



## DIGNITY AND JUSTICE FOR DETAINEES WEEK

Information Note No. 5

### Women and Girls

In a system primarily designed for men, women are likely to be affected by detention in a particularly harsh way, with their rights and basic dignity systematically violated.

Whether held in prisons, detention centres, psychiatric institutions or social care centres, women and girls have different needs which are often ignored. Poverty, persisting discriminatory laws, lack of enjoyment of economic, social and cultural rights and related obstacles in accessing justice increase the likelihood of women being detained.

Women and girls also suffer disproportionately when deprived of their liberty outside formal detention facilities, for instance in situations of debt bondage and forced domestic labour.

**The human rights of women and girls will be a particular focus of the Dignity and Justice for Detainees Week (6 – 12 October 2008) proposed by the Office of the High Commissioner for Human Rights.** The initiative is part of the commemoration of the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights.

This information note is directed at National Human Rights Institutions (NHRIs), governments, OHCHR field presences, United Nations organizations and UN country teams, civil society bodies, NGOs specializing in issues related to detention, police forces, justice systems and the media.

All can work, in a manner appropriate to their expertise and the situation in the country of operations, to prevent the unjust and arbitrary detention of women and girls and improve conditions for those deprived of their liberty.

Key issues relating to the detention of women and girls are:

- **The disproportionate growth in the number of women detainees and the link to poverty; discriminatory laws; lack of enjoyment of economic, social and cultural rights; and difficulties in access to justice;**
- **the impact on women and girls of detention in systems designed for men; and**
- **the different needs of women in detention.**

### **The disproportionate growth in the number of women detainees worldwide**

It is estimated that more than half a million women and girls are detained in penal institutions around the world.<sup>1</sup> Women are usually imprisoned for petty and non-violent crimes such as property and drug-related offences. They often come from

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<sup>1</sup> International Centre for Prison Studies, World Female Imprisonment List, 2006.

economically and socially disadvantaged communities, including indigenous, ethnic or linguistic minorities—or are foreigners.

In many countries the rates of female imprisonment are growing significantly. In some countries this is due to the increased use of imprisonment to punish offences that were previously punished by non-custodial sentences. Women are particularly vulnerable to being detained because of their inability to pay fines for petty offences and/or to post bail.

Human rights law specifically prohibits detention due to the inability to fulfil a contractual obligation, and international jurisprudence likewise condemns detention for certain forms of petty crimes. Furthermore, pre-trial detention “shall not be the general rule”, yet a large number of female detainees are awaiting final adjudication of cases.

Policies regarding pre-trial detention may appear to be based on gender-neutral criteria, but they are likely to have a harsher impact on women. Women often find themselves without the financial resources to obtain bail as they are less likely to have secure work or property in their own name, and they are also less likely to have access to legal advice.<sup>2</sup>

The practice of custody for so-called “protective purposes” discriminates against women in its application, as women accused of crimes are often those whom a court sees as a risk to themselves due to mental health problems, drug dependency, unstable accommodation or financial pressure. “Protective custody” in some countries is a misnomer for the arbitrary detention of victims of particular crimes, or simply when the threat of such a crime is present.

Women who have been victims of rape or are otherwise at risk of so-called honour killing are frequently detained as the authorities fear that the individual will not testify due to the stigma involved. While not designed to punish the victims, the consequences of such detention, often lasting years, are the same.

The effects of even a short period of custody are particularly devastating for a woman if she is the sole carer of her children. There is a high risk of losing accommodation and employment upon prison entry. A mother whose children have been placed in the care of the State or another person usually cannot reclaim custody unless she has accommodation and the means to support her family. This can cause lasting or permanent dislocation of families. To avert this, courts should use options other than detention, such as referral or community bail facilities, and social services. The best interests of the child of an alleged offender should be taken into account, as must measures to prevent the breakdown of the family unit.

### **Women detainees have particular needs**

Women in detention, especially mothers, have particular physical, vocational, social and psychological needs, different from those of men. Yet, for instance, the location of facilities for women or lack of visiting conveniences appropriate for children often makes maintaining contact with their family and the outside world difficult. This leads to isolation, which can have serious psychological effects.<sup>3</sup> Women detainees

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<sup>2</sup> International Commission of Jurists (2004), Human rights of women in conflict with the criminal justice system: submission to the Committee on the Elimination of Discrimination against Women.

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights, Articles 7 (conditions of work), (adequate standard of living), 12 (highest attainable standard of physical and mental health), and 13 (right to education).

suffer from very high rates of mental illness and are subject to higher levels of depression, anxiety, phobias, neuroses, self-mutilation and suicide compared to the general population and male detainees.

Particular groups of women, such as pregnant women, female juvenile detainees, women with disabilities, women living with mental health problems, drug problems or HIV and Aids, women who are detained in armed conflict and women who are foreign nationals or from indigenous and minority communities have further needs specific to them.

### **The impact of detention on women is different from that on men**

While conditions of detention may not be discriminatory as such, not taking into account the special needs of women in a system primarily designed for men results in detention having a discriminatory impact on women.

For instance, problems such as overcrowding, poor hygiene and inadequate visiting facilities affect both men and women detainees, but women are especially vulnerable to poor hygiene conditions during their menstruation. Moreover, women are often the sole or primary caregivers of young children and have other family responsibilities. Concern for their children's welfare in their absence is often their first and foremost worry. Breastfeeding mothers separated from their children are exposed to particular suffering during detention.<sup>4</sup>

Women are also particularly vulnerable to abuse and physical and sexual violence. The impact of routine strip-searches on women is disproportionately greater than on men, as women detainees as a group present a higher incidence of previous sexual assault than the general community and their male counterparts. Women with cultural or religious backgrounds that emphasise modesty may also find strip-searching particularly degrading and traumatic.

In many remand prisons, women are held in the same premises as men, often without female staff, which makes them vulnerable to sexual assault by both wardens and male inmates. Rape and other forms of sexual violence in detention settings (including prisons, but also in detention facilities of the police, the military, asylum centres, psychiatric clinics and social care centres), whether perpetrated by officials or co-prisoners with the acquiescence of officials, constitutes torture.

To prevent women having their rights and basic dignity systematically violated, the right to non-discrimination and equality must be the touchstone for evaluating and reforming prison conditions and systems for women.<sup>5</sup> It requires an understanding of the different ways in which detention affects men and women, and a different approach to male and female detainees.

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<sup>4</sup> Principle 20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states the importance of being imprisoned close to home. Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women is relevant to conjugal visits.

<sup>5</sup> Non-discrimination between male and female prisoners: Universal Declaration of Human rights, Article 2; International Covenant on Civil and Political Rights, Article 3; International Covenant on Economic, Cultural and Social Rights, Article 3; Convention on the Elimination of Discrimination against Women, Articles 1 and 2; Human Rights Committee, General Comment 28; Basic Principles for the Treatment of Prisoners, Principle 2; Body of Principles for the Protection of All Persons from any Form of Detention or Imprisonment, Principle 5(2).

Women prisoners should only be attended and supervised by women officers, or male staff should only have access to facilities when supervised by female staff.<sup>6</sup> Detention centres must have in place policies to prevent, investigate and punish any physical, sexual or psychological violence. Staff must incorporate sensitization to the vulnerability of women detainees to abuse, in addition to having policies and procedures for preventing and responding to abuse.

Prison systems must be designed to give the widest possible protection and assistance to the family that can be accommodated under the necessary security measures, such as accommodating a woman detainee as close to her family (and provide a means where she can be transferred to another location, should her family relocate); and facilitating as much contact between the woman detainee and her family as possible through leave from prison, prison visits (including conjugal visits), telephone contact, letters and other appropriate means.

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<sup>6</sup> Rule 3 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, Resolution 663 C(XXIV) of 31 July 1957, amended by Resolution 2076 (LXII) of 13 May 1977, as reaffirmed by the Human Rights Committee in its General Comment 28 and the Special Rapporteur on Violence against Women and the African Commission on Human and Peoples' Rights. See also a modification of this strict standard by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Standards, CPT/Inf/E (2002) Rev. 2003 VII Women deprived of their liberty, paragraph 26.

#### **ABOUT OHCHR**

The Office of the United Nations High Commissioner for Human Rights (OHCHR), a part of the United Nations Secretariat, has been given a unique mandate to promote and protect all human rights. Headquartered in Geneva, the Office is also present in some 50 countries. Headed by the High Commissioner for Human Rights, a position established by the General Assembly in 1993 to spearhead the United Nations' human rights efforts, OHCHR takes action based on the unique mandate given it by the international community to guard and advocate for international human rights law. For more information please visit [www.ohchr.org](http://www.ohchr.org)

On Human Rights Day 2007, the United Nations and OHCHR launched a year-long UN system-wide advocacy campaign to mark the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights (UDHR), under the theme: "**Dignity and justice for all of us**".