become cause for concern. Foreign national women feature particularly highly with regard to these offences.

10. The report of the organization Rethinking Crime and Punishment published in 2003⁴ reveals that at the time of writing women prisoners represented "a fifth of the female prison population [in England and Wales]". Of this total, "almost half ... are Jamaican women who have been convicted of drugs offences, mostly importing drugs. Such women usually come from a background of extreme poverty and are rarely high up in the criminal gangs which use them. Most are single parents and first-time offenders and there is evidence to suggest that coercion plays a part in their decision to become a drug courier."⁵

11. In the United States the "war on drugs" has had a similarly stark effect on women. Between 1986 and 1995 "the number of women incarcerated for drug offences rose an amazing 888 per cent; those imprisoned for other crimes rose 129 percent".⁶ At the same time, "drug offences account for about one third of the rise in male prison population".⁷

12. Likewise, in Brazil, "a proportionally higher number of women are sentenced for drugs offences; 48 per cent of women and 10 per cent of men".⁸ In a 1998 report by Human Rights Watch, "Behind Bars in Brazil", investigators noticed that in the women's prisons they visited, "roughly half of the female inmates were held for drug crimes, usually for very low-level offences".

13. Another Human Rights Watch report, this time concerning Indonesia, stated: "Of the 96 women at Tangerang during our visit, 33 were there on drug charges, [one of] the two most common offences."⁹

14. A 1990 Americas Watch Report on Jamaica stated that of the 115 inmates incarcerated at the Women's Prison in Fort Augusta, about 40 were imprisoned for drug crimes, including 16 United States citizens. In 1991, Mendoca¹⁰ stated that of 63 prisoners

in the women's prison in Guyana, 52 were there for drug offences. Thus, in Jamaica in 1990, 35 per cent of incarcerated women were charged with drug offences, while in Guyana in 1991 the figure was 82 per cent.

15. This indicates that women are imprisoned in much greater numbers, proportionally, for drug-related crimes than for any other.

16. A substantial percentage of women prisoners - in fact, the majority in most institutions for which statistics were available - are also mothers or primary carers of children and/or disabled, elderly, or otherwise incapacitated relatives. This means that the imprisonment of the woman as an individual cannot be considered in isolation. Her incarceration will have secondary implications for her family and dependents, as well as further implications for wider society.

Statistical overview

17. Data available from the United Kingdom for 2002 illustrate a typical scenario for imprisoned women in developed and developing countries: 66 per cent of female prisoners were mothers; 55 per cent of female prisoners had at least one child under 16. Over a third of the mothers had one or more children under 5 years old; 34 per cent of mothers were single parents before prison, with the proportion rising to 43 per cent for those who expected to be single parents on release. Estimates based on the survey results suggest that on average, 4,500 children under 16 had a mother in prison during 1998.¹¹

18. The Fawcett Society puts the estimate much higher, stating in its 2003 Interim Report on Women and Offending that "it is estimated that 17,000 children are separated from their mother by imprisonment each year".

19. The Jamaica Living Survey of Living Conditions for 2001 states that 44.7 per cent of households are female headed. These households tend to produce more children than male-headed households and those who reside in rural areas tend to have more children than urban dwellers. Thus the pressure is greater on females in a context where the unemployment rate in Jamaica, though reduced from 16.5 per cent in 1997 to 15 per cent in 2001, stood at 23.5 per cent for women and 10.3 per cent for men. Forty-four per cent of inmates at the Fort Augusta Correctional Facility for women were heads of their households at the time of their arrest.

20. In the United States, "About 80 per cent of women in prison are mothers, with three quarters having children under 18 years of age."¹² In Brazil, "65 per cent [of female prisoners] are single women; 87 per cent have children".¹³

21. Many more studies have indicated that the majority of the increase in criminal activity by women in developed countries has been in terms of property offences. In developing countries, the offences have been reflected in the emergence of the "drug mule" trade. This can perhaps be explained in terms of increasing poverty, as with some women, liberation and equality has meant a decrease in economic support by male partners as well as a lessening of economic opportunities in situations where their educational and skills levels are minimal.

Consequences

22. Several consequences derive from the increased number of women inmates. The issue of overcrowding has become particularly acute in women's prisons all over the world. From Latin America, to Africa, the Middle East, the United States, the United Kingdom and the Caribbean, there are similar stories of overcrowding which impacts on facilities for hygiene, health care, food, trained correctional officers and provision of other resources. Three examples will suffice.

23. Conditions at Cochabamba Women's Prison have been described as follows: "[In] just 30 m x 30 m, there were around 1,000 people inside, 400 women and 600 children."¹⁴ In the United States, overcrowding at a women's prison in California meant that "there was a shortage of toilets and showers; prisoners, as a result, were often forced to urinate in stairwells and shower in stalls overflowing with 'ankle-deep slimy water'".¹⁵ A 1993 report by Middle East Watch found that the women's prison at Qanater, Egypt, "was originally built to accommodate 500 male prisoners; with its population of 1,100 women, the living quarters therefore were extremely overcrowded".¹⁶ There was a severe lack of sanitary facilities. In one building, "121 inmates of three cells ... had no access to the washroom" and inmates from another cell reported that "they were never let out of the cell and had to wash and relieve themselves in buckets".¹⁷

24. Given the differences in the national economies of the examples chosen, it would appear that very little thought has been given to the development of correctional facilities for women and children in the budgetary considerations of both developed and developing countries.

25. The Standard Minimum Rules for the Treatment of Prisoners give specific guidelines on personal hygiene. Paragraph 16 states: "In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the *hair and beard, and men shall be enabled to shave regularly*" (emphases added). This perhaps reflects gender bias, or the omission of concern for female inmates and their particular hygiene needs.

26. Given the fundamental changes that have taken place in the human rights arena since 1977, particularly regarding the rights of women and children, it is perhaps time for the Standard Minimum Rules for the Treatment of Prisoners to be reviewed.

27. Some prisons provide soap/shampoo once a month, but it is insufficient. Buying such products within the prison is prohibitively expensive. In other prisons, no hygiene products are provided at all, and women are dependent on their visitors to bring them such necessities. In circumstances where women do not receive visits, dependence on others for the provision of vital hygiene requirements too often leads to further exploitation at the hands of sister inmates as well as prison officials - male and female.

28. A further consequence of the gross overcrowding of women's facilities is that prisoners spend an increased amount of time locked in their cells. As there is little or no recreational or other communal space for them to pass time in, and there is an insufficient ratio of staff to prisoners to allow adequate supervision, women are confined in their cells.

Women in mixed-sex facilities

29. Paragraph 8 (a) of the United Nations Standard Minimum Rules for the Treatment of Prisoners states: “Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate.” Paragraph 53 states:

“53 (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

“(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

“(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.”

30. Although the principle of separation of different classes and genders of prisoners is generally accepted, as a result of the overcrowding and the lack of any dedicated facilities for women prisoners, it is not unusual for women to be imprisoned in mixed-sex facilities. This may mean housing female convicts and those on remand in women’s wings of men’s prisons as in the United Kingdom, or it may mean mixing women in with male prisoners - not only in the same wings, but sometimes even in the same cells, as in Haiti. All of these practices are clearly contrary to the Standard Minimum Rules for the Treatment of Prisoners.

31. Where women prisoners are not held separately from male prisoners, they are at risk of serious violent and sexual assault. This is true wherever prisoners are in physical contact. This is self-evident where they are sharing cells, but also applies in other situations where physical contact occurs, such as shared “sections”. Not only is this a general risk situation, but it is a particular problem given that a significant number of the men are in prison because they have committed violent and sexual crimes against women.

32. This lack of separate facilities facilitates physical and sexual abuse of female inmates and contributes to the transmission of HIV/AIDS, other sexually transmitted diseases (STDs) and other potentially fatal diseases such as TB. In less developed countries diseases such as malaria, scabies and TB may be of particular concern, especially where hygiene levels are poor. This situation can be aggravated by overcrowding in prisons, where there is no separation of healthy and contagiously sick prisoners. This has been noted in Malawi, where “TB patients are mixed with others, even during the two first weeks when they are contagious”.¹⁸

33. HIV and AIDS infection amongst women prisoners merit particular attention. The 1998 Human Rights Watch investigation into women’s prisons in Brazil noted on page 2 that, “HIV/AIDS is a serious threat to the health of women prisoners: indeed, studies indicate that the disease strikes an even higher percentage of incarcerated women than men. Twenty per cent of the women prisoners tested for the AIDS virus at the Women’s Penitentiary in São Paulo were found to be HIV-positive.” Women are biologically more susceptible to

becoming infected with HIV through heterosexual intercourse than men, and the rates of infection for imprisoned women are higher than that of women in the general community as a result of higher levels of drug addiction (research in the United Kingdom noted that “the prevalence of HIV/AIDS is 13 times higher amongst women in prison than in the general population”.¹⁹ Women prisoners may contract HIV through sharing injection equipment, either before imprisonment, or during their prison sentence when access to clean syringes is more difficult, and through forced sexual activity during imprisonment.

34. In addition, women prisoners who have been sex workers or who have been sexually abused/raped are also at an increased risk of contracting HIV/AIDS and other STDs. Women imprisoned alongside male prisoners or in facilities staffed by male personnel continue to be at risk of infection throughout their sentence. In fact, they may be at greater risk in prison than they would be in the free community. In his report on the Central African Republic, the Special Rapporteur on Prisons and Conditions of Detention in Africa of the African Commission on Human and Peoples’ Rights observed, “men and women sharing the same cells ... rape contributing to the AIDS pandemic”.²⁰

35. There are few provisions to ensure that inmates’ rights to adequate health care are respected. Most female inmates serve short sentences. The implications for their immediate family, community and the wider society on their release, if they survive, is self-evident. Further implications concern the consequences of the intense trauma experienced by those inmates who may have been exposed to sexual and physical abuse prior to incarceration.

36. Overcrowding, underfunding and an insufficient number of properly trained correctional officers impact negatively on the provision of rehabilitation programmes for female inmates. In terms of rehabilitation, educational or vocational training, counselling, or drug/alcohol dependency programmes, women’s prisons are disadvantaged compared to men’s establishments. This is due in part to lack of funding and in part to a lack of programmes designed or adapted specifically for women.

37. In terms of prison budgeting, women’s facilities receive a small fraction of the overall funds. Instituting programming for women is, therefore, far down the list of priorities. It has been established that the large majority of imprisoned women come from a background of serious personal and social disadvantage. The primary triggers for women’s crime concern drug addiction and poverty. There is, therefore, a need for programmes for female prisoners to address addictions, provide routes to legal gainful employment on their release, and deal with the psychological trauma of pre- and post-incarceration abuse.

38. There is also a lack of training programmes for prison staff working with female prisoners. In the United Kingdom the rapidly increasing women’s prison population has led to the conversion of men’s detention facilities into facilities for women. In the last three years, five prisons in the United Kingdom have been at least partially converted from male to female use, and this has been done “often at short notice and with insufficient attention paid to its appropriateness for women or to the training of staff”.²¹ As a consequence, “the process of converting prisons has not always been successful, not least because of the speed of the changeover compounded by the need to change the attitudes and practices of staff”.

39. Most critically, this has caused problems in relation to security and searching, as “the rapid change of use of some prisons has resulted in there being insufficient numbers of female staff to carry out these duties”. The prison at Highpoint was highlighted as one where “the prison has fewer female officers than it needs for supervision”.

40. In the United Kingdom, the Report of the Committee on Women’s Imprisonment (the Wedderburn Report) also noted that the change of use in prisons required staff training for working with women. This training has proven “very limited” not least because allowing time off duty for staff to train is particularly difficult when this training has become necessary due to overcrowding and increased pressure on resources.

41. Similarly, Human Rights Watch’s 1996 report on women’s prisons in the United States highlighted on page 41 the lack of training for guards assigned to women’s prisons: “little, if any, information was provided concerning the impact of previous sexual abuse on incarcerated women. Security techniques, prisoner profiles, and other training materials are often based upon the model of a male prisoner. States inadequately train corrections officers working in women’s prisons on the obligation to refrain from sexual contact, verbal degradation or privacy violations”.

42. In some countries military personnel are employed in prisons. According to Human Rights Watch, in Venezuela the National Guard provides staff for many prisons. Such individuals have shown themselves to be in particular need of training on the role and duties of correctional staff.

Impact on the family

43. Women are, generally, imprisoned further from home than their male counterparts. Statistics from the United States show that “more than 60 per cent of all women are incarcerated more than one hundred miles from their child’s place of residence”.²² This has implications for visiting rights and aggravates the loss of family ties - a particularly acute problem for women with young children. Socio-economic indicators show that the majority of imprisoned women come from low-income backgrounds, which means that the financial costs of travelling to the prison in order to visit may be prohibitive even when other factors permit.

44. Being able to receive family visits is important for all prisoners, but it is undeniable that it affects some more than others. A mother of young children is likely to suffer more psychological and emotional trauma if denied visiting rights than an unattached father. For this reason, the problem already highlighted concerning the geographical distribution of women’s prisons is of importance. The difficulties of travelling large distances in order to visit prisoners are aggravated by brief visiting hours. In some cases, women reported visiting times of as little as 5 to 10 minutes.²³

45. A number of other factors impact on family visits. In instances where children are the wards of the State, or living with different foster parents, visits are determined by the willingness of the foster parents and child welfare workers. Human Rights Watch, in a report published in June 2002, noted: “although child welfare workers are legally mandated to facilitate parent-child

visits when such visits are not detrimental to the child, many feel that accompanying children to visit parents in prison is disproportionately time consuming and hard to reconcile with other demands of their caseload”.²⁴ Some foster parents face similar conflict of interest.

46. Emotional factors impact on both parents and children. In the case of those mothers who did not consider the consequences of their actions, some children would have been left with feelings of abandonment, not having received an explanation for their mothers’ absence. Some of these mothers may not want their children to know where they are or to see them in prison conditions. Children who might have been told of the reasons for their mothers’ absence might have reacted with shame and anger, expressed in an unwillingness to visit. For all, there is the additional distress caused by the separation after the brief visit.

47. In many cases, conditions for children’s prison visits are far from ideal. Visiting hours are often restrictive and visiting rooms unattractive and crowded. In Spain, for example, “visits with children are conducted through a glass window, in visiting rooms that are usually filthy and depressing”.²⁵ Security measures to prevent possible drug smuggling may mean that women are not allowed to have any physical contact with their children. These restrictions “are distressing and may impair the quality of the parent/child relationship”.²⁶ In an example from Broward, a detention facility in the United States, “inmates are not allowed to hold visiting children on their lap during the visit and are allowed to give them a brief hug only at the beginning and at the end of the visit”.²⁷ Again, it is difficult for a young child to understand the reasons for these conditions, and they may be left with the distressing impression that their mother does not want to kiss or cuddle them any more.

48. In Venezuela, “Prisoners described how their family members were subjected to extremely intrusive searches as the cost of a visit.” Further mistreatment of prisoners may include “physical abuse, disrespect, and financial extortion”.²⁸

49. In violation of international norms governing the treatment of children, a recent decision by the California Department of Corrections requires children visiting their parents in prison “to undergo a body search alone [i.e. with no accompanying adult present]”.²⁹

50. In Australia, “women are subjected to a full ‘cough and squat’ strip search after every family and legal visit. Women must decide that in order to see their family they will undergo this indignity. For women who have been previously sexually assaulted the search procedure may result in the woman becoming re-traumatized.”³⁰

51. For those families who succeed in making visits, the experience may be an unpleasant one. Besides the inevitable emotional impacts of such visits, and the often physically unpleasant nature of the environment, prisoners’ families may feel that the prison staff and procedures are degrading to them. The 14-year-old daughter of a prisoner in the United Kingdom described prison procedures and the guards’ attitudes: “It makes you feel horrible, like you have done something too. They watch you and make you feel guilty just for being there ... You don’t get used to it.” In these circumstances, it is not uncommon for women to make the difficult choice not to see their children at all.

Children in prison with mothers

52. It is common practice worldwide for very young children to be allowed to accompany their mothers to prison. Age limits, conditions and eligibility for placement for such children varies from country to country, and even within individual prisons.

53. Iceland allows very young babies to remain for the period of breastfeeding and New Zealand allows up to six months while childcare arrangements are made. Spain, Pakistan and Bangladesh are more liberal as children are allowed to remain up to 6 years old.³¹

54. It has to be noted that in many circumstances decisions regarding age limit are applied not in accordance with strict guidelines but by considerations of a practical nature. For example, the Brazilian Constitution “mandates that women prisoners be permitted to keep their nursing babies during the entire lactation period. In order to implement this rule, the national prison law states that every women’s prison must be equipped with a nursery for mothers and their infants. Many women’s prisons abide by these requirements, but not all of them. At the women’s prison in Manaus, Amazonas state, babies can only stay with their mothers for a week because the facility is too overcrowded to permit them to remain longer.”³²

55. Consideration is also given to allowing the child to stay with the mother in some cases if release is near. Thus, in the United States, mothers are allowed to keep infants until the child is 12 months old unless the mother is likely to be released before the child is 18 months old.

56. In the guidelines in the United Kingdom’s Prisoners’ Information Book for Women Prisoners and Young Offenders, it states: “The decision on whether or not to allow a mother to keep her baby with her in prison is taken by the Governor in the light of a recommendation from an independently chaired multidisciplinary team which may include a prison officer, a probation officer, a prison medical officer and the liaison social worker ... Each case is judged individually and the team is concerned primarily with establishing what is in the best interests of the child.”³³

57. However, in reality there are only 64 places available in “Mother and Baby Units” across England.³⁴ These units are expensive to fund and as a result supply is likely to be substantially lower than demand. This can be assumed to be applicable in other countries also.

58. Once the children reach an age where they are no longer allowed to remain with their mother, the process of separation must occur. Clearly, this may be traumatic and distressing for all those concerned, and must be handled sensitively. However, information regarding procedures for separation was limited to reference in a July 1999 report from the Prison Services Working Group, which states that “it is crucial to the separation experience for child and mother that additional opportunities for visiting are put in place prior to the actual separation, to enable the child to settle in to his or her new home and family”.

Conditions and facilities

59. The conditions of detention for women with children vary considerably between facilities, and there can be no generalization of standards. In March 1997, Human Rights Watch reported on a prison in Venezuela as follows: “Some forty women prisoners, some with babies,

mingled with a men's population of over 1,000. Not a guard was to be seen within the prison. Men carrying weapons fought over buckets of food. A prisoner lay by the gate paralyzed, with a bullet lodged in his spine from a recent shooting."

60. In contrast, in the Netherlands: "children up to the age of four are accommodated at Ter Peel ... set in 25 acres of wooded land with no high wall and minimal security. Because of this, most of the 102 mothers who used the unit in its first two years were convinced that their children did not realise they were staying in a prison ... A great deal of effort has been made to provide the children with a home-like environment. At Ter Peel, ten rooms were converted to provide a purpose built, self-contained unit suitable for babies and toddlers. Mother and baby are accommodated in two adjoining rooms, one for the mother, one for the child. There is also a communal dining room and living area with kitchen and well-equipped indoor and outdoor play areas."³⁵

61. Provisions for children to attend school or playgroups are also variable, although little information is available on this. Prisoners Abroad News reports that in Ecuador, "many of the ... prisoners have their children in prison with them, the older ones leaving the prison each day to attend school".

62. Whilst the provision of educational facilities for the children is essential, the best manner of providing this is debatable. Children who live in prison with their mother but attend an ordinary school outside the prison may be subject to stigma and humiliation. Discussions should be held with the school authorities prior to the child's entry into school to ensure that the child's dignity will be protected.

Childcare within prisons

63. Women who are allowed to keep their children with them in prison require assistance with childcare in order to facilitate their participation in work or educational programmes. If these are not available women may be barred from participation. This is the case at Styal Prison in England, where mothers were restricted to the unit. They could not take their babies to the classes and there were no crèche facilities to leave the children.

64. Where childcare is provided, it can either be on the prison site, staffed by prison officers as at the New York nurseries and at Frondenberg, or at a community nursery staffed by professional childcare workers as in Finland. At Ter Peel in the Netherlands, both systems have been tested, and it was decided that the latter system was best, as it provided the children with the environment of a "regular" child and provided the opportunity for comparison and observation with children of the same age who live in the community, allowing any problems to be detected at an early stage. The mothers gained guidance, education and support. And, it was felt that it is cheaper to send a small number of children to an outside nursery than to establish and maintain a prison crèche.

65. Some prisons run on-site crèches which prison staff can also use. This has the advantage of increasing the peer group for inmates' children, facilitating childcare for staff, as well as making it more economically viable. However, it does mean that the inmates' children remain

subject to a very limited and limiting environment. This environment could be broadened somewhat if a weekend visiting programme could be established where inmates' children could spend weekends with staff in their homes.

Pregnancy and breastfeeding

66. Research available would suggest that there are no special pre- or post-natal arrangements in place for mothers. This is an area of omission which should be speedily corrected given the possibility of passing on HIV through breastfeeding.

Preliminary concluding comments

67. This working paper gives but a brief overview of mothers and mothers with children in prisons. Many factors have not been raised due to time and space limitations. Suffice it to say that the situation reflects gross violations of almost all accepted human rights principles reflected in the Universal Declaration of Human Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners, to name a few.

68. It is recommended that the Commission on Human Rights be asked to specifically request States parties to report on this question in all future reports to the relevant treaty bodies.

69. The Sub-Commission is reminded of the views expressed by the Special Rapporteur on Prisons and Conditions of Detention in Africa on page 36 of his 2001 report: "Prison is not a safe place for pregnant women, babies and young children and it is not advisable to separate babies and young children from their mothers. However, it is possible to find solutions so that these women are not imprisoned: use of bail for remand prisoners, non-custodial sentences or conditional/early release, parole, probation, suspended sentences for convicted prisoners."

70. This writer concurs with those views and recommends that efforts be made to encourage States to review sentencing procedures for women found guilty of drug-related offences, particularly women who are pregnant, mothers, first offenders and drug-use free.

71. From the overview presented above it is plain to see that the imprisonment of women who are also mothers presents manifold and complex problems: the emotional anguish and personal hardship that their children suffer as a result of separation from their mothers in this way. This is particularly relevant when one considers the large percentage of women who are incarcerated for non-violent crimes such as drug possession or minor fraud. The trauma inflicted on the offender's family does not necessarily end upon her release. It is all too common for a prison sentence to result in the permanent break-up of a woman's family. Not only is this extremely negative for them, but it has long-term implications for society as a whole as it has been seen that the children of incarcerated mothers are at an increased risk of becoming offenders themselves, with the implication that imprisoning mothers is conducive to creating future criminals.

72. Regarding those women currently imprisoned, this writer is of the view that given the low skills of the majority of imprisoned females, it would be more beneficial to both mothers and children in the short and long term for professional supervision to be given to some of the mothers in childcare training. This would prepare them with parenting skills as well as provide them with an employable skill on release. Sentences should be assessed and training rotated on the basis of those unemployed prior to conviction and closest to release, thus ensuring an ongoing cadre of trained caregivers for continuity of the programme.

73. A skills audit should be done of all inmates. Those with transferable skills should be encouraged to teach others in organized classes. This would reduce the long periods of idleness, prepare them for reintegration into society and increase the self-worth of both teachers and students. "Open days" could be held where relatives and members of the wider society could visit the institutions and buy items created inside the institutions.

74. Money earned could be placed in a fund for participating inmates on their release, or used to buy needed items. In order to build team spirit and management skills, decisions on how best to utilize the money should be made by the inmates in conjunction with the prison authorities and selected members of the NGO community/civil society.

75. Continued research should be done on this issue as the present paper does not speak to the continuous sexual abuse and exploitation engendered from the use of male correctional officers, the need for facilities to be built for women offenders, health, and issues concerning foreign nationals and indigenous women, among others.

76. The links between the development of the international drug trade and its impact on the lives of economically deprived women needs to be examined. What is clear is that there needs to be a prioritization of rights-based sentencing and a re-examination by the international society of the concepts of crime, punishment and justice.

Notes

¹ *Report of the Sixth United Nations Conference on the Prevention of Crime and the Treatment of Offenders (Caracas, 25 August-5 September 1980)*, United Nations publication, Sales No. E.81.IV.4, chap. I, sect. B.

² www.kcl.ac.uk/depsta/rel.icps: Kings College London International Centre for Prison Studies: World Prison Brief statistics (last modified 11 January 2004).

³ Owen, Barbara in Ross, Jeremy and Richards, Stephen "Convict Criminology", Wadsworth 2003.

⁴ Cited in Fawcett Society 2003, p. 9, Rethinking Crime and Punishment, "A bitter pill to swallow: The sentencing of foreign national drug couriers" 2003.

⁵ Ibid.

- ⁶ Owen 2003, p. 237 citing Mauer, Potler and Wolf 1999.
- ⁷ Ibid.
- ⁸ Howard, 2003.
- ⁹ Asia Watch 1990, p. 27.
- ¹⁰ Improving Prison Conditions in the Caribbean: Report and Papers from a Conference, 1991, p. 119.
- ¹¹ Statistics on Women and the Criminal Justice System 2002, pp. 35 and 37.
- ¹² Owen 2003, p. 244.
- ¹³ Howard 2003, p. 1.
- ¹⁴ Bryant 2003, p. 31.
- ¹⁵ Human Rights Watch 1996, p. 246.
- ¹⁶ Middle East Watch 1993, p. 139.
- ¹⁷ Ibid, p. 141.
- ¹⁸ Chirwa 2001, p. 27.
- ¹⁹ Fawcett Society 2001, p. 25.
- ²⁰ Dankwa 2000, p. 5.
- ²¹ Wedderburn 2000, p. 17.
- ²² Human Rights Watch 1996, p. 22.
- ²³ Middle East Watch, 1993, p. 149.
- ²⁴ Human Rights Watch, June 2002, p. 9.
- ²⁵ Human Rights Watch, 1992, p. 28.
- ²⁶ Prison Services Working Group, July 1999, p. 20.
- ²⁷ Human Rights Watch, November 1991, p. 62.
- ²⁸ Human Rights Watch, March 1997, p. 6.

²⁹ Human Rights Watch, 1996, p. 45.

³⁰ Social Justice Report 2002, p. 158, citing Kilroy, D 2001.

³¹ CRC/C/65/Add.21, pp. 43 and 101, States' Reports to the Committee on the Rights of the Child, 34th Session, October 2003.

³² Human Rights Watch Report, 1998, p. 6.

³³ Prison Reform Trust and HM Prison Service 2003, p. 50.

³⁴ Prison Services Working Group, July 1999, p. 12.

³⁵ Caddle 1998, p. 3.
