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Friends World Committee for Consultation (Quakers), an international non-governmental organisation in General Consultative Status with ECOSOC welcomes the opportunity to submit the following information in response to the OHCHR request for information for the analytical report on the causes and human rights implications of over-incarceration and overcrowding, mandated by UN Human Rights Council resolution 24/12 on Human Rights in the Administration of Justice, including Juvenile Justice.

Introduction:

Overuse of incarceration (pre-trial and after sentencing) and overcrowding in prison impact on the rights to adequate housing, to food, to the highest attainable standard of physical and mental health, the right to private and family life, the prohibition on inhuman and degrading treatment and many other rights of those incarcerated (men, women and children), and in addition on those of children living in prison with a parent, as well as impacting on the other children of (male and female) prisoners also depriving them of the right to family life and to not be separated from their parents except when it is in their best interests to be separated.¹

1. Overincarceration, Overcrowding and the death penalty:

Amnesty International reports that (excluding China) at least 2,466 persons were sentenced to death in 2014, at least 607 were executed, and at least 19,094 were believed to be under sentence of death at the end of 2014.² In States that have a moratorium on executions but not on sentencing, without a policy of prompt commutation of the death penalty, the numbers on death row (or equivalent) continue to grow. This can lead to years or decades of incarceration of those sentenced to death, impacting on their physical and mental health due to the physical conditions and/or prolonged uncertainty about being executed³, with all the additional restrictions which often apply to death sentenced prisoners in terms of visits, including of children and other family members, such as no contact visits. The impact on children of having a parent sentenced to

1 Laurel Townhead: *Briefing Paper: Children of Incarcerated Parents International Standards and Guidance* (QUNO, April 2015); Oliver Robertson: *Collateral Convicts: Children of incarcerated parents Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011* (QUNO, March 2012)

2 Amnesty International: *Death sentences and executions in 2014* (April 2015)

3 See, for example, AI: *Death sentences and executions in 2014*, p.32 in relation to Japan; Amnesty International: *Hanging by a Thread: Mental Health and the Death Penalty in Japan* (2009), pp 23-24

death or executed is usually severe and long-lasting, interfering with many of their rights.⁴ In some countries, children are living on death row with their mothers.

Good practice: Abolish the death penalty for all crimes and commute all existing death sentences, or at least have a moratorium on death sentences as well as executions.

2. **Over-incarceration, overcrowding and women:**

Globally women prisoners are a small minority of the prison population (about 6.5%), but the proportion has increased by over 40% between 2000 and 2013 according to the International Centre for Prison Studies.⁵ Penal Reform International reports that imprisonment for drug related offences (usually low level drug trafficking offences) is particularly high among women.⁶ Generally, the profile of female prisoners shows that the majority are poor, with little education, a high percentage are mothers, often sole or primary caretakers, or lead a single-headed household⁷, have poor physical and mental health and have suffered physical or sexual abuse prior to incarceration.⁸

(a) pre-trial detention: The Open Society Justice Initiative has highlighted the overuse of pre-trial detention for women, including for offences which should not require such detention, and its impact on their ability to access legal advice.⁹ Their disempowerment through poverty and lack of education means that they tend to be unaware of their rights in detention, unable to access and afford legal representation, post bail or pay fines. Prolonged pre-trial detention only serves to exacerbate poverty among women with severe downstream social and economic effects on their children and families.¹⁰

Good practice: Provide early access to legal advice and legal aid, give priority to non-custodial alternatives to pre-trial detention, especially for pregnant women, breastfeeding mothers and those who are the sole or primary carers for children.

(b) Sentenced women prisoners: Once imprisoned, female detainees encounter a number of critical problems which disproportionately affect women and which may threaten their rights to

4 *Children of parents sentenced to death or executed: How are they affected? How can they be supported?* (Child Rights Connect, August 2013); Oliver Robertson and Rachel Brett: *Lightening the Load of the Parental Death Sentence on Children* (QUNO, June 2013)

5 Roy Walmsley: *World Prison Population List*, 10th edn, International Centre for Prison Studies, 21 November 2013

6 Penal Reform International: *Global Prison Trends 2015 (footnotes omitted)*, p.12

7 Marilize Ackermann: *Women in pre-trial detention in Africa: A review of the literature* (Civil Society Prison Reform Initiative, 2014), p. 7

8 Penal Reform International studies of women prisoners in Armenia, Georgia, Kazakhstan, Kyrgyzstan, Jordan and Tunisia showed that 7 or 8 out of 10 women prisoners had children; UNODC: *Handbook on Women and Imprisonment 2nd edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (The Bangkok Rules), (UN, 2014)

9 Open Society Justice Initiative: *The socioeconomic impact of pretrial detention* (New York 2011)

10 Ackermann, p.7; see also “Women in Prison in Argentina: causes, conditions and consequences,” May 2013, Cornell Law School International Human Rights Clinic, Avon Global Center for Women and Justice, University of Chicago Law School International Human Rights Clinic, Defensoría General de la Nación Argentina

human dignity and security of person. These include concerns around reproductive health needs, mental health and increased vulnerability to abuse in prison. Harassment and attempts to exploit female detainees by law enforcement officers are reported in many countries.¹¹ Pregnant girl prisoners comprise one of the most vulnerable groups in prisons, due to the social stigma, their inexperience of pregnancy and childbirth as well as the lack of adequate facilities for pregnant girls and girl mothers. Their health may be at enhanced risk during pregnancy and childbirth because of their age. Particular problems face the significant percentage of women prisoners who are foreign nationals. Statistics show that very large proportions of foreign nationals in prison are charged with or convicted of drug related offences particularly trafficking.¹² Many women drug mules are not residents of the country in which they are imprisoned, often for long terms. In addition to the general problems they face as foreigners is the fact that many have children in their home country.¹³ In addition, in countries where house arrest or detention is available for pregnant women and mothers of young children, this may not be available for non-resident foreign nationals (or Roma/travellers) as they do not have an address in that country where they could reside.¹⁴ Overcrowding impacts on the rights to physical and mental health, to adequate food, nutrition and hygiene, providing a breeding ground for disease and the spread of communicable diseases. Specifically for women, given their high levels of mental and physical health problems prior to incarceration, overcrowding has effects above and beyond those on otherwise healthy inmates. In addition, inadequate nutrition may impact on the healthy development of the unborn child, and on a mother's capacity to breastfeed with negative consequences for the baby. Overcrowding may also lead to women being housed in men's prisons with increased safety and security risks and to reduced access to education, rehabilitation and drug treatment programmes which might otherwise be available.

Good practice: Provide non-custodial alternatives to imprisonment, including suspended sentences, house arrest or detention for pregnant women and mothers of young children,¹⁵ and provision of accommodation for non-resident foreign nationals and Roma who would not otherwise be able to avail themselves of such measures. Identify and address the causes of the increased criminalisation of women, for example, Costa Rica no longer imprisons women visitors who take drugs into prison, and in Seattle, USA, Law Enforcement Assisted Diversion (LEAD) addresses low-level drug and prostitution crimes by diversion into community-based treatment and support services – including housing, healthcare, job training, treatment and mental health support instead of through traditional criminal justice system avenues.

3. **Overincarceration, overcrowding and children of prisoners:**

Around the world there are thousands of children living in prison with their parent, mostly their mother, and a far greater number have an imprisoned parent (father, mother or both – including

11 Ackermann, p.7

12 Penal Reform International: *Global Prison Trends 2015 (footnotes omitted)*

13 Women in Prison in Argentina

14 Women in Prison in Argentina

15 For example, the Ghanaian Criminal Procedure Code allows for non-custodial or suspended sentences for pregnant women

male and female juvenile offenders¹⁶) with whom they are not living in the prison. Recent years have seen a growing recognition of children of incarcerated parents as a vulnerable group, taking account of their rights, protection and needs. Prison is not a desirable environment for babies and children, but where the child's parent or primary caregiver is incarcerated, it is also not desirable to separate the child (especially babies and young children) from the parent/carer unless there are particular issues which mean that separation is in the best interests of the child. Therefore, overincarceration (in particular of mothers, including juveniles who are also mothers¹⁷) has a direct impact on the rights of their children, and when linked with overcrowding impacts negatively on these children's rights to health, physical, mental and social development, play, education, and to be free from physical and mental violence.¹⁸ Poor diets have long term negative effects on the health of children: some prison services do not allocate food portions to children and it is the responsibility of the family to supply clothing and other necessities for the child.¹⁹

For example, the majority of female detainees in Africa are mothers and many are the primary or sole caretakers of their children. Typically in Africa, mothers are allowed to keep babies or young children in prison with them up to a certain age. The number of children who are left alone outside prison when their mothers are detained is much greater and the social impacts on them are profound. Where social welfare structures exist, children are likely to be placed in the care of a family member, foster parent or orphanage.²⁰

Recent research has shown that paternal imprisonment also impacts negatively on their children²¹ and children of incarcerated fathers and mothers suffer a range of problems, in particular, stigma and discrimination on the grounds of their parent's status, increased poverty, often leading to children working, and impacts on education.

Good practice: Take account of the best interests of the child when sentencing or deciding on pre-trial measures for a parent or carer.²² When sentencing or considering pre-trial measures for pregnant women,²³ parent(s) and primary caregivers, suspended or non-custodial sentences should, wherever possible, be issued.²⁴

16 UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (2014)

17 The National Center on Crime and Delinquency study of 1000 girls in the California Juvenile Justice System found that the median age at which their first child was delivered was 14 years (quoted in Lee: "Girls in the American Juvenile Justice system", Hong Kong Symposium presentation February 2014)

18 Kate Philbrick, Liz Ayre and Hannah Lynn (eds): *Children of Imprisoned Parents: European Perspectives on Good Practice* (2nd ed 2014)

19 Ackermann, p. 31

20 Ackermann, p. 7

21 Adele D. Jones and Agnieszka E. Wainaina-Woźna (eds): *Children of Prisoners Interventions and mitigations to strengthen mental health* (University of Huddersfield, 2013)

22 See South African Constitutional Court in *S v M* (CCT 53/06) [2007] ZACC 18

23 Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para.69(a). United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Resolution para. 9, Rule 64. Committee on the Rights of the Child, Concluding observations on the combined third, fourth and fifth periodic reports of Hungary,

4. **Overincarceration, overcrowding and older prisoners:**

Recent studies²⁵ show that penal systems are struggling to cope with a rising number of older prisoners. The use of very long and life prison sentences (in particular life without the possibility of parole) has led to an increase in the number of elderly prisoners although there are other factors too. Many prisons are not equipped for such a population. The problems for older prisoners are compounded by overcrowding leaving them all the more vulnerable to abuse, violence, neglect and inhuman and degrading treatment.

Good practice: Abolish sentences of life without the possibility of parole²⁶, ensure that all prisoners are considered for release on a regular basis, and consider compassionate release for incapacitated and terminally ill prisoners. Ensure quality care in safety and dignity, including end of life care, for older prisoners who cannot be released. Some States have a maximum age for imprisonment (for example, 80 years old in Spain).

adopted by the Committee at its sixty-seventh session (1 – 19 September 2014), CRC/C/HUN/CO/3-5 of 14 October 2014, para. 43; Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Iraq, CRC/C/IRQ/CO/2-4 of 4 February 2015, para. 57(a)

24 Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(a). United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Resolution para. 9, Rule 64. Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 30. Concluding observations of the Human Rights Committee: Norway, CPR/C/NOR/CO/5 of 25 April 2006, para. 16. Committee on the Rights of the Child, Concluding observations: Burundi, CRC/C/BDI/CO/2 of 19 October 2010, para.63; Committee on the Rights of the Child, Concluding observations: Ethiopia, CRC/C/ETH/CO/3 of 1 November 2006, para. 50; Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 of 22 October 2010, para. 63(b); Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Mauritius, CRC/C/MUS/CO/3-5 of 4 February 2015, para.48; Committee on the Rights of the Child, Concluding observations on the combined third, fourth and fifth periodic reports of Hungary, adopted by the Committee at its sixty-seventh session (1 – 19 September 2014), CRC/C/HUN/CO/3-5 of 14 October 2014, para. 43; Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Iraq, CRC/C/IRQ/CO/2-4 of 4 February 2015, para. 57(a); Committee on the Rights of the Child, Concluding observations on the consolidated third and fourth periodic reports of India, CRC/C/IND/CO/3-4 of 13 June 2014, para. 60. See also African charter on the Rights and Welfare of the Child, Art. 30, and General Comment 1 of the African Expert Committee on the Rights and Welfare of the Child; also Italian Law 62/2011.

25 *Old Behind Bars: The Aging Prison Population in the United States* (Human Rights Watch, 2012)

26 The European Court of Human Rights has ruled that such sentences are a violation of the European Convention on Human Rights Article 3 (inhuman and degrading treatment) *Vinter and others v. UK* (Applications nos. 66069/09, 130/10 and 3896/10)