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RIGHTS FOR ALL: “Not Part of My Sentence”: Violations of the Human Rights of Women in Custody

This is one of a series of reports being issued by Amnesty International as part of a worldwide campaign against human rights abuses in the USA. For an abridged version of this report, please see: United States of America: “Not Part of My Sentence” -Violations of the Human Rights of Women In Custody, AI Index AMR 51/19/99. An overview of the human rights concerns that are the focus of the campaign is provided in Amnesty International’s report United States of America: Rights for All, AI Index: AMR 51/35/98.

The focus of the report is women who have been accused or convicted of breaking criminal laws. Amnesty International is releasing a separate report on the detention of asylum seekers in the USA, which includes cases of women who seek asylum.

The incarceration of girls in the USA was examined in Amnesty International’s report, *Betraying the Young*, AI Index: AMR 51/57/98, published in November 1998.

Amnesty International acknowledges the considerable assistance it received from many people including incarcerated and formerly incarcerated women; lawyers and other people advocating on behalf of incarcerated women; researchers; and federal and state government officials in the USA.

In November 1998 Amnesty International delegates visited Valley State Prison for Women in California where they interviewed staff and prisoners and were provided with documents. Amnesty International’s delegates were Dr Silvia Casale, a prison consultant and UK member of the European Committee for the Prevention of Torture, and two staff members of Amnesty International’s International Secretariat. Amnesty International was given access to all parts of the prison and was allowed to interview individual prisoners in private, as well as talk freely to inmates and staff during their tour. Amnesty International greatly appreciates the assistance it received in arranging and undertaking the visit from officers of the California Department of Corrections in Sacramento and at the prison.

I INTRODUCTION

“That was not part of my sentence, to ... perform oral sex with the officers.” - New York prisoner Tanya Ross, November 1998 [Interview on Dateline NBC television, November 1, 1998, National Broadcasting Co Ltd.]

This report describes violations of the human rights of women incarcerated in prisons and jails [Most “prisons” are state and federal facilities for people sentenced to imprisonment for longer than a year. “Jails” are local government (county and city) facilities mainly holding people who are in custody before they are tried or who have been sentenced to imprisonment for less than a year.] in the United States of America. The rights are set out in a number of agreements that have been adopted by an overwhelming majority of countries.

Many of the violations described in this report, such as sexual abuse committed by prison guards, are also prohibited by laws of the USA. However, as the report shows, a female prisoner may find it extraordinarily difficult to stop unlawful conduct or to have a perpetrator brought to justice. She may have good reason to fear that if she complains she will be victimised again or that investigators will not believe her word in the face of denial by a guard.

Other violations reflect a significant difference between the rights of women set out in international standards and federal and state laws in the USA. For example, international standards provide that female prisoners should be supervised only by female guards. In contrast, under laws of the USA, a male guard may watch over a woman, even when she is dressing or showering or using the toilet. He may touch every part of her body when he searches for contraband.

International standards restrict the use of restraints to situations where they are necessary to prevent escape or to prevent prisoners from injuring themselves or others or from damaging property. In the USA restraints are used as a matter of course. A woman who is in labour or seriously ill, even dying, may be taken to a hospital in handcuffs and chained by her leg to the bed.

Under international standards, it is considered inhumane to punish prisoners by placing them in isolation for a prolonged period in conditions of reduced sensory stimulation. In the USA, several states have prison units where women are held in such conditions.

The laws of the United States proclaim the equality of men and women. However the United States Senate has declined to ratify the Convention on the Elimination of All Forms of Discrimination Against Women, a treaty that has been ratified by most governments.

Amnesty International calls on federal, state and local governments and authorities to take urgent action to ensure that the laws, regulations, policies and practices for which they are responsible rigorously conform to international standards and respect the human rights of women deprived of their liberty.

II THE HUMAN RIGHTS OF INCARCERATED WOMEN

1. International Standards

“Unless the human rights of women, as defined by international human rights instruments, are fully recognized and effectively protected, applied, implemented and enforced in national law as well as in national practice...they will exist in name only.” - Beijing Declaration and Platform for Action, adopted at Fourth World Conference on Women, 1995 [Report of the Fourth World Conference on Women, UN document A/CONF.177/20, 17 October 1995, paragraph 228.].

During the last 50 years, the international community has adopted a number of standards and mechanisms to protect the human rights of individuals in relation to the governments within whose jurisdictions they reside. The standards are based on the precept that human rights are universal and an international responsibility, not simply an internal one. International human rights standards articulate the criteria against which the conduct of the authorities of any nation, including the USA, should be measured.

The USA made a significant contribution to the development of the international standards and mechanisms of human rights protection. However, it has declined to ratify key human rights treaties, has reserved the right not to implement important provisions of treaties that it has ratified and has refused to permit people within the USA to bring complaints about alleged violations of their human rights to international monitoring bodies [See Amnesty International, United States of America: Rights for All, AI Index: AMR 51/35/98, chapter 7.].

In December 1998, President Clinton ordered government agencies to promote monitoring and implementation of federal and state government obligations under international human rights treaties, to conduct an annual review of the reservations the US has made to the treaties it has ratified and other measures to advance implementation of international human rights treaties [Executive Order 13107, 10 December 1998.]. Amnesty International hopes that the President’s initiative will bring about greater acceptance of and conformity with international standards by the USA.

The following paragraphs describe a number of international treaties and other instruments that enshrine rights that are particularly important to people who are accused or convicted of breaking the criminal law, including people who are deprived of their liberty.

International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is the principal international treaty setting out fundamental civil and political rights for everybody. One hundred and forty nations have ratified the treaty, that is, have agreed to be legally bound by its provisions which include:

- the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (Article 7)
- the right of any detained person to be treated with humanity and with respect for the inherent dignity of the human person (Article 10)
- the right to privacy without arbitrary interference (Article 17).

Governments are required to ensure to every person the rights recognized in the treaty without distinction of any kind, such as sex and race (Article 2). The ICCPR also recognizes that all people are equal before the law and are entitled to equal and effective protection against discrimination on grounds such as sex and race (Article 26). The prohibition of discrimination in the ICCPR and the right to privacy includes a prohibition of discrimination on the ground of sexual orientation [Human Rights Committee decision in *Toonen v Australia*, UN Doc:CCPR/C/50/D/488/1992, views adopted 31 March 1994.].

The USA became a party to the ICCPR in 1992 but it reserved the right to refrain from implementing certain provisions or to restrict their application. For example, the US government stated that the United States considered itself to be bound by the prohibition of “cruel, inhuman and degrading treatment or punishment” in Article 7 of the ICCPR only to the extent that Article 7 referred to “the cruel and unusual treatment or punishment prohibited by... the Constitution of the United States.” The US government did so because the reference to “degrading treatment or punishment” in Article 7 of the ICCPR might cover treatment that would not be prohibited by the US Constitution [See Report of the US State Department appended in “Message to the US Senate from the President,” transmitting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, May 20 1988, treaty Document 100-20, page 15.]. It was not willing to prohibit conduct that was not already prohibited by US law. The Human Rights Committee, a body of experts established by the ICCPR who provide authoritative guidance on the interpretation of its provisions and monitor governments’ implementation, has stated that it considers the US reservation to Article 7 “incompatible with the object and purpose of the Covenant.” [UN Doc CCPR/C/79/Add.50, para 14. Several countries have objected to the US reservation to Article 7 because they consider that it is incompatible with the object and purpose of the ICCPR. Under international law, an incompatible reservation is not valid and the relevant treaty provision is still considered binding: Article 19© of the Vienna Convention on the Law of Treaties. The Human Rights Committee has not determined whether the US reservation is invalid, though it has said that “a State may not reserve the right... to subject persons to cruel, inhuman or degrading treatment or punishment.” General Comment No.24 (52), General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, CCPR/C/21/Rev.1/Add.6, 2 November 1994.].

Under a treaty called the (first) Optional Protocol to the International Covenant on Civil and Political Rights, the Human Rights Committee may consider complaints by individuals that a government which is a party to the Protocol violated rights guaranteed by the ICCPR. Individuals can ask the Committee to consider such complaints only if they have exhausted all remedies available within their country. Ninety two governments have agreed to be parties to the Protocol. The US has not done so.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)

The Convention against Torture requires governments to prohibit and punish torture in law and in practice. Governments must investigate whenever there are reasonable grounds to believe that an act of torture or cruel, inhuman or degrading treatment or punishment has been committed, and must bring those responsible to justice. Under the treaty, rape of a woman in custody by a correctional officer is considered to be torture [In a report to the United Nations Commission on Human Rights, then United Nations Special Rapporteur on Torture, Professor Kooijmans noted that “since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture.” UN Commission on Human Rights, UN Doc E/CN.4/1992/SR.21, 21 February 1992, paragraph 35. The International Tribunal for the Former Yugoslavia has considered that rape in armed conflict is an act of torture, referring to a report of the United Nations Special Rapporteur on “Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict.” Prosecutor v Delacic et al, Case No. IT-96-21-T, paragraph 493.].

The USA ratified the treaty in 1994. As with respect to the ICCPR, the government made a reservation stating that it considered itself obligated to prevent “cruel, inhuman or degrading treatment or punishment” only insofar as the term meant the cruel, unusual or inhumane treatment or punishment prohibited by the US Constitution. The US was due to report in 1995 on its implementation of the treaty requirements to the Committee against Torture, which monitors implementation of the Convention. As of January 1999 it had not done so.

The treaty has a provision (article 22) under which governments may make a declaration recognizing the competence of the Committee against Torture to consider complaints by individuals that their rights under the treaty have been violated. At January 1999, 38 had made such a declaration. The USA has not done so.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

In relation to women, the most striking instance of US resistance to international human rights commitments is its failure to ratify the Convention on the Elimination of All Forms of Discrimination Against Women. The US government signed the treaty in 1980, shortly after it was adopted by the United Nations. Signature is a procedure that formally expresses a country’s willingness to become a party that is obliged to implement a treaty’s provisions. By signing, a government binds itself not to do anything that would defeat the object and purpose of the treaty, pending the decision whether to ratify it. Ratification is the procedure that makes a treaty binding and makes the government subject to international scrutiny of its implementation of the treaty’s obligations. One hundred and sixty-one countries have ratified CEDAW.

Under US law, the Senate must agree in order for a treaty to be ratified and this has not occurred, despite support for ratification from the President and many members of Congress and the public. The President has indicated that ratification of CEDAW is his administration’s “next legislative priority” and has urged “rapid action” by the Senate

[Statement by Ambassador Betty King, US representative on the United Nations Economic and Social Council, on Agenda Item 110(D), “Comprehensive Implementation and Follow-up to the Vienna Declaration and Programme of Action,” in the Third Committee, 2 November, 1998, US Mission to the United Nations Press Release.].

CEDAW includes a number of rights and freedoms that are of particular importance to incarcerated women, including the right not to be subjected to gender-based violence. The Committee on the

Elimination of Discrimination Against Women, the body of experts that monitors implementation of the treaty and provides guidance as to its interpretation, has stated that “the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.”[General Recommendation 19, Violence Against Women, HRI\GEN\1Rev.1 at 84 (1994).] CEDAW also enshrines the right to health care services.

International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

CERD obliges governments that have ratified it to eradicate racial discrimination in all areas of public life [“Racial” discrimination includes discrimination based on colour, descent or national or ethnic identity (Article 1).]. The USA ratified the treaty in 1994. The treaty requires governments to periodically report on their implementation of its provisions. At the time of writing (February 1999), the USA has not submitted reports that were due in November 1995 and November 1997. Articles 2-7 establish substantive obligations on governments; the US has made reservations on five of these six Articles (2, 3, 4, 5 and 7). Under Article 14, a country may make a declaration to permit individuals to complain that they have been a victim of a violation of a treaty right to the treaty monitoring body, the Committee on the Elimination of Racial Discrimination. The US has not made such a declaration.

Regional human rights treaties

The USA’s reluctance to support international human rights protection mechanisms is most marked in the inter-American system. The USA has been a leading member of the Organization of American States (OAS) since the charter of the OAS was adopted in 1948 but has refused to recognize any regional human rights treaties. These include the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, which has been ratified by 27 of the 35 member states of the OAS. The USA has signed but has not ratified the American Convention on Human Rights which was adopted by the OAS in 1969 and has been ratified by 24 states, of which 16 have also accepted the jurisdiction Inter-American Court of Human Rights to interpret and apply the Convention.

Other international standards

Many human rights requirements relating to incarcerated people are contained in standards which have been adopted by the international community, but which are not in the form of treaties. Although these standards do not technically have the legal power of treaties, they have the moral force of having been negotiated by governments, and of having been adopted by political bodies such as the UN General Assembly, usually by consensus. The USA played a major part in drawing up the standards and agreed that they should be adopted. However, it has not ensured that a number of the provisions are implemented by jails and prisons in the US.

One of the standards is the United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), which contain provisions specifically relating to women. For example, Rule 53 (2) provides that no male member of the staff may enter the part of the institution set aside for women unless accompanied by a woman officer; Rule 53(3) provides that women prisoners should be attended and supervised only by women officers. Courts in the US, including the US Supreme Court, have referred to the Standard Minimum Rules for guidance in specific cases to determine whether prisons have violated the US Constitution’s prohibition on the imposition of cruel and unusual punishment [For example *Estelle v Gamble*, 429 US 97 (1976); *LaReau v Manson*, (1980) 507 F Supp 1177.].

Another standard, the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) contains an authoritative set of internationally recognized minimum standards on how detainees and prisoners should be treated. They include a

requirement that incarcerated people should be given medical care and treatment free of charge (Principle 24).

Recommendations relating to international commitments

The USA's reluctance to fully accept international human rights treaties and standards denies women in the USA rights and protections which many other governments around the world have agreed to recognise. Amnesty International recommends that the USA should:

- ratify without reservations the human rights treaties that it has not yet ratified and in particular the Convention on the Elimination of All Forms of Discrimination Against Women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the American Convention on Human Rights;
- withdraw its reservations to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination;
- give people in the USA recourse to international human rights protection mechanisms;
- submit to the international monitoring bodies the USA's overdue reports on its implementation of the Convention against Torture and the Convention on the Elimination of All Forms of Racial Discrimination.

2. US Laws and Standards

The United States of America is a federal political system with national, state and local governments. States are primarily responsible for criminal justice legislation and are the main operators of prisons, which generally hold people sentenced to terms of imprisonment longer than a year. Local governments within states generally operate jails that detain people before they are tried or when they have been sentenced to imprisonment for periods of less than a year. The federal government operates custodial facilities for people who are accused or convicted of violating federal laws. It also provides funds to states, local government and other bodies for a wide variety of criminal justice purposes.

Federal and state constitutions and laws specify a range of rights for people held in jails and prison. The laws and practices of the federal, state and local governments and their agencies must comply with the federal constitution, as interpreted by the courts. As mentioned previously, the US Constitution (in a provision known as the Eighth Amendment) prohibits the imposition of cruel and unusual punishment. The US Supreme Court and lower courts have interpreted the prohibition of cruel and unusual punishment and other provisions of the US Constitution as guaranteeing people in prisons and jails a range of rights in matters such as physical safety, medical care, access to the courts and procedural safeguards in disciplinary hearings. There are also state laws that protect the rights of inmates because such laws are applicable to everyone (such as laws against assault) or apply to inmates specifically (such as laws prohibiting sexual relations between correctional staff and inmates). In many matters, such as the use of restraints, the supervision of women prisoners and the separation of children from adults, US law provides a lower level of protection than international standards for people deprived of their liberty. The US Constitution does however prohibit sex discrimination by states (and their agencies), which has provided the basis for some successful legal action on behalf of women in prisons and jails.

Apart from decisions of the US Supreme Court, there is not a national body of law governing the treatment of people in jails and prisons. Several national non-governmental organizations have developed detailed standards for the treatment of accused and convicted people in custody. These standards are not legally binding though courts occasionally take them into account in determining legal requirements. Two of these organizations, the American Correctional Association (ACA) and the National Commission on Correctional Health Care (NCCHC), use the standards as the basis for

assessing and monitoring facilities that wish to be accredited with these organizations. Generally, facilities can choose whether or not to seek accreditation although some facilities become accredited or adopt standards because they are required to do so by state authorities [Only a minority of facilities are accredited. About 60% of prisons are accredited by the ACA and 25% by the NCCHC; 4% of jails are accredited by the ACA and 7% by the NCCHC.].

III PROFILE OF WOMEN IN PRISONS AND JAILS

[Sources for statistics in this section, unless otherwise noted: D Galliard and A Beck, Prison & Jail Inmates at Midyear 1997, Bureau of Justice Statistics Bulletin, US Department of Justice, Washington DC, 1998; C Mumola and A Beck, Prisoners in 1996, Bureau of Justice Statistics Bulletin, US Department of Justice, Washington DC, 1997.]

1. Overview

On 30 June 1997, there were about 138,000 women in jails and prisons in the USA, more than three times as many as the number of women incarcerated in 1985;

For over a decade, the rate at which women are being incarcerated has been increasing at a far faster rate than the rate of increase of incarceration of men;

Women are in prisons and jails for mainly non-violent crimes and have far less violent criminal histories than incarcerated men;

The main type of crime that has resulted in the incarceration of women in recent years is violation of laws prohibiting the possession or sale of specified drugs;

Compared with their number in the general population, black and Hispanic women form a disproportionately large segment of incarcerated women;

More than 80,000 women in prisons and jails are mothers of children under 18; they have about 200,000 children aged under 18.

The rapidly growing number of incarcerated women

About 78,000 women, who have generally been sentenced to imprisonment for more than a year, are in federal and state government prisons. They make up 6.4 per cent of the prison population of the USA.

County and city jails hold around 60,000 women. They are mainly awaiting trial or have been sentenced to relatively short terms of imprisonment [There are smaller numbers held for other reasons e.g. sentenced women awaiting transfer to prison or who are held in jails because there is no room in state prisons ; women detained pending the determination of an application for asylum.]. They constitute about 10 per cent of the jail population in the USA.

The number of women incarcerated in prisons and jails in the USA is approximately 10 times more than the number of women incarcerated in Western European countries, whose combined female population is about the same size as that of the USA [In 1996-97, there were about 13,500 pre-trial and convicted women in prison in the countries of Spain (3974), France (2165), Italy (2098), Germany (2768), England (2299) and Scotland (202). The female population of these countries was about 150 million. The female population of the USA in 1990, the last census year, was 127 million. Sources of data: demographic data for Europe: Europe Statistical Survey which gives the most recent census data - 1981 for Spain, Italy and the UK, 1990 for France and 1995 for Germany; prisoner data for Europe is for 1 September 1996, except for Spain, from: Penological Information Bulletin, No. 21, December 1998, published by the Council of Europe, Table 2 (Prison Population on 1 September

1996: Demographic Structure), page 67; Spanish prisoner data is for 1997, provided to Amnesty International by Ministerio del Interior, January 1999.].

For more than a decade, the rate of increase in the number of women incarcerated in jails and prisons in the USA has consistently exceeded the rate of increase in the number of men being incarcerated in the US. Between 1985 and 1996:

- the female prison population increased by an average of 11.2 percent per year compared with 7.9 percent for men;
- the female jail population grew by an average of 9.9 percent each year, and that of men by 6.4 percent.

Women's crimes [Arrest data is derived from US Department of Justice, Source book of Criminal Justice Statistics 1997, Table 4.8. Murder data is from J Fox and M Zawitz, "Homicide trends in the US," US Department of Justice, Washington DC, 1999.]

"Women tend to commit survival crimes to earn money, feed a drug-dependent life, and escape brutalizing physical conditions and relationships." [B Owen, In the Mix - Struggle and Survival in a Women's Prison, State University of New York Press, Albany, New York, 1998, 11.]

Women are far less likely than men to be charged with or incarcerated for a violent crime. Women comprise over half the US population but in 1996 women comprised only 15 percent of people arrested for the most serious violent crimes (such as murder, rape and robbery) and 20 percent of people arrested for less serious assaults. Women in jail are half as likely as men to have had prior violent criminal records (17 percent of women compared with 36 percent of men). Men are 9 times more likely than women to commit murder. In October 1998, there were 45 women and 3474 men on death row.

Women are also a relatively small proportion of people who are charged with most other criminal offences. In 1996, they constituted 28 percent of people arrested for property crimes and 17 percent of people arrested for laws relating to illegal drugs. Women were a majority (60%) of those arrested for only one type of crime, "prostitution and commercialized vice."

Women in the US are incarcerated for predominantly non-violent offences. [Sources - [State data: D. Gilliard and A. Beck, "Prisoners in 1997", Bureau of Justice Statistics, Washington DC, 1998; federal data provided to Amnesty International by Bureau of Justice Statistics.].

In 1996-97, the proportion of women who were incarcerated for violent crimes in jails and in state and federal prisons was about half the rate of men who were incarcerated for violent crimes. In jails, 15% of women compared with 28% of men were in custody for violent crimes. In state prisons, 28% of women and 49% of men were convicted of violent crimes; in federal prisons 6% of women and 12% of men were convicted of violent crimes [Data for federal prisoners is for 1997, from Source book of Criminal Justice Statistics 1997, Table 6.51, page 505 and excludes prisoners housed for authorities other than the Federal Bureau of Prisons, such as the District of Columbia.].

Women are far more likely than men to attack people they know than strangers. According to a 1991 national prison survey, nearly two thirds of the women in prison for a violent crime had victimized a relative, an "intimate" (spouse, ex-spouse, boyfriend or girlfriend), or someone else they knew. In comparison, half the men had victimized strangers [T Snell, Women in Prison - Survey of State Prison Inmates - 1991, Bureau of Justice Statistics, Washington DC, 1994. The survey also reported that almost one third of the women in prison for homicide had killed an intimate - husband, ex-husband or boyfriend; a fifth (21%) had killed strangers. It did not give comparable data for men who had killed.]. Studies of women who have committed crimes of violence indicate that often they have acted in response to abuse that they have suffered [For example, Tracy Huling found that 59% of women in New York committed to prison in 1986 for killing someone close to them were being abused at the time of the crime: T Huling, Breaking the Silence, Correctional Association of New York, New York, 1991, cited in J Pollock, Counselling Women in Prison, Sage Publications,

California, 1998, 15. In a study of California female prisoners, 10% reported that they had been incarcerated for a crime involving the use of a weapon to protect themselves or their children; 27.9% indicated past use of a weapon to protect themselves or their children: B Owen and B Bloom, *Profiling the Needs of California's Female Prisoners - a Needs Assessment*, National Institute of Corrections, 1995.].

As described below, the dramatic increase in the number of women in jails and prisons is due, in large part, to a massive rise in the number of women incarcerated for violating drug laws.

Racial and ethnic minorities

One of the most striking characteristics of incarcerated women is that the proportion who are of racial and ethnic minority background greatly exceeds their representation in the general population. The rate of imprisonment of black women is more than eight times the rate of imprisonment of white women; the rate of imprisonment of Hispanic women is nearly four times the rate of imprisonment of white women.

The rate of increase of imprisonment of black and Hispanic women has slightly exceeded the rate of increase of imprisonment of white women throughout this decade [From 1990-96, the number of imprisoned white females increased by 67%, black females by 72% and Hispanic females by 71%: D Gilliard and J Beck, "Prisoners in 1997," Bureau of Justice Statistics Bulletin, US Department of Justice, Washington DC, August 1998.].

Employment

National and state surveys consistently find that a majority of incarcerated women have relatively low levels of education and vocational skills and are not in the paid workforce:

- a national survey of prisoners found that more than half of the women (53%) were unemployed at the time of their arrest, far more than the men (32%) [T Snell, *Women in Prison: Survey of State Prison Inmates*, 1991, Bureau of Justice Statistics, US Justice Department, Washington DC, 1994.];
- a survey of prisoners in New York State reported a similar situation: 54 percent of women and 26 percent of men reported themselves as being unemployed at the time of their arrest [Female Offenders: 1995-1996, State of New York, Department of Correctional Services, Albany, New York, 1997.];
- in a survey of prisoners in California, half the respondents reported that they had never worked and a larger number had not worked in the year prior to being imprisoned. The most commonly cited reason for not working was substance abuse problems [B Owen, *In the Mix: Struggle and Survival in a Women's Prison*, State University of New York Press, New York, 1998, 61.].

2. Mothers behind bars

The use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories.

Recommendation of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders [Report of the 8th UN Congress on the Prevention of Crime and Treatment of Offenders, UN Doc. A/Conf.144/28, rev1 (91.IV.2),Res 1(a),5(c),1990.].

"I think families should understand that if you screw up, you lose your kids." Representative Susan Gerard, Arizona legislator, 1998 [Cited in K Bland, "Parenting Programs Few at Arizona Prisons," The Arizona Republic, 15 November 1998.].

As stated above, there are estimated to be more than 80,000 mothers among the women in prison and jail. They have approximately 200,000 children aged under 18 [There is no national data. This estimate is based on various surveys of the number of women who have children aged under 18 and how many children they have. The method of calculation was suggested by D Johnston, "Effects of Parental Incarceration," in K Gabel and D Johnston eds, *Children of Incarcerated Parents*, Lexington Books, New York, 1995.]. Surveys indicate that the great majority of imprisoned women with children under 18 lived with their children before they were imprisoned [The only national survey of women in prison reported that 67% of female inmates had children aged under 18, and 72% lived with their children prior to their imprisonment. A similar proportion of male inmates had children aged under 18 (64%) but only 53% lived with them. When they were imprisoned, only a quarter of women left their children in the care of the children's father; 90% of male inmates left their children in the care of the children's mother: T Snell, "Women in Prison: Survey of State Prison Inmates, 1991," Bureau of Justice Statistics, US Justice Department, Washington DC, 1994.].

All states have laws permitting the termination of parental rights of parents who are incarcerated [In some states the laws specifically refer to parents who are incarcerated; in others the termination of the rights of incarcerated parents occurs under general laws relating to, for example, adoption. See P Gently, "Procedural Due Process Rights of Incarcerated Parents in Termination of Parental Rights Proceedings: a Fifty State Analysis," *Journal of Family Law*, volume 30, number 4, 1991-92.]. Women's prisons are often located in rural areas far from the cities in which the majority of inmates lived, making it difficult to maintain contact with their children and jeopardising the prospects of successful reunification. A national study found that more than half of the children of women prisoners did not visit their mothers while they were in prison

[B Bloom and D Steinhart, *Why Punish the Children? A Reappraisal of the Children of Incarcerated Mothers in America*, National Council on Crime and Delinquency, San Francisco, 1993, cited in B Bloom, M Chesney Lind and B Owen, *Women in California: Hidden Victims of the War on Drugs*, Center on Juvenile and Criminal Justice, San Francisco, 1994, 6.]. Over 60 percent of the children who did not visit lived more than 100 miles (160 kilometres) from the prison where their mother was incarcerated. Many of the children of incarcerated women are placed in foster care, "where the inability of imprisoned mothers to meet court-mandated family reunification requirements for contact and visitation with their children can result in termination of the mother's parental rights." [B Bloom, M Chesney Lind and B Owen, *Women in California: Hidden Victims of the War on Drugs*, Center on Juvenile and Criminal Justice, San Francisco, 1994, 6.].

In 1950, thirteen states had laws allowing mothers in prison to keep their infants with them. Over the next two decades a number of states repealed their laws; even some states that had such laws did not establish the programs required to put into practice what the laws permitted [B Bloom, "Public Policy and the Children of Incarcerated Parents," in K Gabel and D Johnston eds, *Children of Incarcerated Parents*, Lexington Books, New York, 1995.]. Fewer than half of the states offer community based facilities that allow mothers to live with their children while serving all or a portion of their sentence or part of their parole immediately after release [J Pollock, "Parenting Programs in Women's Prisons," unpublished study for Open Society Institute, Center on Crime, Communities and Culture, 1999. Pollock surveyed all states in 1998. Of the 40 that responded, 14 reported that they had community facilities for mothers and children: California, Connecticut, Illinois, Indiana, Iowa, Kansas, Massachusetts, Minnesota, North Carolina, Ohio, Rhode Island, Vermont, Virginia and Washington.].

Many women enter jail and prison pregnant. In 1997-98, more than 2,200 pregnant women were imprisoned and more than 1,300 babies were born in prisons ["Inmate Health Care, Part II", *Corrections Compendium*, Volume 23, Number 11, November 1998, 11. The number is based on information provided by 35 state correctional systems and the Federal Bureau of Prisons, some of which provided only approximate data. The other states did not respond to the survey at all or did not have information about pregnancies and births. Amnesty International is not aware of data on the

number of women who gave birth while in jail.]. In at least 40 states, babies are taken from their imprisoned mothers almost immediately after birth or at the time the mother is discharged from hospital [”Inmate Health Care, Part II”, Corrections Compendium, November 1998. Alaska, Colorado, Washington DC, Oklahoma, Utah and West Virginia did not respond to the survey. In a similar survey in 1997, Washington DC, Utah and West Virginia reported that they did not allow newborns to stay with mothers; the other states that did not respond in 1998 did not respond in 1997: “Inmate Health Care, Part II,” Corrections Compendium, November 1997.]. The exceptional states are:

California: the Community Prison Mother Program has six community facilities where an eligible pregnant woman is housed and may remain with her infant from the time of birth until the end of incarceration; the Program has 94 places - in 1997, 436 pregnant women were incarcerated in California state prisons and 381 babies were born to state female prisoners;

Illinois: qualified inmates may be housed in a residential program for up to 24 months; there are 15 places available in the program - in 1997, 120 pregnant women were incarcerated in Illinois state prisons and 51 babies were born to state female prisoners;

- New York: a woman may keep her baby for up to 12 months;
- Nebraska: a woman may keep her baby for up to 18 months.
- South Dakota: a woman may keep her baby for up to 30 days.
- The federal Bureau of Prisons MINT (“Mothers and Infants Together”) program allows low-risk women to participate in “Community Corrections Center” programs while pregnant. A woman is placed in the community-based program before delivery and remains for three months with the baby after delivery.

The impact of incarceration on families as a whole and on the individual family members, particularly parents who are primary caretakers and their children, is at the very least disruptive and commonly traumatic [See, for example, studies cited in K Gabel and D Johnston eds, Children of Incarcerated Parents, Lexington Books, New York, 1995.]. Incarcerated and formerly incarcerated women interviewed by Amnesty International in the course of research for this report described the enforced separation from their infants, particularly shortly after giving birth, as the most difficult experience of their imprisonment. In 1993, the US House of Representatives summarized the findings of research on the harm of separation and the benefits of maintaining family ties as follows:

Separation of children from their primary caretaker-parents can cause harm to children’s psychological well-being and hinder their growth and development;

many infants who are born shortly before or while their mothers are incarcerated are quickly separated from their mothers, preventing the parent-child bonding that is crucial to developing a sense of security and trust in children;

- maintaining close relationships with their children provides a powerful incentive for prisoners to participate in and successfully benefit from rehabilitative programs; and
- maintaining strong family ties during imprisonment decreases recidivism [Title XLI - Family Unity Demonstration Project, forming part of the Violent Crime Control and Law Enforcement Act of 1993, HR 3355.].

The preceding summary of research was incorporated in legislation allowing the establishment of projects to promote the maintenance of family ties between incarcerated parents and their children. The legislation was passed in 1994, specifying that nearly \$20 million could be spent on the projects in the period 1996-2000 and requiring an evaluation of their effectiveness. Since the law was enacted, Congress has failed to appropriate any money to implement the legislation.

Projects that facilitate the maintenance of ties between parents who are incarcerated (or face the possibility of incarceration) and their families are consistent with the international standards that Amnesty International urges US federal and state governments and their authorities to respect [In particular (a) the rehabilitation of offenders is an essential aim of the penitentiary system -Article 10, International Covenant on Civil and Political Rights; and (b) promotion of the best interests of the child

- a general principle of the Convention on the Rights of the Child which the US has signed but not ratified.].

3. *The Impact of the War on Drugs*

‘Without any fanfare, the “war on drugs” has become a war on women, and it has clearly contributed to the explosion in women’s prison population...While the intent of get tough policies was to rid society of drug dealers and so called king-pins, over a third (35.9%) of the women serving time for drug offenses in the nation’s prisons are serving time solely for “possession.”’

A study of women in California prisons[B Bloom, M Chesney Lind, B Owen, Women in California Prisons: Hidden Victims of the War on Drugs, Center on Juvenile and Criminal Justice, San Francisco, 1994.].

We need to be more honest with ourselves that the vast majority of women receiving prison sentences are not the business operatives of the drug networks. The glass ceiling seems to operate for women whether we are talking about legitimate or illegitimate business. They (women) are very small cogs in a very large system, not the organizers or backers of illegal drug empires. This, coupled with a growing mood among the American public reportedly concerned about early intervention for troubled kids and more drug treatment in preference to more prisons, should give us the opening we need to look at better and more cost-effective ways of dealing with women offenders.

Elaine Lord, warden of Bedford Hills Correctional Facility, New York State’s maximum security prison for women [Cited in M Mauer and T Huling, Young Black Americans and the Criminal Justice System: Five Years Later, The Sentencing Project, Washington DC, 1995, 22.].

Since the 1980s, the federal and state government criminal justice authorities have increased efforts to detect and prosecute people who violate drug laws and legislatures required courts to impose harsher penalties. The so-called war on drugs has resulted in a significant increase in the number of people who are incarcerated and the length of incarceration for people convicted of committing drug crimes [The following examples illustrate the severity of penalties for drug crimes. Under federal law, the mandatory minimum penalty for a first-time drug offender convicted of possession of one gram of LSD or five grams of crack cocaine is five years without parole. There is no minimum term of imprisonment prescribed for the offence of “aggravated sexual abuse” i.e. rape. In Michigan, a court must sentence someone convicted of possession of 50 grams of cocaine to 10-20 years in prison; the minimum sentence for possession of 650 grams is 25 years and a sentence of life imprisonment may be imposed. There is no minimum sentence of imprisonment for the offence of “criminal sexual conduct in the first degree.” In New York, the penalty for possession of four ounces or more of a narcotic drug, is a mandatory minimum prison sentence of 15 years to life - a higher penalty than the minimum for the crime of rape and the same penalty that can be imposed on people convicted of murder, arson and kidnapping.].

From 1986 to 1996 the number of women sentenced to state prison for drug crimes increased ten fold (from around 2,370 to 23,700) and, as the above graph illustrates [Source of data: D. Gilliard and A. Beck, Prisoners in 1997, Bureau of Justice Statistics, Washington DC, for 1990 and 1996; T. Snell, Women in Prison, Bureau of Justice Statistics, Washington DC, for 1986. Amnesty International was not able to obtain federal prison data for 1986.], the imprisonment of women for drug crimes has been the main element in the overall increase in the imprisonment of women.

Women have been described as disproportionately the “victims” or “prisoners” of the war on drugs. The number of women imprisoned for drug offences in state prison systems doubled between 1990 and 1996; in the same period, the number of men imprisoned for drug crimes increased by just over half. Nationally, one in three women in prison and one in four women in jail are incarcerated for violating a drug law; the comparable figures for men are one in five in both prisons and jails. In New York, 61 percent of women in state prisons in 1996 had been convicted of a drug crime, a fifth of

them (444 women) having been convicted for possession of an illegal substance. In California, 42 percent of female prisoners and 27 percent of male prisoners in state prisons in 1998 were incarcerated for drug crimes. A study of a sample of California female state prisoners in 1993 found that the most common crime (16% of the women) for which they had been convicted was possession of illegal drugs [B Owen and B Bloom, Profiling the Needs of California's Female Prisoners - a Needs Assessment, National Institute of Corrections, 1995.].

The war on drugs has also had a disproportionate impact on minority women. For example, in New York, drug convictions are far more prevalent among female prisoners who are black (59%) and Hispanic (77%) than among white female prisoners (34%) [State of New York Department of Correctional Services, Female Offenders 1995-96, Albany, New York 1997.].

Pointing to the link between substance abuse and the prevalence of physical and sexual abuse among women, one study concludes that "the war on drugs has succeeded only in criminalizing women already suffering under extreme socio-economic and psychological stress." [M Mauer and T Huling, Young Black Americans and the Criminal Justice System: Five Years Later, The Sentencing Project, Washington DC, 1995, 22.].

The harsh penalties that are being imposed on so many people convicted of violating drug laws has given rise to a number of concerns among people of various backgrounds, including judges, legislators, people working in welfare and human rights organizations.

One such concern which relates to both men and women, is that the penalties appear excessive for the nature of the crime, particularly where the conduct involves possession of drugs for personal use rather than sale. Courts in the US have overturned some sentences on the grounds that they were so harsh that they violated the constitutional prohibition against the imposition of cruel and unusual punishment. Judges in and outside court have spoken out against the severity of sentences they are required to impose and some federal judges are reported to have refused to sit on drug cases to avoid being put in a position of having to impose what they considered to be excessively severe sentences

[The organization Families Against Mandatory Minimums Foundation reports that "by May 1993, 50 senior federal judges...had exercised their prerogative and refused to hear drug cases," and cites individual judges critical of severe penalties they have to impose because of laws prescribing mandatory minimum terms of imprisonment: www.famm.org/about3.htm. In 1990, the Judicial Conference of the United States, representing federal judges, voted to urge Congress "to reconsider the wisdom of mandatory minimum sentence statutes," noting that a number of regional groups of judges had passed resolutions in opposition to such sentences: United States Sentencing Commission, Special Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, United States Sentencing Commission, Washington DC, 1991, chapter 6.]. The principle that punishment should be "proportionate" to prohibited conduct is internationally recognized [For example, Report of the 8th UN Congress on the Prevention of Crime and Treatment of Offenders, UN Doc. A/Conf.144/28, rev1(91.IV.2), Res 1(a),5(c), 1990. For US law sources see US Sentencing Commission, Special Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, August 199. Human Rights Watch, an international non-governmental human rights organization, considers that New York State's drug laws violate both international and US prohibitions on cruel punishment - Cruel and Usual: Disproportionate Sentences for New York Drug Offenders, Human Rights Watch, New York, 1997.].

Another concern that has been raised by people who have looked at the impact of the laws is that restrictions on the sentencing discretion of judges with respect to people convicted of violating drug laws (and other crimes) adversely affect many women. For example, women often have a very subordinate role in drug dealing and so may have little information to offer in order to be eligible for the more lenient sentences imposed on people who assist the police and prosecution. As well, women may participate in drug crimes because they are under considerable pressure from a man

with whom they are in a relationship, without being able to establish persuasively that they were coerced for the purposes of a reduced sentence.

A study of the “gender-neutral” federal sentencing guidelines by US legal scholar Professor Myrna Raeder concluded that the sentencing model placed women at a distinct disadvantage with respect to gender-specific characteristics, experiences and roles. The policy did not allow the court to consider as mitigating circumstances such factors as the role of single mothers in particular in caring for children; the minor role that women play in many crimes; the abusive/coercive environments in which many women play these roles; and the lower recidivism rates for women

[M Raeder, “Gender and Sentencing: Single Moms, Battered Women, and Other Sex-Based Anomalies in the Gender-Free World of the Federal Sentencing Guidelines,” *Pepperdine Law Review*, Vol 20, No 3, 1993.].

Research and specific cases provide support for these concerns. For example, a 1994 study by the Department of Justice found that women were over-represented among low-level drug offenders who were non-violent, had minimal or no prior criminal history, and were not principal figures in criminal organizations or activities, but nevertheless received sentences similar to “high level” drug offenders under the mandatory sentencing policies [Department of Justice, “An Analysis of Non-violent Drug Offenders with Minimal Criminal Histories,” February 4, 1994, cited in M Mauer and T Huling, *Young Black Americans and the Criminal Justice System: Five Years Later, The Sentencing Project*, Washington DC, 1995.].

Tracy Huling studied drug couriers or “mules,” women arrested at New York City’s John F. Kennedy Airport for smuggling drugs into the USA. In New York, a person who pleads guilty to committing a specified drug crime which has a minimum penalty of three years-to-life imprisonment can be sentenced to lifetime probation if they provide “material assistance” leading to the arrest of a drug dealer. Prosecutors and drug enforcement agents interviewed by Huling noted that “women rarely can offer material assistance of any value because they are involved so marginally, if at all, in the larger drug operation [”T Huling, “Women Drug Couriers - Sentencing Reform Needed for Prisoners of War”, 9 WTR Crim. Just. (1995).].

The following are examples of individual cases reported to Amnesty International that raise concern about the capacity of laws and sentencing guidelines to take adequate account of women’s circumstances:

Sally Smith, then aged 37, was sentenced to life without parole in 1993 in Michigan after being convicted of the crime of “Conspiracy With Intent to Deliver Over 650 Grams of Cocaine.” Her conviction was based on two phone calls she allegedly made to collect money for her boyfriend Robert Darcy and two receipts she signed for a cash exchange. There was considerable evidence that Sally Smith was brutally beaten and verbally abused by Robert Darcy during their 17-year relationship and that he threatened to kill her or one of her family members if she left him. During the trial, the court refused to admit evidence of abuse that occurred prior to 1984-1989, the dates of the conspiracy, because it was considered too remote to impact on her behaviour. An expert on battered women’s syndrome who testified on behalf of Sally Smith was not permitted to tell the jury that, in her opinion, the long history of abuse suffered by Sally Smith made her incapable of exercising “free will.” [Information provided to Amnesty International by Families Against Mandatory Minimums Foundation, Washington DC.].

Sylvia Foster, then aged 34, was sentenced to 24 years imprisonment in 1997 in Florida for facilitating the drug dealing of her boyfriend. It was her first criminal offence. The judge in the trial remarked that Sylvia Foster had acted “out of character” because “when you’re in love you’re blind or something, you’ll do anything.” Before Sylvia Foster was sentenced the prosecutor stated to the court: “Your Honor, this is one of those, not necessarily rare, but probably unique sentencing situations where I have a sense that the defense, the prosecution and the Court wish that there might be

greater latitude in discretion for sentencing for women.”[Information and court documents provided to Amnesty International by Families Against Mandatory Minimums Foundation, Washington DC.]

In 1988 Angela Thompson, at age 17, was arrested for selling two ounces of cocaine to an undercover police officer and sentenced to 15 years to life imprisonment. She had no prior criminal record and was acting on the direction of her uncle and legal guardian, a drug dealer with an extensive criminal history. Angela Thompson was pregnant at the time of her arrest and gave birth while in prison. Her son Shamel was placed in the care of his aunts. Justice Jerome Marks, a retired State Supreme Court justice, read an account of Angela Thompson’s sentence and considered it unjust: “This is one of the great injustices that I’ve run across. I was a judge for 22 years and I never had a case where a youngster 17 years of age, with no criminal background at all, ends up doing 15 years to life.’ In 1996, he prepared a clemency petition to New York Governor George Pataki which was denied. He resubmitted the petition in 1997 and it was granted. Angela Thompson was released from prison in January 1998 [New York Times 25 November 1996 and 24 January 1998.]

The essence of the concern raised by such cases, by Professor Raeder, Tracy Huling and others is not that women in general are treated more severely than men and indeed studies that compare the sentencing of women and men suggest the opposite [For example, see state studies described in National Council on Crime and Delinquency, National Assessment of Structured Sentencing, Bureau of Justice Assistance, US Department of Justice, Washington DC, 1996, and the study conducted by the US Sentencing Commission, Special Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, Washington DC, 1991. The US Sentencing Commission has commissioned a study of the impact of federal sentencing guidelines on race and gender disparity - US Sentencing Commission, Annual Report 1997, US Sentencing Commission, Washington DC, 1998, 46.]. However such comparisons do not reveal the full picture and nor do they answer the question whether the criminal justice system takes adequate and appropriate account of women’s circumstances in assessing culpability and punishment. Professor Raeder has suggested the establishment of a federal task force to “focus on all of the gender issues that affect the sentencing and imprisonment of women,” with broadly drawn representation from, among others, the Justice Department, judiciary, Sentencing Commission and criminologists who have studied family based prisoner issues [M Raeder, “Gender and Sentencing: Single Moms, Battered Women, and Other Sex-Based Anomalies in the Gender-Free World of the Federal Sentencing Guidelines,” Pepperdine Law Review, Volume 20:905, 1993, 989.]. Amnesty International welcomes this proposal.

IV DISCRIMINATION

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2, Universal Declaration of Human Rights

No State shall...deny to any person within its jurisdiction the equal protection of the laws.

Amendment XIV, Constitution of the United States

“The needs of female inmates are significantly different from those of male prisoners, for whom most of the existing institutional programs and policies were developed and implemented.”

Dr Barbara Okun, guide to counselling women in prison, 1998 [In J Pollock, Counselling Women in Prison, Sage Publications, California, 1998, vii.].

“Custody and health care staff have often gained their experience working with a male

inmate population and have no knowledge of the special needs of a female inmate population.”

Female Inmate Health Issues Report, California, 1996 [Female Health Issues Task Force Report - the Task Force was established under California legislation and reported in 1996. The California Department of Corrections provided a copy of the report to Amnesty International.].

In 1980, the US General Accounting Office (GAO) reported to the US Congress that female prisoners were inequitably treated: “women in correctional institutions are not provided with comparable services, educational programs, or facilities as male prisoners.” [US General Accounting Office, Women in Prison: Inequitable Treatment Requires Action, Washington DC, 1980.]. The report discussed various approaches to overcome disparities and made recommendations to improve conditions for women in prison. In May 1998, following a request by Congresswoman Eleanor Holmes Norton, the GAO initiated a study of conditions of confinement for women prisoners and, in particular, parenting and health care issues. In December 1998, the study was extended to include sexual harassment and abuse. The study is restricted to four correctional systems - the Federal Bureau of Prisons, California, Texas and Washington - and is scheduled to be completed at the end of July 1999 [Letter from N Rabkin, US General Accounting Office, to Congresswoman E Norton, 10 December, 1998.].

There is a dearth of readily available, recent evidence to enable a detailed comparison of services for men and women. A number of court cases and investigations have found that female inmates had access to fewer programs and lived in poorer quality facilities than male inmates [For example, W Collins and A Collins, Women in Jail: Legal Issues, National Institute of Corrections, Washington DC, 1996; M Morash, T Bynum, and B Koons, “Women Offenders: Programming Needs and Promising Approaches”, National Institute of Justice Research in Brief, August 1998 at page 2 cites research published between 1977 and 1994 showing “inadequacies in medical services, education, vocational training, prison industry, law libraries and parenting as well as a lack of objective knowledge about what works.”]. Several recent examples are:

New York A US Department of Justice investigation reported that at Orleans County Jail, male inmates received a variety of educational and other programs such as Alcoholics Anonymous but females did not; unlike male inmates, female inmates could not become “trusties”, a position which entitled them to greater privileges than other inmates and increased the likelihood of early release [US Department of Justice, letter to S Dudek, Executive Officer of Orleans County, January 7, 1998.].

California A study of state prisons reported that while male prisoners received specialized HIV-related medical services, there was no comparable specialist within the women’s prison system [L Acoca, “Defusing the Time Bomb: Understanding and Meeting the Growing Health Care Needs of Incarcerated Women in America,” Crime and Delinquency, Vol 44, No. 1 January 1998, 53.].

Washington DC Female prisoners brought legal action to obtain equity with male prisoners in a number of programs. The court ordered the corrections department to provide female prisoners with equal access to educational and vocational programs available to male prisoners, because of federal legislation requiring equality in these areas. It refused to order the department to provide female prisoners with equivalent access to work, recreation and religious programs, holding that because there were far fewer female than male prisoners it was “hardly surprising, let alone evidence of discrimination, that the smaller correctional facility offered fewer programs than the larger one.” In June 1998, the women brought further legal action to enforce the order for equal educational and vocational opportunities [At trial, the court held that the women were entitled to remedial measures in relation to all the areas where they had less access to programs: Women Prisoners of the District of Columbia Department of Corrections v District of Columbia, 877 F.Supp 634 (1994). On appeal, only measures relating to educational and vocational programs were upheld; the quoted remark is from the appeal: Women Prisoners of the District of Columbia Department of Corrections v District of Columbia, 93 F.3d 910 (1996).]. At the time of writing, February 1999, the matter had not yet been resolved.

The decision of the court in this case indicates one reason that has been identified for the poorer treatment experienced by incarcerated women - they are far fewer in number than the men, which makes it relatively more expensive to provide the same array of programs and facilities for them. As a study of the mental health of women in jail concluded, "ironically, the relatively small number of women in jail makes the per capita cost too high to provide them with needed services." [L Teplin, K Abram, G McClelland, "Prevalence of Psychiatric Disorders Among Incarcerated Women - I. Pre-trial Jail Detainees," Archives of General Psychiatry, Volume 53, June 1996, 511.]. Another reason that has been cited is the persistence of traditional or stereotyped notions about the kinds of programs that are appropriate for or of interest to women [W Collins and A Collins, Women in Jail: Legal Issues, National Institute of Corrections, Washington DC, 1996, 9.].

It is important to note that women's right to equality does not necessarily mean that they should receive the same treatment as men. For example, women's right to adequate health care requires access to services such as pre- and post-natal care, that are different to those required by men. The provision of treatment to women and men for the consequences of physical and sexual abuse must take account of the fact that women are far more likely to have been physically and sexually abused and that the nature and circumstances of the abuse of women and men differs markedly [In a 1996 survey of jail inmates, 37% of women and 6% of men reported they had been sexually abused before their most recent admission to jail; 27% of the women and 3% of the men reported that they had been raped. Women were far more likely to report sexual or physical abuse both as children (37%) and as adults (27%) than were men (12% of men reported sexual or physical abuse before age 18 and 2% after age 18): C Harlow, Profile of Jail Inmates 1996, Bureau of Justice Statistics Special Report, US Department of Justice, Washington DC, 1998.]. To be effective, treatment for substance abuse must be tailored to the particular needs of women and take account of the reasons for their substance abuse which may be specific to women

[The National Center on Addiction and Substance Abuse at Columbia University, Behind Bars: Substance Abuse and America's Prison Population, The National Center on Addiction and Substance Abuse at Columbia University, New York, NY, 1998. B Owen and B Bloom noted in a study of programs for women prisoners in California that "the subject of past abuse emerges frequently in (substance abuse) recovery programs, yet is basically overlooked in most curricula." Profiling the Needs of California's Female Prisoners - a Needs Assessment, National Institute of Corrections, Washington DC, 1995.].

In a 1993-94 national survey, researchers found that correctional administrators, staff and participants perceived that "many needs of incarcerated women are different from those of men and require approaches tailored to their specific characteristics and situations." [M Morash, T Bynum, and B Koons, Women Offenders: Programming Needs and Promising Approaches, National Institute of Justice Research in Brief, Washington DC, 1998, 10.]. This was far more common among prison than jail administrators. The survey found that while progress is being made in developing different management approaches and different programs, many of the people surveyed reported that some needs of incarcerated women were still unmet or were not met satisfactorily and that there were areas where programs existed but needed to be expanded. State-level administrators identified four types of programs needing expansion that they considered of particular importance to women: family-related, mental health (in particular to counteract victimization from abuse and to improve self-esteem); substance abuse and vocational programming.

Prison authorities around the USA differ considerably in their responsiveness to developing programs specifically for women. According to a 1997 survey of 52 departments of corrections [The survey received responses from 49 state departments of corrections, the New York City and District of Columbia department of corrections and the Federal Bureau of Prisons: US Department of Justice, National Institute of Corrections Information Center, Current Issues in the Operation of Women's Prisons, National Institute of Corrections, Colorado, 1998.]:

only 27 departments reported that they provide substance abuse programs developed specifically for women;

- only 19 departments provided domestic violence programs developed specifically for women;
- only nine departments offered programs addressing for victims of sexual assault;
- only nine departments provided special programs to address women's health education.

Among the positive developments, the study reported that the US Bureau of Prisons, which operates federal prisons, has a national policy requiring that any new or revised policy or programs must address gender. The Vermont Department of Corrections reported a major new initiative focussing on female offenders including hiring a Director for Women Offenders, developing specific policies on women and two community-based residential programs for women and children.

It is important to note that providing equal treatment for women and men is not enough if the standard of treatment of men constitutes a violation of human rights. For example, in its investigation of conditions at the Globe Jail in Gila County, Arizona, the US Justice Department found that while female inmates had less opportunity than males for out-of-cell time, inmates generally had almost no opportunity for outdoor exercise, in violation of their constitutionally recognized right [US Department of Justice, "Investigation of Gila County Jails", letter to Ms D Meissner, Commissioner, Immigration and Naturalization Service, January 7, 1998.]. The Justice Department found a similar situation at the Coffee County Jail in Douglas, Georgia. At most, inmates were allowed outdoors twice per week for an inadequate total of two hours. There was no scheduled outdoor exercise time for female inmates, who were allowed to exercise only when a female jailor was assigned to the female area of the jail and was willing to allow the inmates outdoors. The jail provided no exercise equipment for inmates. On the day the Justice Department inspected the jail, about 50 male inmates had only a child's small tattered football provided to them. Female inmates had no equipment at all [U.S. Department of Justice, "Notice of Findings from Investigation of Coffee County Jail," 23 April, 1996.].

It is also important to note that a woman's right to be free of discrimination applies not only to her identity as a woman in relation to men. In her study of a California women's prison, Barbara Owen received reports of discrimination against women on the basis of both race and sexual orientation, though overall staff-prisoner relations were "fairly cooperative." B.Owen, *In the Mix - Struggle and Survival in a Woman's Prison*, State University of New York Press, Albany, 1998, page 160. For race, see page 154; for sexual orientation, see page 165. Human Rights Watch has reported that lesbian and transgendered prisoners have been targeted for sexual abuse [*All Too Familiar: Sexual Abuse of Women in US State*

Prisons, Human Rights Watch, New York, 1996, page 2.].

Providers of programs and services must also take account of differences between women which may be significant, such as race, ethnicity, language and sexual identity. For example, a 1996 study of women's prisons in Florida, California and Connecticut found that language and cultural barriers exacerbated the health and mental health problems experienced by female prisoners generally. For example, few correctional staff were bilingual and "women with medical problems who did not speak English were often unable to access the services they needed even when their problems were severe." [L Acoca, "Defusing the Time Bomb: Understanding and Meeting the Growing Health Care Needs of Incarcerated Women in America," *Crime and Delinquency*, Vol. 44 No. 1, January 1998, 49-69, 59]. In her guide to counselling women in prison, Professor Joycelyn Pollock emphasizes that "to be successful counselling must understand the social realities that female prisoners come from and will return to." Professor Pollock notes that:

...the offender is affected by systemic factors, such as racial discrimination and gender bias. There are very real and serious effects of being an African American woman in this society, or a Hispanic woman, or a Native American woman. Life experiences and system barriers have to be recognized and taken into account during the helping process [J Pollock, *Counselling Women in Prison*, Sage Publications, California, 1998, 199 and 185-186.].

V SEXUAL ABUSE

“No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.”

Article 7, International Covenant on Civil and Political Rights

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

Article 10, International Covenant on Civil and Political Rights

“No one shall be subjected to arbitrary or unlawful interference with his privacy...”

Article 17, International Covenant on Civil and Political Rights

“I’m tired of being gynaecologically examined every time I’m searched.”

Inmate at Valley State Prison for Women, California, 18 November 1998, speaking with an Amnesty International delegate about searches conducted by some male staff.

“Nearly every inmate we interviewed reported various sexually aggressive acts of guards. A number of women reported that officers routinely ‘corner’ women in their cells or on their work details in the kitchen or laundry room and press their bodies against them, mocking sexual intercourse. Women described incidents where guards exposed their genitals while making sexually suggestive remarks.”

Findings of US Justice Department investigation into women’s prisons in Michigan, 1995 [Letter from US Department of Justice to Honorable John Engler, Governor of Michigan, 27 March, 1995. Additional findings are cited below in this chapter.].

1. Introduction

Many women in prisons and jails in the USA are victims of sexual abuse by staff, including sexually offensive language; male staff touching inmates’ breasts and genitals when conducting searches; male staff watching inmates while they are naked; and rape.

In the overwhelming majority of complaints of sexual abuse by female inmates against staff, men are reported to be the perpetrators. Contrary to international standards, prisons and jails in the USA employ men to guard women and place relatively few restrictions on the duties of male staff. As a consequence, much of the touching and viewing of their bodies by staff that women experience as shocking and humiliating is permitted by law.

When an officer’s conduct is such that it violates institutional rules (for example, prohibiting any staff-inmate sexual contact) and even criminal laws (for example, concerning rape and sexual assault), the victim is often reluctant to complain because she may have good reason to anticipate that her accusation is less likely to persuade investigators than the denial of an officer; she may also fear retaliation.

The seriousness and prevalence of sexual abuse in six jurisdictions (California, Washington DC, Georgia, Illinois, Michigan, New York) was described in 1996 in a report by Human Rights Watch, an international human rights organization [All Too Familiar - Sexual Abuse of Women in US State Prisons, Human Rights Watch, New York, 1996.]. Further evidence is provided by the following reports.

Alabama The US Justice Department’s investigation of Julia Tutwiler prison in 1994 received what were considered to be credible reports of sexual relations between inmates and some staff. According to the reports, staff members rewarded inmates with food, cosmetics and money for their participation. While the investigation received no allegations of “physically forced rape,” it considered the sexual relationships “not appropriate or truly ‘voluntary’ given the institutional relationship.” [“Notice of findings from investigation of Julia Tutwiler Prison for Women,” March 27, 1995.].

Arizona In 1997 a US Justice Department investigation into women's prisons concluded that the authorities failed to protect women from sexual misconduct by correctional officers and other staff. The misconduct included rape, sexual relationships, sexual touching and fondling, and "without good reason, frequent, prolonged, close-up and prurient viewing during dressing, showering and use of toilet facilities." [CIV97-476, US District of Arizona.]. The Justice Department reports that since 1992 more than 60 people who worked with female inmates in Arizona have been dismissed, have resigned or have been disciplined as a result of sexual misconduct [US Memorandum in Opposition to Defendant's Motion for Summary Judgement, US v Arizona et al, Civil Action No.97-746-PHX-ROS, filed November 1998.]. The Justice Department was unable to reach an agreement with the state to implement additional measures to prevent and deal with sexual abuse and initiated legal action. In January 1999, the Justice Department and the state were discussing a possible settlement of the lawsuit.

California During 1997-98, Amnesty International received reports from prisoners and other sources that inmates were the victims of sexual abuse by some staff at Valley State Prison for Women. One of the reports was in the form of a letter from the "general population" of the prison, which stated:

"There's no voice telling taxpayers that their money is being wasted, that we are in need of adequate medical care, that we don't like to be pawed on by male correctional officers under the pretence of being pat searched. No, we do not have a voice that will speak about how we are treated by the male officers, as if we were their private harem to sexually abuse and harass. Not to mention the emotional and verbal abuses when being addressed as bitches, niggers, wet backs, or any other of the racial or sexual slurs that the abusive officer's tiny mind can conjure."

The letter stated that only a minority of officers behaved abusively, but the women were very distressed and felt unable to secure protection. Amnesty International wrote to the Department of Corrections requesting an inquiry into the reports of sexual abuse and other concerns. The Director of the Department, Mr Terhune, responded that the Department did not condone sexual misconduct between inmates and staff, that staff are trained on the subject of sexual misconduct and that all allegations are promptly investigated. Mr Terhune also informed Amnesty International that the prison had recently installed "drop boxes" for inmate complaints which would only be seen by investigative staff who are not staff on housing units. Amnesty International replied that reports received by the organization indicated that inmates did not have confidence in the complaints procedure. It asked to visit the prison and to meet the Director, who agreed to the requests.

Amnesty International delegates visited the prison in November 1998 and interviewed prisoners who reported that it was common for some male officers to watch them dressing and undressing and, in breach of the approved procedure, to touch their breasts and genitals when conducting pat searches. At the time of the visit, the delegates were informed, several guards were being investigated for sexual misconduct including an alleged incident of rape. Several prisoners told the delegates that prisoners were afraid to place complaints in drop boxes because other prisoners might think that they were informing the authorities about prisoner misconduct.

Federal Bureau of Prisons In March 1998, the Federal Bureau of Prisons agreed to pay three women a total of \$500,000 to settle a lawsuit in which they reported that guards had committed, orchestrated and facilitated sexual abuse against them and against other women at the Federal Detention Center, Pleasanton, California [Private Settlement Agreement, Lucas v White, Case number C96-02905 US District Court of Northern California.]. The women reported, among other things, that guards had taken money from male inmates in exchange for allowing the male inmates to enter the women's cells so that they could sexually abuse them.

The women's lawsuit also complained of racial discrimination. All three are African American and at the time they were sexually abused there were also white female prisoners who were being sexually abused. The white female prisoners were moved immediately after a complaint was made to officials

but the African American women were not moved for about another 10 days and continued to be subjected to abuse.

As part of the settlement of the women's legal action, the Bureau agreed to institute a variety of measures to prevent and respond to sexual abuse of prisoners, including the provision of a telephone link to allow women to report complaints of sexual abuse to an external inquiry unit.

Florida In March 1998 a former prison guard, was convicted of raping a female inmate at the Florida Correctional Institution in Lowell. Sentencing the man to serve nine years in prison, the judge said: "It's clear from the evidence that you abused the trust that was put in you as a corrections officer." [St Petersburg Times, March 25, 1998.].

In October 1998, Florence Krell hanged herself from her cell door at Jefferson Correctional Institution. Shortly before her death she wrote letters to the judge who had sentenced her and to her mother, complaining of abuse from guards and other forms of ill-treatment. Among the incidents she described was being left naked in her cell and observed by male officers. In January 1999, the state Department of Corrections announced a change in policy to prohibit inmates being left completely naked in their cells. Florida legislators have held hearings into the death of Florence Krell and the suicide of another female prisoner in December 1998. The American Civil Liberties Union of Florida has asked the Governor of Florida to establish a general investigation of conditions for female prisoners in Florida, citing reports that it has received from and on behalf of prisoners alleging, among other matters, sexual activity between staff and inmates, sexual abuse and harassment [The Tampa Tribune - various articles e.g. 29 November; 4, 6, 10 and 25 December 1998 and 13 January 1999; Miami Herald 21 January 1999; ACLU of Florida media release, 13 January 1999 and communications from ACLU Florida to Amnesty International.]. Amnesty International has written to the Governor to support the request for a general inquiry.

Idaho In January 1999, a former guard at Jefferson County jail pleaded guilty to a charge of sexual contact with a female inmate, a serious crime in the state. He was due to be sentenced in February 1999 [Information provided to Amnesty International by Office of Prosecuting Attorney, Jefferson County.].

Illinois In April 1998 a guard at the Will County Jail, was dismissed when an internal inquiry found that he had "used his position as a correctional officer for his own personal gain and sexual gratification." Earlier in the year, the guard was also charged with violating a new criminal law that prohibits prison and jail guards from sexual conduct with inmates. It is alleged that he had sexual relations with five female inmates [Chicago Tribune, May 1, 1998.].

Maryland In January 1998 a former guard was convicted of sexually assaulting an inmate at the Women's Detention Center in Towson. He was sentenced to serve 90 days in prison [The Baltimore Sun, April 29, 1998.].

Massachusetts On 12 December 1997 the state Department of Corrections settled a lawsuit which alleged that the manner in which strip searches of female prisoners at Framingham prison were carried out during a training exercise in September 1995 violated the prisoners' constitutional rights. On the night of 20-21 September 1995, according to the legal complaint filed by the women, 112 women and pre-trial detainees were roused from their beds by masked guards screaming and shouting abuse. Sixteen women were strip searched in front of male and female staff and ordered to provide urine samples. In the settlement agreement the Corrections Department agreed, among other things, that it would carry out future strip searches and urine tests "in relative privacy with as much dignity as possible" and such searches and tests would not be conducted if men were present, unless in an emergency. The women were awarded \$80,000 [Prison Legal News September 1998.].

On 16 October 1998, Framingham prison inmate Elizabeth Bouchard telephoned a radio station and described how she was treated when she was put under constant observation as a suicide risk because she was depressed after her baby died.

I was...put on eyeball status, stripped of belongings, clothing, placed in a room with nothing but a plastic mattress on the floor. Watched 24 hours a day by a man or woman. I was haemorrhaging but because of my status not allowed to have tampons or underwear. I was very humiliated, degraded. Being on eyeball status with male officers, my depression intensified. I didn't want to be violated any more than I already was, so I put the mattress up against the window. When I did that I was in violation because they couldn't see me. The door was forced open, I was physically restrained in four point restraints - arms, legs spreadeagled, tied to the floor, naked, helmet on head, men and women in the room ["Here and Now" program, station WBUR, Boston University, 16 October 1998.].

Michigan A US Department of Justice investigation of women's prisons in 1994-95 reported evidence of widespread sexual abuse, including rapes [Letter from US Department of Justice to Honorable John Engler, Governor of Michigan, 27 March 1995.]. Reports of sexual abuse were provided not only by inmates:"an officer matter-of-factly advised (US Justice Department investigators) that there is frequent sexual activity between guards and inmates." There was also evidence that a number of officers had been charged with sexual assault and evidence that pregnancies had resulted from inmates' sexual involvement with guards. In addition to sexual assaults, the Justice Department reported that:

- officers abused women during pat-down searches by "routinely touching all parts of the woman's body, including fondling and squeezing their breasts, buttocks, and genital areas in ways not justified by legitimate security needs";
- officers stood outside prisoners' cells and watched them dress or undress, and stood in shower areas to observe women showering and using toilet facilities. The Justice Department concluded that "the degree and kind of surveillance employed by many guards at these facilities goes well beyond legitimate security needs."

Michigan disputes the findings of the Justice Department that there is persistent and systematic sexual abuse that is not being dealt with effectively. According to the Michigan Department of Corrections, sexual misconduct is "aggressively investigated," as indicated by the following data. In 1996 there were 13 allegations of sexual misconduct at Michigan's two prisons for women; all were investigated and two were sustained and resulted in disciplinary action. In 1997 there were 19 allegations of sexual misconduct of which five were sustained. In 1998, to 20 November, there were 24 allegations of sexual misconduct of which five were sustained and resulted in disciplinary action and nine were pending [The Insider - a Public Information Service of the Michigan Department of Corrections, 20 November, 1998.].

In 1997 the Justice Department and women prisoners initiated legal action asking a court to order the state to take stronger action to protect prisoners from sexual abuse [Letter from US Justice Department to John Engler, Governor of Michigan, March 27, 1995. The Justice Department unsuccessfully sought a court order to secure access. The letter notes that investigators were permitted to interview inmates during regular visiting hours in visiting room facilities.]. As of February 1999, it appeared that the case would go to trial during the course of 1999.

In 1998, Michigan refused permission to the United Nations Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, to visit women's prisons in the state to investigate reports of sexual misconduct. "I view the United Nations as an unwitting tool in the Justice Department's agenda to discredit the state of Michigan in spite of the objective evidence that the state of Michigan has not violated the civil and constitutional rights of women inmates," Michigan Governor Engler wrote to the Office of the United Nations High Commissioner for Human Rights [Reported by Inter-Press Third World News Agency, 14 August, 1998.].

In October 1998, inmates and a guard reported to Amnesty International that sexual abuse of female inmates by staff continues to occur. In November 1998, the Detroit City Council adopted a resolution calling on the Governor "to end all prison practices which allow, promote and enforce violence against women in Michigan state prisons including custodial sexual abuse and harassment."

New Hampshire In October 1998, a correctional officer was convicted of sexually assaulting an inmate at the New Hampshire State Prison for Women in Goffstown. State Assistant Attorney General Constance Stratton has informed Amnesty International that, following the officer's arrest and subsequent convictions, meetings were held between staff and inmates at the prison in order :

- to create an environment where it is appropriate for correctional officers to report any behaviour of peers which causes them concern;
- to make it safer for inmates to report inappropriate behaviour;
- to give inmates access to levels of authority in the institution other than the correctional officers themselves.

The Department of Corrections has also enacted "harsher discipline" for sexual abuse by staff and intends to appoint as the head of the Department's Internal Affairs section a person who has experience of conducting investigations into allegations of sexual abuse [Letter to Amnesty International, 5 January 1999.].

New York In October 1997 a corrections officer employed at Taconic Correctional Facility for Women pleaded guilty to a charge involving sexual activity with an inmate [The charge was described in a press release issued by the District Attorney of Westchester County, 24 April 1997; in January 1999, an officer of Bedford Court informed Amnesty International of the outcome.].

Female prisoners initiated a lawsuit in 1998 claiming that pat frisks (searches of clothed women prisoners) that are regularly carried out by male correctional officers constitute "legalised sexual molestation." [Fleming et al v Goord, 98 CIV 8022, US District Court, Southern District of New York.]. Additional information about this case is provided later in this chapter.

Ohio In October 1996, a former prison guard at the Correctional Medical Center, a prison facility, pleaded guilty to sexual misconduct with inmates and was sentenced to two years in prison. In May 1997, another former guard was placed on probation for three years after pleading guilty to sexual misconduct with two female inmates at the same facility [The Columbus Dispatch 12 February 1997 and 29 May 1997.].

Texas In November 1998, a correctional officer pleaded guilty to sexual misconduct with female inmates at Plane State Jail. He was fined \$3000 [Texas Department of Criminal Justice, letter dated 7 January 1999 to Amnesty International.].

Virginia In January 1998 a former guard at Rappahannock Regional Jail pleaded guilty to sexually assaulting a female inmate and was sentenced to six months in jail [Daily Press, 14 January 1998.].

Washington In November 1998 the state of Washington agreed to pay a former prisoner \$110,000 to settle a lawsuit she initiated after she was raped and made pregnant by a guard at the Washington Corrections Center for Women in 1993. Similar cases are pending, including one case in which an inmate who had been imprisoned since 1985 gave birth to a child in December 1997. In the latter case the woman alleged that she was raped but prosecution authorities declined to charge the officer identified as the father because they considered they could not prove the officer had used force or threat of force. The state has no law prohibiting consensual sex between inmates and staff. In February 1998, it is reported that the Department of Corrections introduced a written policy prohibiting sex between prison employees and inmates and was reportedly preparing policies to investigate allegations of sexual abuse and to protect the health and safety of inmates who report that they have been raped [The News Tribune, 3 February, 1998; 6 June 1998; 3 November 1998, 30 January 1999.]. In January 1999, Amnesty International was informed that legislators were proposing to introduce legislation to prohibit sex between staff and inmates.

Washington DC In 1994, a court found that despite the correctional authority's policies and procedures designed to address sexual misconduct by staff, female prisoners in three facilities were subjected to many incidents including violent sexual assaults, invasions of privacy and inappropriate remarks. The authority conceded that it had failed to protect the women from sexual abuse. The court

ordered that the authority should implement a number of remedial measures. In 1998, female prisoners returned to court complaining that the authority had failed to comply with the court's order and as a consequence female prisoners continued to be sexually assaulted and harassed [*Women Prisoners of the District of Columbia v District of Columbia*, 899 F. Supp 659 (D.D.C. 1995); *Women Prisoners of the District of Columbia v District of Columbia*, F.3d 910 (D.C. Cir. 1996); *Women Prisoners of the District of Columbia v District of Columbia*, Plaintiff's Memorandum in Support of Motion for Contempt and to Enforce the Court's Order for Injunctive Relief, 22 June 1998.]. As of January 1999 the matter had not been resolved.

West Virginia In October 1997 the former sheriff of Grant County was sentenced to seven years' imprisonment in a case in which female inmates at Grant County Jail were forced to engage in sex acts with law enforcement officials. In the same case, a former police officer of the Petersburg Police department, also in Grant County, was sentenced to five years' imprisonment for raping a female inmate four times. The former police officer acknowledged that the sex acts had occurred but argued they were consensual, according to a police investigator. The victims have initiated legal action against the county for compensation [Charleston Gazette, 16 October, 1997.].

Wyoming In June 1998, a guard at the Wyoming Women's Center in Lusk pleaded guilty to a charge of raping two female prisoners on three occasions [Prison Legal News, September 1998.].

2. International standards and US law in relation to sexual abuse

"It's not consensual - they have the power, the uniform, the badge." - Elizabeth Bouchard, prisoner in Massachusetts, November 1998 [Elizabeth Bouchard was speaking on radio, by telephone from Framingham prison - "Here and Now" program, station WBUR, Boston University, 16 October 1998.].

Under international law, rape of a prisoner by correctional staff is considered to be an act of torture [In a report to the United Nations Commission on Human Rights, then United Nations Special Rapporteur on Torture, Professor Kooijmans noted that "since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture." UN Commission on Human Rights, UN Doc E/CN.4/1992/SR.21, 21 February 1992, paragraph 35. The International Tribunal for Yugoslavia has considered that rape in armed conflict is an act of torture, referring to a report of the United Nations Special Rapporteur on "Contemporary Forms of Slavery, Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict." Case No. IT-96-21-T, paragraph 493.]. Other forms of sexual abuse are clearly violations of the internationally recognised prohibition of cruel, inhuman or degrading treatment or punishment, which governments are called upon to interpret "so as to extend the widest possible protection against abuses, whether physical or mental." [Explanatory footnote to Principle 6, United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.]. Sexual abuse also violates the right to be treated with respect for human dignity, and the right to privacy, both enshrined in the International Covenant on Civil and Political Rights (ICCPR).

Some reports indicate that women who were sexually abused were targeted not only because of their gender. As described earlier, in its study of sexual abuse of women in US prisons, Human Rights Watch noted that lesbian and transgendered prisoners had been singled out for sexual abuse [Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons*, Human Rights Watch, New York, 1996, 2.]. Targeting of incarcerated women because of their sexual identity violates not only their right against sexual abuse but also their right to be free from discrimination, which is enshrined in the ICCPR and Convention Against Torture. As described earlier in this chapter, the three women who sued the Federal Bureau of Prisons complained, among other things, of racial discrimination because white female prisoners were moved to safety far more quickly than they were. Targeting of women because of their race or ethnic identity violates their right against discrimination

under the ICCPR, the Convention against Torture and the International Convention on the Elimination of Racial Discrimination.

International standards do not specifically deal with the issue of consensual sexual relations between staff and inmates. Incarcerated and formerly incarcerated women with whom Amnesty International has spoken, and correctional authorities and other people familiar with the environment of jails and prisons, consider that sexual relations between staff and inmates are inherently abusive of the inmates and can never be truly consensual, even if initiated by inmates, simply because of the considerable difference in power between the parties. As an Arizona prison psychiatrist has explained, “the relationship can never be equal. “ In his view,

“clearly an inmate by their role as inmate is vulnerable and not in parity situation with the jailor...who has all kinds of authority and power and potential means to exert influence and pressure...The jailkeeper...(is) mandated by law and by society to fulfill a certain function and that is not to fulfill their own personal sexual needs...On an individual level, if in fact, as you point out that even up to 80% of the female inmates have a history of sexual or other kinds of abuse in the past, then very likely some and maybe many of those inmates have sufficient degree of disturbance in their identity, their self esteem...in their own sexuality that would make them vulnerable and not as able to make proper decisions.” [United States’ Memorandum in Opposition to Defendants’ Motion for Summary Judgement, USA v State of Arizona et al, Civil Action No. 97-476-PHX-ROS, US District Court for the District of Arizona.]

The rules of the international criminal courts on the former Yugoslavia and Rwanda take note of the coercive reality of the custodial environment by providing that in cases of alleged sexual assault, consent is not allowed as a defence if the victim was subjected to or threatened with or has reason to fear violence, duress, detention or psychological oppression [Rule 96 of the rules of procedure and evidence (IT/32/Rev.3/Corr.1 of 6 February 1995) of the International Criminal Tribunal for the Former Yugoslavia and a similar rule in the International Criminal Tribunal for Rwanda which set forth evidentiary procedure for cases of sexual assault.]. Further, international standards recognise that the proper administration of prisons depends upon their staff’s “integrity, humanity, professional capacity and personal suitability for the work.” [Rule 46(1), Standard Minimum Rules for the Treatment of Prisoners.] None of these personal qualities is consistent with staff exploiting opportunities for sexual relations with inmates.

Under federal and state laws of the US, rape and other forms of coerced sexual contact are prohibited by general criminal laws. In addition, 36 states, the District of Columbia and the federal government have laws specifically prohibiting sexual relations between staff of jails and prisons and inmates [Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas and Wyoming. For an outline of the laws, see B Smith, Fifty-State Survey of Criminal laws Prohibiting Sexual Abuse of Prisoners, National Women’s Law Center, Washington DC, 1998. The survey and the information in this report vary because: Maryland and Tennessee legislated after the Smith survey was completed; Amnesty International considers that Wisconsin should be characterized as not having a law specifically prohibiting sexual contact although it has a law generally prohibiting abuse of prisoners.]. Thirteen states do not have such laws [Alabama, Kentucky, Massachusetts, Minnesota, Montana, Nebraska, Oregon, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin (this state has a law prohibiting “abuse” of people in penal institutions). In states about which Amnesty International has information, for example Massachusetts, prison staff rules prohibit sexual relations between staff and inmates.]. The laws vary in scope and nature. For example, in 13 states and the District of Columbia a correctional employee commits an offence even if the inmate consented; three states (Arizona, Delaware and Nevada) make it a crime for an inmate as well as a correctional employee to engage in sexual activity with each other.

In 1998, proposed legislation was introduced into Congress to encourage states to criminalize sexual conduct between correctional staff and prisoners, by financially penalizing states that do not have such laws. Violence Against Women Act of 1998, introduced in the House of Representatives. The proposed legislation also required that the Department of Justice establish a national, toll-free telephone "hotline" for prisoners to report sexual contact with correctional staff. Callers were to be provided with counselling and referred to assistance; the Attorney General was to be required to provide an annual report on the number and status of complaints. The proposed legislation was not considered before the Congressional term ended. Amnesty International has been informed that similar proposed legislation may be introduced in 1999.

3. Standards relating to male staff

"Women's full enjoyment of equal rights is undermined by the discrepancies between some national legislation and international law and international instruments on human rights."

Beijing Declaration and Platform for Action, adopted at Fourth World Conference on Women, 1995 [Report of the Fourth World Conference on Women, UN document A/CONF.177/20, 17 October 1995, paragraph 219.]

"Showers do not allow for privacy, especially for females as their chests are exposed through the top window." A prison official giving the tour claimed the showers get fogged up and therefore block guard's vision of inmates' chest and genital area. However, we observed a male taking a shower and we could clearly see him." - Report of tour of Colorado State Penitentiary, 1998 [The Prisoners Rights Project of the Rocky Mountain Peace and Justice Center, Notes of tour of Colorado State Penitentiary, September 9, 1998.]

The employment of men to guard women is inconsistent with international standards [Rules 53(2) and 53(3), Standard Minimum Rules for the Treatment of Prisoners.] which provide that:

- female prisoners should be attended and supervised only by female officers;
- male staff such as doctors and teachers may provide professional services in female facilities, but should always be accompanied by female officers.

The standards also provide that measures which are designed solely to protect the rights and special status of women are not considered discriminatory [Principle 5(2), Body of Principles for the Protection of All Persons Under Any Form of Detention.]. The United Nations Human Rights Committee has stated that to ensure protection of the dignity of a person who is being searched by a state official, a body search should only be conducted by someone of the same sex [General Comment 16 to Article 17 of the ICCPR, "Compilation of General Comment and General Recommendations Adopted by Human Rights Treaty Bodies," UN Document HRI/GEN/Rev.3, 15 August 1997.]

Men form a very large proportion of the staff in prisons and jails in which women are incarcerated in the US. A 1997 survey of prisons in 40 states found that on average 41 percent of the correctional officers working with female inmates are men ["Female Offenders: As Their Numbers Grow, So Does The Need for Gender-Specific Programming," Corrections Compendium, March 1998. The following states did not provide data on the male-female composition of their prison staff: Alaska, Arizona, Georgia, Illinois, Iowa, Maryland, Michigan, New York, North Dakota, South Dakota; the Federal Bureau of Prisons also did not respond. In a separate survey, Mississippi reported that 237 male correctional officers were assigned to female prisons as at January 1, 1997: Criminal Justice Institute, The Corrections Yearbook 1997, Criminal Justice Institute, New York, 1997 - Amnesty International is not aware of the reason for the discrepancy between Mississippi's data in this and the first mentioned survey. Another survey of prisons as at 31 December 1997 reported that in state-operated facilities, female staff filled on average 55 percent of custody positions, ranging from 18-97 percent; three privately operated prisons had an average of 69 percent female custody staff: US Department of Justice National Institute of Corrections Information Center, Current Issues in the Operation of

Women's Prisons, National Institute of Corrections, Colorado, 1998. Amnesty International is not aware of similar information about jails but the proportion of male staff may well be greater.]. The proportion varied greatly between states. Men were 72 percent of correctional staff guarding women in Kansas and 66 percent in California and Idaho. Mississippi reported that it had no male officers guarding women while Nevada employed no men in one of its two prisons for women; in the other Nevada women's prison, 35 percent of employees were men. In Louisiana, men constituted four per cent of staff guarding women. Twenty six of the 40 states also reported that they do not require special training for staff who guard female prisoners.

Courts in the US have ruled that anti-discrimination employment laws mean that prisons and jails cannot refuse to employ men to supervise female inmates, or women to supervise male inmates. Court decisions, legislation and the policies of jail and prison authorities in the US impose limits on what male staff in female facilities are permitted to do (and also on female staff in male facilities) and the limits differ between and within states.

In Hawaii, a court in 1998 upheld the legal right of the Department of Corrections to assign only female correctional officers to work a particular time of day when they might have unsupervised access to the inmates and be required to observe inmates in the showers and toilet areas. The Department's policy, the court decided, was "a reasonable response to the concerns about inmate privacy and allegations of abuse by male (staff)." In reaching its decision, the court took note that in a similar case in Wisconsin, ten years earlier, a court had held that a warden "made a professional judgment that giving women prisoners a living environment free from the presence of males in a position of authority was necessary to foster the goal of rehabilitation," particularly in light of the fact that many of the inmates had been physically and sexually abused by men [*Robino v Iranon*, 145 F.3d 1109 (9th Circuit, 1998). The Wisconsin case was *Torres v Wisconsin Department of Health and Social Services*, 859 F.2d 1523 (7th Circuit, 1988).]. In Kenton County jail, Kentucky, male guards are not permitted into the isolation section if it holds a female inmate unless they are accompanied by a female guard. In contrast, in Vermont prisons, a labour union contract specifically forbids assignments on the basis of gender [US Department of Justice National Institute of Corrections Information Center, *Current Issues in the Operation of Women's Prisons*, National Institute of Corrections, Colorado, 1998, 3.].

In general, laws and policies permit male staff to guard female inmates and prohibit them from conducting strip searches and intimate body searches of female inmates, except in emergency situations. Male staff are permitted to view undressed females "if it is reasonable, the exception rather than the rule, and based on a legitimate reason."

[*W Collins and A Collins*, *Women in Jail: Legal Issues*, National Institute of Corrections, 1996, 18.]. According to the US Government, male officers who work in women's housing units are "admonished to respect the privacy of female inmates." [Human Rights Committee, Fifty-third session, "Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant - Initial report of the United States of America," CCPR/C/SR.1405, 24 April 1995, 8.].

Courts have taken different views about the legitimacy of male staff conducting what are described as "pat" searches or "pat frisks," that is, searching women who are dressed. Thorough pat searches require some contact with the genital area. In the state of Washington, a court decided that such searches of women by men amounted to cruel and unusual punishment, in violation of the US Constitution [*Jordan v Gardner*, 986 F.2d (9th Cir., 1993).]. Many of the women in the prison had been subjected to physical and sexual abuse prior to being imprisoned and they and experts testified that pat searches by men would traumatize them because it constituted continuation of the abuse. Further, in the opinion of one judge, prisoners who had not been sexually abused prior to their imprisonment would be substantially harmed by cross-gender searches. He stated:

"The intrusive, probing searches at issue here permit men in position of ultimate authority to flatten the breasts of women who are powerless and totally subject to their control, to knead the seams of

their clothing at their inner thighs, and then thrust their hands inward and upward into their crotches. Such conduct is offensive in the extreme to all women, regardless of their prior sexual history.

“A common-sense understanding of the different experiences of men and women in this society, leads to the inescapable conclusion that invasive searches of the bodies of female prisoners by male prison guards are harmful both because they constitute and reinforce gender subordination, and because they offend our basic values and our concepts of human dignity.”

In a later case, male and female correctional officers successfully sued the director of the Nevada Department of Prisons to prevent him transferring male officers out of a female facility and transferring female officers into the facility. The court decided that it was not against the law for male correctional officers to conduct clothed body searches of female inmates which include touching their breast and genital areas, unless there was evidence (as had been presented in Washington) that the women would suffer severe distress. Even if there was such evidence, the court held, cross-gender searching would be legal if it could be shown to be necessary for security reasons because there were not enough female correctional officers to conduct all searches [*Carl v Angelone*, 883 F.Supp.1433 (D.Nev., 1995).].

As stated earlier in this chapter, in 1998 female inmates in New York initiated legal action to challenge the legality of pat searches of women by male guards in that state. The lawsuit describes the authorised method of pat searches in New York as follows:

“[A]n officer begins by ordering the inmate to stand against a wall with her back to him. The officer then approaches the inmate from behind, placing his hands on the inmate’s neck inside the collar of her shirt. He works his hands down every inch of the surface of her body. Probing for small items, the officer runs his hands under and over the woman’s breasts, brushing her nipples. Searching the woman’s legs, the officer grips one inner thigh. His hands press against the woman’s vagina before moving down her thigh toward the ankle. He then grips her other thigh and repeats this procedure on the woman’s other side.” [*Fleming et al v Goord*, 98 CIV 8022, US District Court, Southern District of New York.].

The women state that even when searches are conducted strictly in accordance with departmental policy they traumatize the large number of inmates who had been physically and sexually abused before they were imprisoned. According to the lawsuit, some male officers disregard departmental procedure and “sexually grope and fondle the prisoners...and/or make sexual and obscene comments about the women’s bodies.” Women report that officers fondled their breasts, grabbed their genitals, masturbated in front of them and made sexual advances. The women report that as a consequence their health had been adversely affected. The women say that the events occurred over a period of five years and that they were afraid to complain because they feared not being believed and that they would suffer retaliation.

In her study of prisoners at the Central California Women’s Facility, many women reported to Barbara Owen that they preferred male staff and gave no indication of “forced abuse” by officers. However, women were troubled by male staff “supervising and observing intimate activities, such as showering, physical searching, or dressing...” [*B Owen*, *In the Mix - Struggle and Survival in a Women’s Prison*, State University of New York Press, Albany, New York 1998, 164.].

Reviewing US compliance with the provisions of the International Covenant on Civil and Political Rights, the Human Rights Committee expressed concern at the practice of using male guards for female inmates, “which has led to serious allegations of sexual abuse of women and the invasion of their privacy.” It called on the authorities to amend existing legislation “so as to provide at least that [male officers] will always be accompanied by women officers.”

[*Human Rights Committee*, Fifty-third session, “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant - Comments of the Human Rights Committee,” CCPR/C/79/Add.50, 7 April 1995.].

In a 1998 report to the Committee on custodial violence against women around the world, the United Nations Special Rapporteur on Violence Against Women called on states to “fully implement the Standard Minimum Rules for the Treatment of Prisoners and ensure that protective measures are guaranteed in all situations of custody.” In light of the information described in this report, Amnesty International agrees that the action called for by the Special Rapporteur should be taken by authorities responsible for jails and prisons.

4. Responses to complaints of sexual abuse

“Most officers will tell you, ‘go ahead and tell - it’s your word against mine. Who are they gonna believe? I’m an officer, I have a badge on, I’m in a superior position to you.’”

Elizabeth Bouchard, prisoner, Framingham prison, Massachusetts, November 1998 [Interview on “Here and Now” radio program, station WBUR, Boston University, 16 October 1998.].

Jail and prison systems in the US have various mechanisms to deal with complaints of sexual abuse and other forms of ill-treatment, in particular:

- investigation and action by personnel within the facility where abuse has been reported;
- investigation and action by personnel of the authority responsible for the facility where abuse has been reported (e.g Department of Corrections);
- referral of allegations of criminal conduct to the police and general criminal prosecutorial agencies.

A number of states and the Federal Bureau of Prisons have introduced special measures aimed at handling complaints and preventing sexual abuse [Cason v Seckinger, Civil Action Number 84-313-1-MAC(CWH)(1994); Washington Prisoners of the District of Columbia Department of Corrections v District of Columbia, US District Court for the District of Columbia, 877 F Supp 634, 1994.]. For example, under the terms of the settlement of the sexual abuse lawsuit cited in the section at the beginning of this chapter, the Bureau of Prisons agreed to provide all inmates with the telephone number of the Inspector General of the Department of Justice, to whom they can report sexual assaults, threats or other ill-treatment; to provide medical and psychological care to an inmate reporting to be the victim of sexual assault; and to develop a training program for all Bureau of Prison staff “which will address Bureau policies and procedures concerning sexual assaults, sexual contacts, sexual misconduct, confidential reporting, sexual harassment and other issues arising out of the special needs of female prisoners.” In a separate initiative, the National Institute of Corrections, part of the US Justice Department, provides training and advice to correctional authorities on the prevention of sexual misconduct in women’s prisons. Prisoners, lawyers and other sources have told Amnesty International that prisoners are often reluctant to complain, for a variety of reasons, including:

- the difficulty of proving an allegation, particularly when the only evidence is the prisoner’s account;
- a prisoner who makes a complaint may be placed in protective segregation while the complaint is investigated; prisoners have said they find this punitive;
- fear of retaliation, which is discussed in the following section.

Of course, a woman can only use prison or jail complaints procedures to complain about treatment that breaches institutional policies. She cannot use these procedures to complain about being searched or being watched while naked by male guards if these activities were conducted in a manner that conforms with the policy of the jail or prison in which she is held. In that case, her only recourse is to challenge the legality of the policy in court, a remedy which is complex and can take years to invoke [See, Amnesty International, United States of America - Rights for All, AI Index: AMR 51/35/98 at 82-83.].

5. *Retaliation*

“Each State Party shall ensure that any individual who alleges that he has been subjected to torture has the right to complain to and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

Article 13, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

[Article 13 refers only to torture; Article 16 applies Article 13 to other forms of cruel, inhuman or degrading treatment or punishment.]

“Confidentiality concerning the request or complaint [regarding treatment] shall be maintained if so requested by the complainant.”

Principle 34, United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

“...the rules are fine the way they are. The trouble is they’re just not enforced...I don’t know how you’re going to protect [officers who might testify about sexual abuse.]. You’re going to have to guarantee them jobs within other state systems here; transfer them to another department; Mental Health; Lottery, something. Because there’s no way they’re going to be able to function here afterwards.”

Julie Kennedy Carpenter, Michigan correctional officer [Deposition taken in relation to legal action by the US Justice Department and women prisoners concerning alleged sexual abuse in Michigan prisons: USA v State of Michigan, 97-CV-75124-DT and L Nunn et al v Michigan Department of Corrections, 97-CV-71416-DT. As reported elsewhere in this report, Michigan Department of Corrections denies the allegations and states that retaliation is prohibited and all complaints are investigated.]

Amnesty International has received a number of reports that inmates and occasionally staff who have reported abuses against inmates have been victimised.

In the litigation brought by Washington DC female prisoners cited in the first part of this chapter, the court was highly critical of the prison authority’s failure to treat complaints by prisoners confidentially. “By leaking private information,” the court stated, “prison officials coerce women prisoners and staff into silence and insulate themselves from scrutiny.” [Washington Prisoners of the District of Columbia Department of Corrections v District of Columbia, US District Court for the District of Columbia, 877 F Supp 634, 1994.].

Breach of confidentiality leading to retaliation was also complained about in the legal action brought by three women against the Federal Bureau of Prisons, described in the section at the beginning of this chapter. In the legal document describing their complaint, the women state that they reported that they were being sexually abused to custody authorities and that these reports were leaked to prisoners and staff. As a result, they were threatened, harassed and subject to retaliation. Robin Lucas, one of the women, reported that she was beaten, raped and sodomized by three men who in the course of the attack told her that they were attacking her in retaliation for providing a statement to investigators.

At Valley State Prison in California, officials told Amnesty International delegates in November 1998 that they did not consider retaliation was common and that staff cannot readily coerce inmates by measures such as denial of privileges because prisoners’ rights are specified in writing. However, prisoners told Amnesty International that staff had harassed women who made complaints by repeatedly searching their possessions and abusing them verbally.

In its investigation of reports of sexual abuse in Michigan prisons, the Justice Department concluded that “many sexual relationships appear to be unreported due to the presently widespread fear of retaliation and vulnerability felt by these women.” In October 1998, Amnesty International received reports from prisoners and other sources in Michigan that some correctional staff had threatened or harassed prisoners who had complained. In November 1998, Human Rights Watch published a report of an investigation into complaints of retaliation against Michigan women prisoners who had complained of sexual abuse. The reported acts of retaliation include: guards sexually and physically assaulted prisoners involved in legal action against the Department of Corrections and confiscated legal mail as contraband; guards subjected prisoners to unnecessarily intrusive body searches, verbally harassed them and threatened them with physical or sexual abuse; staff falsely reported that inmates had committed acts of misconduct [Human Rights Watch, *Nowhere to Hide: Retaliation Against Women in Michigan State Prisons*, Human Rights Watch, New York, 1998.]. A former guard, Patricia Hibbs, has told Amnesty International that in 1997 she reported abuse by staff and was subsequently physically attacked by an unknown person in an area of the prison where no prisoners are permitted access.

Amnesty International wrote to the Michigan Commissioner of Corrections urging that he establish an inquiry into the allegations of retaliation. The Commissioner responded, saying that departmental policy prohibits retaliation, that all allegations of misconduct are thoroughly and independently investigated and that investigations have not substantiated the assertion that there has been a pattern of abuse by staff. The Commissioner accused Amnesty International of indicting and convicting the thousands of employees of the Michigan Department of Corrections and of “publicly lynching” them [Letter to Amnesty International from Kenneth McGinnis, Director, Michigan Department of Corrections, 9 November 1998.]. Amnesty International has replied, reiterating that the organization called for an inquiry in response to reports of retaliation against inmates and employees who had complained about abuses, and that it did not consider that anything in the letter could reasonably be construed as a statement by Amnesty International that it has found thousands of members of staff guilty of wrongdoing and was calling for them to be punished. Amnesty International said that it welcomed the Department’s assurances that abuse and retaliation are prohibited by departmental policies and procedures, that the Department is committed to enforcing the standards vigorously and that all allegations of retaliation are thoroughly investigated. Amnesty International continues to be concerned about reports of retaliation and has asked the Commissioner for further information about the investigation of allegations and the treatment of inmates who allege that they have been the victim of abuse.

Recommendations to protect female inmates from sexual abuse

Amnesty International considers that the nature and extent of sexual abuse of female inmates by male staff in jails and prisons in the USA, and the harm that sexual abuse causes, warrants strong and immediate action by authorities responsible for jails and prisons to provide the protection to which incarcerated women are entitled under international standards. Amnesty International calls upon authorities to publicly recognise that sexual abuse constitutes torture or cruel, inhuman or degrading treatment or punishment and to take the following measures to combat it:

- Female inmates should be guarded only by female officers. Male staff who provide professional services in female facilities should always be accompanied by female officers.
- Sexual abuse of inmates by staff should be expressly prohibited and action taken against staff who sexually abuse inmates.
- Sexual abuse should be widely defined to include sexual assault and threatened sexual assault; sexual contact; and sexually explicit language and gestures.
- All staff and inmates should be informed that sexual abuse is prohibited and that inmates have a right to complain if they are abused;
- staff have a duty to report if they know that an inmate has been abused.

- All complaints must be investigated independently, promptly and thoroughly in line with best practice for the investigation of sexual assault.
- Victims of sexual abuse must be provided with appropriate care and redress.
- Inmates and staff who report abuses should be protected from retaliation by measures including:
- inmates and staff must be informed that they have a right to protection from retaliation;
- as far as practicable, reports of abuse by inmates and staff should be treated in strict confidence;
- disciplinary and/or legal action, as appropriate, should be taken against any member of staff who seeks to deter inmates and staff from reporting abuse or who, in any manner, harasses or intimidates inmates or staff who report abuse.

VI RESTRAINTS

“Chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- (a) as a precaution against escape during a transfer...
- (b) on medical grounds by direction of the medical officer;
- (c) by order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property....
- (Instruments of restraint) must not be applied for any longer time than is strictly necessary.”

Rule 33, United Nations Standard Minimum Rules for the Treatment of Prisoners

“Giving birth while incarcerated was one of the most horrifying experiences of my life. While enduring intense labour pains, I was handcuffed while being taken to the hospital, even though I was in a secured vehicle with a metal grating between the driver’s and passenger’s compartments and with no interior door handles on the passenger doors. With the handcuffs on, I could not even hold my stomach to get some comfort from the pain...At the hospital I was shackled to a metal bed post by my right ankle throughout seven hours of labour, although a correctional officer was in the room with me at all times. The shackles were not removed until 30 minutes prior to my delivery...Imagine being shackled to a metal bedpost, excruciating pains going through my body, and not being able to adjust myself to even try to feel any type of comfort, trying to move and with each turn having hard, cold metal restraining my movements. Not only was this painful, it was traumatizing, and very stressful for myself and also for my child...Even animals would not be shackled during labour, a household dog or a cow on a farm..The birth of a child is supposed to be a joyous experience, and I was robbed of the joy of my daughter’s birth..Is it really necessary to handcuff and shackle mothers who are in labour? With all the other security measures that were in place, and with my minimum security status, did they really have to put me and my infant through that torture?”

Statement of Warnice Robinson, imprisoned in Illinois for shoplifting [Warnice Robinson was speaking in Washington DC on 6 October 1998 at the launch of Amnesty International’s report, United States of America - Rights for All, AI Index: AMR 51/35/98.].

1. The use of restraints on pregnant and sick inmates

On 18 November, 1998, Amnesty International delegates visited Madera County Hospital in California. Prison officials took them through a ward where women are held when they are seriously ill or in labour and for a short period after giving birth. The ward is locked. Inside the ward are four armed guards. Yet every woman is chained by a leg to her bed. A woman showed the Amnesty International delegates her shackle. She could lie on her side but she could not roll over. Prison officials explained to the delegates that the shackle is removed only if a doctor informs them that it is interfering with medical treatment or is injurious to a woman’s health. Shortly before Amnesty International’s visit, the organization received a report from a lawyer that at the same hospital in 1998

she had seen a woman who was shackled having a seizure and that guards refused the request of nursing staff to remove the restraint.

The sick women chained to their hospital beds in California are not an exception. Around the USA, jails and prisons commonly use restraints on incarcerated women when the women are being transported to and kept in hospital. In Illinois in October 1998, a woman who was recently incarcerated in a prison in that state told Amnesty International that earlier in the year she had been taken handcuffed to a hospital for surgery and was shackled to her bed when she woke from the anaesthetic.

The same policy is in place in Chicago's Cook County jail. In November 1998, in relation to a lawsuit, an officer of the Cook County Sheriff's Department was asked about the Department's policy on the use of restraints on jail inmates in hospital. He described it as follows:

Q. (question from the lawyer seeking information): Once the medical staff has determined the (inmate) should be in Ward X, what, if any, arrangements are made to secure that person by the sheriff's department?

A. (answer by the officer): We would place an officer, individual officer, on an individual patient, and we would restrain the inmate via handcuff and leg shackle.

Q. Is that always the case or usually the case that you restrain them?

A. When there's a medical condition that precludes us from securing a patient, then there would be an exception.

Q. Okay. Can you give me an example?

A. If an inmate has no legs, we would not put a leg shackle on them.

Q. Okay. Let's say that the person was in a coma but alive. Do they get restrained?

A. Yes.

Q. Let's say a person has just had a heart attack and is recuperating but is so weak they can't get out of bed. Do they get restrained?

A. Yes [Deposition of Daniel Thiesen relating to the case of Rivera v Sheahan et al, US District Court for the Northern District of Illinois, Eastern Division, No. 97 C 2735. The interrogation was conducted in relation to legal action over the use of restraints on a jail inmate with AIDS who was rushed to hospital for urgent treatment. Amnesty International has been informed that she died several months later.].

As these and other reports indicate, jails and prisons use restraints on women as a matter of course, regardless of whether a woman has a history of violence (which only a minority have); regardless of whether she has ever absconded or attempted to escape (which few women have); regardless of her state of consciousness [Data concerning women's offences is presented in chapter 3. Concerning escapes, the State of New York Department of Correctional Services reports that in the period 1991-95 all escape and attempted escape incidents involved male inmates. In 15 years to 1997 there had been only three escapes or attempted escapes at female prisons - State of New York Department of Correctional Services, "Female Offenders: 1995-96," Albany, New York, 1997.]. While exceptions are made if a doctor asks on medical grounds, Amnesty International has received reports of cases where a doctor was not present to request the removal of restraints in circumstances where approval would generally have been given or a guard with a key was not immediately available. For example, Amnesty International received the following statement from "Maria Jones," a recent inmate of Cook County jail in Illinois [Not her real name. The statement was made to a visitor and provided to Amnesty International.]. Maria Jones was charged with violating drug laws and stated that she had never tried to escape or been charged with a violent offence or been classified as dangerous. She had a prior conviction, in the 1980s, for shoplifting. Nevertheless, she was always placed in handcuffs

and leg shackles when she was taken from the jail to hospital for pre-natal care and to give birth, as she describes:

“I told the nurse that my water broke, and the officer took off the handcuffs so that I could put on the hospital gown. I was placed on a monitoring machine with the leg shackles still on. I was taken into the labour room and my leg was shackled to the hospital bed. The officer was stationed just outside the door. I was in labour for almost twelve hours. I asked the officer to disconnect the leg iron from the bed when I needed to use the bathroom, but the officer made me use the bedpan instead. I was not permitted to move around to help the labour along.

“I was given an epidural, and I carefully moved into a sitting position while dealing with the leg iron. While the needle was still in my back, I felt a strong contraction and I knew that the baby was coming. When I told the nurse, she told me not to push and said that the baby wasn’t coming yet. I asked for the doctor and worked the leg chain around so that I could lay down again.

The doctor came and said that yes, this baby is coming right now, and started to prepare the bed for delivery. Because I was shackled to the bed, they couldn’t remove the lower part of the bed for the delivery, and they couldn’t put my feet in the stirrups. My feet were still shackled together, and I couldn’t get my legs apart. The doctor called for the officer, but the officer had gone down the hall. No one else could unlock the shackles, and my baby was coming but I couldn’t open my legs.

Finally the officer came and unlocked the shackles from my ankles. My baby was born then. I stayed in the delivery room with my baby for a little while, but then the officer put the leg shackles and handcuffs back on me and I was taken out of the delivery room.

I was in the hospital for about three days, with one hand and one foot shackled to the bed. There was a heavy blue box connecting the cuff with the bed, which left me no room to move. My handcuffs were removed when I was eating or holding my baby, but the leg irons were always on. My leg was disconnected from the bed only when I used the bathroom. Otherwise I was handcuffed and shackled, with one hand and one foot shackled to the hospital bed. Since I went back to the jail, every visit with my baby has been through the glass. I have not been permitted to hold my baby since my release from the hospital.”

Amnesty International also received reports that six women were restrained while in hospital waiting to give birth in New York City in 1998. The women were reportedly restrained despite the fact that none of them had a history of violence or had attempted to escape from custody: the policy of the New York City Department of Corrections prohibits the use of restraints on pregnant inmates admitted to hospital for delivery “unless the inmate attempts to escape at the hospital or the inmate engages in violent behaviour at the hospital which presents a danger of injury,” [City of New York Department of Corrections Directive 4202 (19 June 1989).The women were interviewed by Reverend Annie Bovian, of the Women’s Advocate Ministry in Courts and Jail, an organization assisting incarcerated and recently released women in the State of New York.]. According to the reports, one of the women gave birth while handcuffed to her bed in the labour room, unattended, screaming for assistance. Another was put into handcuffs while labour was being induced. The report continued:

“They took the handcuffs off when the baby was about to be born. After the baby was born she was shackled in the recovery room. She was shackled while she held the baby. Had to walk with shackles when she went to the baby. She asked the officer to hold the baby while she went to pick something up. The officer said it was against the rules. She had to manoeuvre with the shackles and the baby to pick up the item. In the room she had a civilian roommate and the roommate had visitors and she had to cover the shackles, she said she felt so ashamed....She said she was traumatized and humiliated by the shackles. She was shackled when she saw her baby in the hospital nursery (a long distance from the room). Passing visitors were staring and making remarks. She was shackled when she took a shower; only one time when she was not.”

A third woman reported that she was shackled to the bed after the birth of her baby by caesarian section even though a doctor had requested that, because of her surgery, she be allowed to walk around. A fourth woman said she was shackled in the recovery room and while she held her baby. She said she felt traumatized and humiliated by the shackles when she went to see her baby in the nursery which is located in a public area.

The use of restraints on women who are about to give birth endangers the woman and her child, as described by physician Dr Patricia Garcia:

“Women in labour need to be mobile so that they can assume various positions as needed and so they can quickly be moved to an operating room. Having the woman in shackles compromises the ability to manipulate her legs into the proper position for necessary treatment. The mother and baby’s health could be compromised if there were complications during delivery, such as haemorrhage or decrease in fetal heart tones. If there were a need for a C-section (caesarian delivery), the mother needs to be moved to an operating room immediately and a delay of even five minutes could result in permanent brain damage for the baby. The use of restraints creates a hazardous situation for the mother and the baby, compromises the mother’s ability post-partum to care for her baby and keeps her from being able to breast-feed.” [Dr Garcia is an obstetrician and gynaecologist at North Western University’s Prentice Women’s Hospital; her statement was provided to Amnesty International by Chicago Legal Aid to Incarcerated Mothers, December 1998.].

Amnesty International welcomes the fact that a growing number of corrections departments acknowledge that special attention is required for pregnant prisoners. In a recent national survey, 20 of the 52 state, city and federal corrections departments that responded reported that they have specific policies or procedures for the physical control and transportation of pregnant inmates [They are: Colorado, Connecticut, Delaware, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, New Hampshire, New Mexico, New York, New York City, North Carolina, Ohio, Oklahoma, Rhode Island, Utah, Washington, Wisconsin and the US Bureau of Prisons: US Department of Justice National Institute of Corrections Information Center, Current Issues in the Operation of Women’s Prisons, National Institute of Corrections, Colorado, 1998.]. In 38 systems, medical personnel are involved in evaluating individual cases prior to the restraint of pregnant women. However, policies for pregnant women that Amnesty International has seen still permit the routine use of restraints without consideration of the necessity for restraints to be employed.

For example:

Ohio The state correctional authority informed Amnesty International that pregnant inmates are scheduled to deliver their babies at the Ohio State University Hospital and “are treated as any patient would be treated regarding procedures during labour and childbirth. The exception is one arm or leg is secured to the bed during labour unless the doctor requests the restraints be removed. During delivery, there are no restraints on the inmate.” [Letter to Amnesty International from L Jones, Human Services Administrator, Ohio Department of Rehabilitation and Correction, March 26, 1998, emphasis added.].

Massachusetts The policy of the correctional authority provides that during their second and third trimester, pregnant inmates are to be transported to hospital only in handcuffs. The policy prohibits the use of restraints on inmates in hospital who are in active labour unless they are disruptive [Letter of 11 June 1998 from W Saltzman, Senior Litigation Attorney, Massachusetts Department of Correction with departmental policy, to Amnesty International.].

Kentucky In contrast, the policy of the Kentucky correctional authority is that pregnant inmates may not be restrained from the time they enter labour and the delivery area until they leave the recovery room. However, after leaving the recovery area, “one leg may be restrained.” [Memorandum from George Million, Deputy Warden/ Security, 1 February, 1996.].

Michigan Women who gave birth while in prison in Michigan told Amnesty International in October 1998 that they were transported to the hospital secured by belly chains and handcuffs, and were kept in restraints at the hospital even though they were constantly supervised by prison guards. One woman reported that she was handcuffed to the hospital bed until she was close to delivery, and that the cuffs were removed at the request of a doctor. A second woman reported that, at the hospital, her legs were chained together until shortly before she gave birth. She told Amnesty International that the restraints were removed at the request of a doctor and only after the guard had obtained approval by telephone from a superior officer. Both women reported that they were cuffed to their beds shortly after giving birth. In November 1998, Detroit City Council passed a resolution calling on state governor, John Engler, to ban the use of restraints on pregnant women before and during labour. The head of the Michigan Department of Corrections has stated that he is not aware of cases where prisoners who were shackled while giving birth [Letter to Amnesty International from Kenneth L McGinnis, Director, Michigan Department of Corrections, 1 November 1998.]. Amnesty International is seeking a detailed account of the Department's policy.

In March 1998 the Illinois Department of Corrections informed Amnesty International that all pregnant prisoners were restrained when being transported to hospital and kept in restraints while in hospital, even when in labour, unless a doctor asked for them to be removed and a correctional officer approved. During the course of 1998, legislators drafted proposed laws to prohibit the use of restraints on pregnant women when they were being transported and in hospital, and on women in hospital after giving birth. In January 1999, the Department of Corrections informed Amnesty International that it was preparing a new policy to stop the use of restraints on pregnant women while being transported and in hospital. The policy will apply only to prisons. It will therefore not apply to Cook County jail, the policy of which was described at the beginning of this chapter.

In October 1998, Amnesty International wrote to the US Attorney General, Janet Reno, requesting an inquiry into the use of restraints on pregnant women prisoners. The letter was referred for response to the section of the US Department of Justice that is responsible for enforcing federal criminal civil rights laws. The chief officer of the section informed Amnesty International that the section was unable to authorize an investigation because the information concerning shackling "does not disclose a prosecutable violation of federal criminal civil rights statutes." [Letter to Amnesty International from J Mott, Acting Section Chief, Criminal Section, Civil Rights Division, US Department of Justice, 22 October 1998, emphasis added.]. Amnesty International acknowledges that the routine use of shackles on pregnant women does not violate criminal laws. It considers that an inquiry is warranted because the practice violates internationally recognized human rights standards which the USA should respect.

2. *Other concerns about the use of restraints*

The use of restraints on women who are pregnant and women who are ill is part of a pattern of the use of restraints in prisons and jails and by police agencies that Amnesty International considers constitutes cruel, inhuman and degrading treatment in contravention of international standards. Some authorities in the US use chains or leg irons, restraints that are expressly prohibited by international standards [Rule 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners specifies that "chains or irons shall not be used as restraints."]. In a recent report on human rights violations in the USA, Amnesty International described human rights concerns about the use of restraints because of the nature of the restraint or the manner in which it was being used [United States of America - Rights For All, AI: Index AMR 51/35/98.].

(i) *The restraint chair*

Some of the most serious abuses have involved a mechanical restraint chair which allows prisoners to be immobilized with four-point restraints securing both arms and legs, and straps which can be tightened across the shoulders and chest.

Amnesty International's concerns include reports that the chair was used to torture and ill-treat more than a dozen inmates in Sacramento County Jail, California, between 1995 and 1997. According to a lawsuit filed against the Sacramento County Sheriff's Department, a disproportionate number of the victims were women and members of racial minorities. The complaints allege that unresisting detainees, most of whom had been arrested for minor offences, were strapped into the chair for hours as a punishment [The chair was used after the detainees had reportedly exhibited only mildly challenging behaviour, such as complaining about their treatment; failing to respond quickly enough to commands and, in one case, asking for a lawyer.]. Many of the victims had masks held over their faces while being placed in the chair or were hooded. They were denied bathroom facilities, food and water, and were subjected to taunts and sexually derogatory remarks by guards. Some of the victims are reported to have suffered serious injuries as a result of being held in the chair in straps and shackles which had deliberately been pulled too tight. Cases include:

A 32-year-old Caucasian woman with a heart condition was held in the chair for eight and a half hours in December 1995. She was allegedly forced to urinate on herself after pleading repeatedly to use the bathroom and was cursed at and taunted by guards. She is reported to have suffered cuts to her shoulders and damage to her wrists, feet and ankles from the tight leather straps and metal cuffs.

A 38-year-old woman from the Dominican Republic was strapped into the chair in May 1996 after a guard overheard her complaining to a nurse about her treatment. Despite suffering from asthma, she was bound, temporarily hooded, and left in a restraint chair for five hours during which period she reportedly had breathing difficulties and was taunted by guards. She is reported to have suffered numerous bruises, swellings and pain as a result of being held in the chair.

A 30-year-old African-American woman with a thyroid complaint, was stripped naked by male and female guards and strapped into a restraint chair where she was left with a hood over her head for eight and a half hours in May 1997. The chair was placed in the centre of an illuminated room with a floor-to-ceiling window through which she was allegedly stared at and jeered at by male guards and other employees, including outside contract workers. She was forced to sit in her own urine which deputies later made her clean up using only her jail-issue T-shirt and bare hands.

Negotiations to settle the lawsuit in these and other cases were underway in February 1999. Meanwhile, the chair continues to be used in the jail. Amnesty International has received reports of misuse of the restraint chair in other US prisons and detention facilities and several inmates have died after being placed in the chair (see USA: Rights For All, 1998). Other cases include that of Annette Romo, who alleged that she was brutalized and placed in a restraint chair while in pre-trial detention in Estrella Jail, Maricopa County, Arizona, in June 1997, after she complained to guards about conditions in her jail unit and asked to be transferred. This was two months after she had lost her baby due to alleged medical neglect in the same jail.

Amnesty International has called for the chair to be banned in the Sacramento County Jail pending a full, independent inquiry. It has also called on the federal authorities to institute an urgent national inquiry into use of restraint chairs, in US prisons and jails[See United States of America - Rights For All, AI Index: AMR 51/35/98.].

(ii) *Electro-shock devices*

Other forms of restraint about which Amnesty International is concerned are electro-shock devices. In one case, Amnesty International received a report that at Muncy Prison, Pennsylvania in 1996, an

“Electronic Body Immobilizer Shield” (EBID) was used against a prisoner who was in distress after she was informed of the scheduled date of her execution. Amnesty International wrote to the Pennsylvania Department of Corrections expressing concern that an electro-shock device had been used against a female prisoner who, according to reports, was not threatening other people. The authorities responded that the device was used because the woman “was displaying significant injurious behaviour and was refusing all orders given by the supervising commissioned officer.” [Letter from M Horn, Secretary of Corrections, September 18, 1998.]. As well, the head of the Department of Corrections explained:

“The EBID shield was utilized as the least amount of force necessary to gain control of the inmate and have her comply with the orders. This shield is a non-lethal defensive device and was used in compliance with Department of Corrections Use of Force Policy, including appropriate documentation and review.”

On 17 March 1998 and 14 August 1998 Amnesty International asked the Department of Corrections for a copy of its policy on the use of the device. The Department has not provided a copy. In its correspondence to Amnesty International concerning this case, the Pennsylvania Department of Corrections has not asserted that the woman was threatening staff. Amnesty International therefore considers that the description of the device as “defensive” and as a “shield” is inaccurate. In the incident described above, it was used as a weapon to secure compliance with orders, not to protect staff from attack.

Recommendations on the use of restraints

In prisons and jails around the USA, restraints are commonly used when they are not essential to prevent escape or to protect people and property. This is evident in the cases of women who are in labour or who have just given birth, or who are seriously ill. Restraint chairs and electro-shock devices have also been used in circumstances which appear to violate the prohibition on the infliction of torture and other forms of cruel, inhuman or degrading treatment and punishment.

Amnesty International recommends that jails and prisons adopt policies on the use of restraints that accord with international standards, as follows:

3. Restraints should be used only when they are required as a precaution against escape or to prevent an inmate from injuring herself or other people or damaging property. In every case, due regard must be given to an inmate’s history and physical condition. Restraints must never be used as punishment.

Policies on the use of restraints should prohibit their use on

- pregnant women when they are being transported and when they are in hospital awaiting delivery
- women who have just given birth
- seriously sick inmates when they are being transported to and when they are in hospital.

Policies on restraints should specify that the types of restraints and the circumstances of their use must not be hazardous to the health and safety of inmates.

Four-point restraints should only be used when strictly necessary as an emergency short-term measure to prevent damage or injury, and in accordance with international and US medical standards. The federal authorities should institute an urgent national inquiry into the use of restraint chairs in prisons and jails.

Jails and prisons should suspend the use of electro-shock weapons pending the outcome of a rigorous, independent and impartial inquiry into the use and effects of the equipment.

Authorities that are responsible for jails and prisons should monitor the use of restraints to ensure strict compliance with policies.

VII HEALTH

“A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.”

Principle 24, UN Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment

“Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.” - Article 8, UN Code of Conduct for Law Enforcement Officials [Adopted by the United Nations General Assembly, 17 December 1979].

“On the night of April 20th I started spotting (bleeding). I told the guard and she said medical was not in at that time of night and there was nothing she could do. As the night went on the bleeding got worse and so did my stomachache. I didn’t sleep at all that night and when the guard passed by me I was crying and I told her the bleeding was getting worse and that I couldn’t stand the stomach cramps I was having..” [The following day Annette Romo continued to bleed and in the afternoon she collapsed and was taken to hospital and immediately scheduled for surgery]. “...I still to this day have dreams about what happened. I will never forget it. It was the worst thing I have ever experienced. If they would have only helped me when I first asked all this would not have happened nor would I have had to lose my baby. It was an awful experience and one that will be with me forever. I thank God everyday that I’m alive and I pray this never happens to anyone else.”

Annette Romo, writing of her experience in an Arizona Jail in 1997 [Letter to Amnesty International, 22 February, 1998.]

1. Introduction

Many women who enter prison and jail are ill or pregnant, and many experience the need for medical attention while they are incarcerated. International standards specify that medical care must be provided whenever necessary, free of charge. The US Supreme Court has also ruled that inmates have a right to adequate medical care for serious medical needs [Estelle v Gamble 429 US 97 (1976)]. Despite these international and national legal obligations, many prisons and jails have not met the required standards.

The following reports illustrate the struggle of many incarcerated women to secure adequate health care.

California In 1995, women at two prisons in California (Central California Women’s Facility and California Institute for Women) began legal action to obtain improved health care services [Shumate v Wilson, US District Court, Eastern District of California, No CIV S-95-0619 WBS JFM.]. The lawsuit cited a number of cases of poor medical treatment including:

Clarisse Shumate, who was suffering from sickle cell anaemia, heart problems, pulmonary hypertension and asthma, experienced delays and interruptions in the provision of medication;

Beverly Tucker, who had long-standing blood-clots in her legs, was not given prescribed medication for the condition. As a result, she had to have a foot amputated;

Cynthia Martin, who required medical care for serious burns to more than half of her body; was denied physical therapy and was subsequently confined to a wheelchair.

In 1997 the women and the state of California agreed to settle the legal action on the basis of a number of undertakings by the state about health care services in the prisons [The document containing the settlement states that the agreement is not to be construed as an admission of liability and that California does not admit that what it undertakes to do differs from the then current policy and practice. The women prisoners considered that the settlement required California to significantly improve health care provision.]. The state's compliance with the agreement is being assessed by an independent monitoring team. In 1998, the first assessment by the team found that of 57 substantive provisions of the settlement agreement, the state had failed to comply with 11, in whole or in part, at one or both prisons. Lawyers for the women contend that there are additional areas where the finding of compliance is in error [Assessment Report on the Compliance of the California Department of Corrections with the Settlement Agreement in *Shumate v Wilson*, 18 November 1998; Letter in response from E Alexander on behalf of counsel for the women prisoners, dated 5 January 1999.].

During 1998, Amnesty International received further reports of inadequate health care for women prisoners in California, including at Valley State Prison for Women. In November 1998, Amnesty International representatives visited the prison and spoke with prison officials, including medical staff, and prisoners. There is a substantial gulf between their accounts about issues such as continuity/interruption of previously prescribed medication for newly admitted women and delays in medical attention. A doctor at the prison acknowledged that women might have to wait weeks to be seen but stated that he screens requests daily to ensure priority is given to the most urgent cases. However several prisoners interviewed by Amnesty International said that they had experienced considerable delays before being seen for what they considered to be painful and pressing conditions.

Florida A recent study of medical care over a five-year period (1992-1996) in a Florida jail concluded that there was a persistent pattern of medical ill-treatment which in some cases amounted to torture under international law [M Vaughn and L Smith, "Practising penal harm medicine in the United States: prisoner voices from jail," *Justice Quarterly*, 16(1), forthcoming, 1999.]. These are some of the cases reported by the study:

- a pregnant prisoner who suffered a miscarriage at the jail waited six or seven hours before medical personnel sent her to the hospital although she was bleeding profusely;
- a pregnant inmate with a history of prior pregnancy problems wrote to a court-appointed monitor of the jail, complaining that she had not been examined by a doctor after several weeks of incarceration. She said that the medical staff told her that they did not treat pregnant prisoners and that she was sometimes in so much pain that she could not eat and keep food down. She wrote that she was afraid of losing the baby, felt depressed and cried most of the time. Pleading for help, she wrote: "we are human beings, not animals, and...animals get better treatment than what we have been receiving."
- another pregnant prisoner suffering from serious vaginal discharge wrote to the court monitor that she was seen by an obstetrician one month into her incarceration but a month later had still not received any treatment. She said that at sick call the jail doctor refused to see her. "I'm constantly having headaches, stomach cramps, and can't sleep," she wrote. "I'm very scared for my baby and myself....Please help me!! Help my baby!"

Virginia At the beginning of 1998, 40 women at the Virginia Correctional Center for Women signed a petition describing delays in getting access to emergency care, doctors, medication, and treatment for chronic illnesses. The complaints included that the facility, which housed around 800 women, did not have a gynecologist on staff and that a woman who complained she was bleeding profusely from the rectum was told by staff to elevate her feet, and subsequently bled to death. Linda Dennett, the mother of a prisoner, reported that her daughter's psychiatric medication had been discontinued when she was transferred from jail to prison in July 1997. Six months later, the medication had not been restored. According to Linda Dennett, "I don't worry about trouble as much as I do about suicide." [L LaFay, *The Virginian-Pilot*, January 26, 1998.] Prison officials denied claims that services were

inadequate ["Abysmal medical care reported by women at Goochland", press release from ACLU National Prison Project, January 21, 1998, Washington DC.].

"Females are secondary," the Chairman of the Virginia State Board of Corrections, Andrew Winston, reportedly stated in January 1998, acknowledging that prisons and inmate services were designed primarily for male prisoners [Associated Press, cited by American Civil Liberties Union media release, 9 February 1998.]. Later that month, Clifton Woodrum, the Chairman of the Virginia State Crime Commission (a correctional oversight body) wrote to the Inspector General of the Department of Corrections, expressing concern that long-standing problems in health care services for female inmates appeared not to have been successfully resolved. Mr Woodrum asked for a report on the Inspector General's investigations into inmate health care complaints and inmate deaths during 1997. At the end of 1998, the Crime Commission had not issued a report of its review. Amnesty International asked the Commission for information about the review on several occasions and at February 1999 had not received a response.

Washington DC On 2 June 1996, Debra Gant, a prisoner in the District of Columbia, began to experience vaginal bleeding and abdominal pain. She reports that she complained to prison staff but her condition was not assessed and she received no treatment. Her condition deteriorated and on July 6 1996, when her pain had become severe and she was semi-conscious, she was taken to hospital where she was diagnosed as having a ruptured ectopic pregnancy. She underwent emergency surgery to stop her bleeding to death; surgeons had to remove an ovary and her fallopian tube. Debra Gant subsequently sued, alleging that "it was the pattern, practice and policy of the District of Columbia to fail to have a system to ensure proper follow up visits for medical treatment, to fail to have sufficient access to medical specialists...to fail to train medical staff to diagnose or treat major medical conditions...and to fail to hire sufficient medical staff." [Gant v District of Columbia, Complained filed for hearing by Superior Court of the District of Columbia, 3 April 1997.]. Amnesty International has been informed that in 1997 the authorities agreed to pay Debra Gant an undisclosed sum of money to settle the case.

2. *The health of women in prisons and jails*

In a 1994-95 survey of women prisoners in California, Connecticut and Florida, half reported that they were experiencing a physical health problem that was interfering with their lives [L Acoca and J Austin, *The Hidden Crisis: Women in Prison*, National Council on Crime and Delinquency, San Francisco, 1996, 73.]. Various studies show that the health of incarcerated women is generally worse than that of women in the general community, reflecting the fact that incarcerated women are more likely to be affected by factors such as poverty, harmful substance use and the risks arising from exchanging of sex for drugs or money. As one study observes, "the struggles for survival that put women at risk for arrest also put them in the path of HIV." [A De Groot, S Leibel, S Zierler, "A Standard of Care for Incarcerated Women: Northeastern United States Experiences," forthcoming, *Journal of Correctional Health Care*.]. In prisons, which hold more than 2000 HIV-positive women, the number of infected women has increased by more than 88 percent since 1991 [L Maruschak, "HIV in Prisons and Jails", Bureau of Justice Statistics Bulletin, Washington DC, 1997. Women who were HIV positive constituted 4% of the prison population (2.3% of the male prisoner population was HIV infected) and 2.4% of the female jail population (2.1% of male inmates were HIV infected). The proportion of incarcerated women who are HIV positive varies greatly around the US. For example, in New York, more than a fifth (22.7%) of women prisoners were known to be HIV positive; in several states (eg Nebraska, Virginia) there were no known cases.]. Incarcerated women also tend to use health care services more than men for various reasons including pregnancy and a higher incidence of sexually transmitted diseases, including HIV [For example, see L Acoca and J Austin, *The Hidden Crisis: Women in Prison*, National Council on Crime and Delinquency, San Francisco, 1996 at page 26: in Connecticut, the study found, 60% of men reported no health needs; in contrast, over 60% of women needed minimal medical assistance requiring access to health services on an outpatient

basis. Nearly four times as many women as men required specialized placement in a housing area where they could receive 24-hour nursing coverage.].

The physical and mental health of many incarcerated women has also been adversely affected by a history of physical and mental abuse as children and as adults prior to their incarceration. According to a 1996 national jail survey, 48 percent of female inmates and 13 percent of male inmates reported having been sexually or physically abused, or both, prior to admission [C W Harlow, Profile of Jail Inmates 1996, Bureau of Justice Statistics, US Department of Justice, Washington DC, 1998: 37% of female inmates and 11% of the male inmates said they had been physically abused; 37% of female inmates and 6% of male inmates reported that they had been sexually abused; 27% of female inmates and 3% of male inmates reported that they had been raped.]. Other surveys have found far higher proportions of women reporting a history of abuse [For example, 80% of a sample of California prisoners interviewed in 1994 indicated that they had experienced emotional, physical or sexual abuse (or a combination) at some time in their lives: B Owen and B Bloom, Profiling the Needs of California's Female Prisoners - A Needs Assessment, National Institute of Corrections, US Department of Justice, Washington DC, 1995.]. A number of studies have identified a relationship between abuse and ongoing physical health problems, such as gynaecological trauma, and mental health problems such as post-traumatic stress disorder as well as to conduct that is directly or indirectly linked to the crimes committed by many women, such as drug use (and associated property crime) and prostitution [In a study of women prisoners in Washington, nearly 40 per cent reported prior sexual or physical abuse; sexual abuse was found to be very strongly related to mental disorder, with the most impaired inmates reporting rates of sexual abuse more than five times as great as inmates with little or no mental disorder. The study explored various aspects of the women's lives, and found that sexual abuse was the element that was most highly predictive of the level of mental disorder: Bates, op cit.].

Various other factors have been cited as contributing to a large number of people with mental health disorders being incarcerated in jails and prisons in the USA. These include

- insufficient mental health services in the community; [For example, see "Offenders With Serious Mental Illness: A Multi-Agency Task Group report to the Colorado Legislature Joint Budget Committee," Colorado Department of Corrections, 1998, and E Torrey et al, Criminalizing the Seriously Mentally Ill - the Abuse of Jails as Mental Hospitals, Public Citizens' Health research Group and National Alliance for the Mentally Ill, Washington DC, 1992, iv. As these studies describe, a number of state and local authorities have established programs designed to divert offenders from incarceration and to prevent re-offending.].
- the massive increase in the incarceration of women convicted of violating drug laws, many of whom have a history of drug abuse;
- stresses associated with incarceration - as well as the deprivation of liberty faced by all inmates; many also are also subject to stressful circumstances such as loss of family contact, termination of parental rights and overcrowding.

3. Concerns about the adequacy of health care

A paper issued by national health care organizations in 1992 warned that standards of health care for incarcerated men and women were becoming increasingly difficult to meet because resources were not increasing in proportion to the increase in the number of inmates with significant health problems. According to the organizations, "the large increase in the number of substance abusers and sick and terminally ill inmates has rendered our nation's prisons and jails physically or financially unable to deal with their current populations, much less the explosive increases the future holds." [American College of Physicians, National Commission on Correctional Health Care, American Correctional Health Services Association, "The Crisis in Correctional Health Care: The Impact of the National Drug Control Strategy on Correctional Health Services - Position Paper," Annals of Internal Medicine, Volume 117, Number 1, 1 July 1992. J Belknap surveyed an unnamed prison in 1992 and

summarized the situation as indicating “a serious lack of effective health care for incarcerated women.” One prisoner described the difficulty of seeing a doctor: “It’s not easy at all unless you’re dying.” It had taken her 8.5 months “and by then I was over my illness.” See J Belknap, “Access to Programs and Health Care for Incarcerated Women,” Federal Probation, Vol 60, No.4, 1996.].

Subsequent reports indicate that the problems continue, and may have worsened, in many institutions. They include inadequate access to health services; failure to refer seriously ill inmates for treatment and delays in treatment or failure to deliver life-saving drugs for inmates with HIV/AIDS.

Human rights groups and health professional bodies consider that inadequate health care is one of the most pressing concerns in US prisons and jails today. According to a lawyer who has represented many women prisoners in legal action on health care matters:

“While the health care available to low-income women in the United States is generally poor, medical conditions for women in United States prisons and jails are appallingly bad...The inadequacy of medical care has had severe repercussions for women prisoners, leading in many cases to late-term miscarriages, untreated cancer and other life-threatening diseases, increased disability as a consequence of poor or nonexistent care and, in some instances, death.” [Ellen Barry, “Women Prisoners and Health Care”, in K Moss ed, Man-made Medicine, Duke University Press, Durham 1996, 250-51.].

In 1994, the National Commission on Correctional Health Care (which establishes and monitors standards) issued a public statement recognising the growing number of female inmates and the increasing physical and mental health problems they present for correctional facilities. The Commission noted, for example, that research had consistently indicated that the provision of gynaecological services for women in prison settings was inadequate

[National Commission on Correctional Health Care, “Women’s Health in Correctional Settings,” Position Statement adopted by Board of Directors, September 25, 1994.]. A recent survey of state prison systems found that all reported that they offer obstetric and gynaecological services, but does not report on their adequacy, for example, whether all women are screened to assess their health and how long women have to wait to be seen [”Inmate Health Care,” Corrections Compendium, October 1998.]. In a survey a year earlier, only about half the systems stated that they offered additional female-specific services, such as mammograms and Pap smears [”Inmate Health Care, Part II,” Corrections Compendium, November 1997.].

Lack of resources for health care

Perhaps the most commonly cited barrier to adequate health care in jails and prisons is that there are too few health care staff to meet the physical and mental health needs of the rapidly growing number of incarcerated women. A number of reasons have been cited for staffing shortages, for example that the increase in the incarceration of women has been greater than authorities expected, compounded by difficulties in attracting and retaining medical staff to work in jails and prisons generally [L Acoca, “Defusing the Time Bomb: Understanding and Meeting the Growing Health Care Needs of Incarcerated Women in America.” Crime and Delinquency, Vol 44 No.1 January 1998, 49-69, 62.]. As the following reports illustrate, the consequences that have been documented include lengthy delays in obtaining medical attention; disrupted and poor quality treatment and lack of counselling services for women who require treatment for substance abuse and other disorders.

In a national survey of jail inmates in 1996, fewer than half the women (47%) received a medical examination to determine their health status after they were admitted [C Harlow, Profile of Jail Inmates 1996, Bureau of Justice Statistics, US Department of Justice, Washington DC 1998; 49% of men received a medical examination after admission.].

In a 1994-95 study of women in prison in California, Florida and Connecticut, 42 percent of women receiving medication for physical disorders, and 31 percent of those receiving treatment for mental

health disorders reported that they were not receiving medical supervision. The effects of the lack of medical oversight, the study noted, included “physical deterioration of prisoners with chronic and degenerative diseases, such as kidney disease and cancer, and over medication of prisoners with psychotropic drugs, resulting in lethargy and/or problems with speech and gait (shuffling).” [L Acoca, “Defusing the Time Bomb: Understanding and Meeting the Growing Health Care Needs of Incarcerated Women in America,” *Crime and Delinquency*, Vol.44, No.1, January 1998.].

In 1997, the US Department of Justice investigation into Los Angeles’ jails reported a serious lack of mental health staffing. The Department’s expert consultants believed that the maximum caseload for a “typical” jail psychiatrist should be approximately 75-100 inmates. At the women’s jail (Sybil Brand Institute) there was “at most”, one psychiatrist available, with an average caseload of 415 women, including more than 300 inmates on psychotropic medications. There were many more who the consultants considered “desperately need to be seen and likely medicated.” [US Department of Justice investigation of Los Angeles County Jail, 1997.” Before the report of the investigation was completed the facility was closed and women were moved to another facility, and new staff were hired. The Justice Department stated that it had not assessed the new facility but said “it appears that mental health staffing continues to be inadequate”: page 9, footnote 4.].

In Florida in 1998, the Correctional Medical Authority (a state body that monitors health care in prisons) reviewed services at the Jefferson Correctional Institution -a prison for women - and found that there were problems caused by the failure to fill vacant positions in both physical and mental health services. The Authority reported that “psychiatric care, particularly medication management and continuity of care, was significantly compromised by the persistent staffing deficiencies.” The prison had two psychiatrist positions which were both vacant at the time of the review; one had been vacant for more than a year. There was one psychiatrist on staff who had been appointed on a temporary basis [State of Florida, Correctional Medical Authority, Physical and Mental Health Survey Report of Jefferson Correctional Institution Conducted September 1-3, 1998.]. The review expressed particular concerns about the use of psychotropic medication and cited the following instances:

- five inmates’ records “lacked documentation of clinical rationale for various medication choices and dosages”;
- in one case psychotropic medication was prescribed where it was “not the drug of first choice” for the disorder that had been diagnosed and in another case it was prescribed for diagnosed conditions which “are generally not amenable to treatment with medication”;
- in three cases necessary laboratory testing for patients on psychotropic medication was either omitted (in one case despite being requested three times) or delayed (in one case for seven months after medication was prescribed).

Lack of treatment for substance abuse

*“The failure to rehabilitate substance-abusing inmates may be the greatest missed opportunity in the war on crime.” - National study of drug abuse and treatment, which reported that treatment programs can reduce recidivism and relapse to drugs[The National Center on Addiction and Substance Abuse at Columbia University, *Behind Bars: Substance Abuse and America’s Prison Population*, The National Center on Addiction and Substance Abuse at Columbia University, 153. A recently reported study of substance abuse treatment also found that treatment reduced substance abuse and criminality for at least 5 years. The study was conducted by USA government agency Office of Applied Studies of the Substance Abuse and Mental Health Services Administration and is cited in *Corrections Compendium*, Volume 23, Number 11, November 1998, 27.].*

As described earlier, the war on drugs has resulted in a massive increase in the incarceration of women and men for violating drug laws. Among this group, and among many other offenders, are large numbers of people who have used and abused legal and illegal drugs. Surveys consistently show a large gap between available substance abuse and treatment -and inmate participation - and the need for such treatment and participation [The National Center on Addiction and Substance

Abuse at Columbia University, Behind Bars: Substance Abuse and America's Prison Population, The National Center on Addiction and Substance Abuse at Columbia University, New York, 1998, 10.].

The most recent survey of prisoners [C Mumola, Substance Abuse and Treatment, State and Federal Prisoners, 1997, Bureau of Justice Statistics, Washington DC, 1999.] was conducted in 1997 and found the following:

Substance Abuse and Treatment, Prisoners 1997.

	State		Federal	
	Female	Male	Female	Male
Had used drugs regularly* (%)				
once a week for more than at least a month	40	69	47	58
Used drugs at time of offence (%)	40	32	19	23
Alcohol or drug-involved prisoners treated for substance abuse since admission to prison (%)				
	20	14	13	12

According to the survey, the number of prisoners with a history of drug abuse has been growing but the proportion of prisoners receiving substance abuse treatment has declined. In 1991, about 40 percent of prisoners who used drugs at the time of their offence participated in drug treatment programs in prison; in 1997, the proportion fell to 18 percent [While the proportion of those receiving "treatment" fell, enrolment in other drug abuse programs, as "self-help" and "peer groups", increased during the period.].

The US Congress has authorised the provision of funds to assist state and local correctional facilities to develop substance abuse programs and the US Department of Justice has indicated that it considers the development of prison-based women's treatment programs "a priority." [Undated statement released by Corrections Program office, Office of Justice Programs, US Department of Justice.]. It is too early to assess the impact of the federal funding on the gap between services and treatment needs, particularly as the number of incarcerated women continues to grow.

Lack of counselling services

"The high rates of exposure to psychological trauma experienced by women in (prison), coupled with the association...between such trauma and the psychiatric disorders that were elevated among the women inmates, suggest that programs may be needed in women's prisons to address exposure to trauma and its sequelae. Many of the behaviours that appear to be related to being arrested and sent to prison eg impulsivity and use of illicit substances, are symptoms that are often associated with exposure to trauma and trauma-related disorders..."

Study of psychiatric disorders among women in prison in North Carolina [K Jordan et al, "Prevalence of Psychiatric Disorders Among Incarcerated Women - II - Convicted Felons Entering Prison," Archives of General Psychiatry, Volume 53, June 1996, 513-519, 518.].

"...the bulk of the interventions needed to help women improve their mental health is not about pills and not limited to the relatively small number of cases where a serious mental illness requires acute hospitalization and care...The fact is we have a lot of experience helping women in the community - in drug counselling programs, rape counselling centers, battered women's shelters and battered women's support groups, mothering groups and public health education - and very little if any of that expertise is reaching women in prison, who are actually the group most in need of such services."

Dr T A Kupers, psychiatrist, California, January 1999 [Communication to Amnesty International. Dr Kupers is Co-Chair, American Association of Community Psychiatrists Committee on Mentally Ill Behind Bars.].

According to reports received by Amnesty International, jails and prisons generally provide services only for what are considered to be the most acute mental health disorders and commonly are unable to provide treatment other than medication. For example, at Valley State Prison for Women in California, Dr Kunkel, the chief prison psychiatrist, told Amnesty International delegates in November 1998 that the prison had too few health care staff to provide a significant amount of counselling and so did not, as a matter of course, provide services to women assessed as having post-traumatic stress disorder. As reported in chapter IV, only nine of 52 corrections departments reported in 1997 that they offered programs for victims of sexual assault.

Women currently or recently imprisoned in Illinois, Michigan and California told Amnesty International that psychotropic medication is often prescribed because other forms of treatment such as psychotherapy are not available. The US Justice Department investigation of jails in Los Angeles, cited earlier in this chapter, reported that although mental health staff were strongly committed to providing mental health care other than psychotropic medication, “their attempts at programming and therapy were overwhelmed by a lack of office and treatment space and inadequate staffing [”The lack of counselling and apparently associated reliance on medication is common to incarcerated men and women e.g. see evaluation of North Carolina Central Prison and McCain Correctional Hospital health care services, which found that “there is a lack of treatment other than medication” (page 4) and “Little individual counselling or group therapy is taking place.” (Page 5): National Institute of Corrections Technical Assistance Report for the North Carolina Department of Correction, Division of Prisons (NIC Technical Assistance No. 98P1025)].

California psychiatrist Dr Terry A Kupers has noted:

“Many prison mental health services are limited to a psychiatrist who visits periodically to prescribe strong anti-psychotic medications. There may also be a few psychologists who spend most of their time administering psychological tests for courts and the parole board, and nurses who barely have time to evaluate emergency cases and pass out pills. But there is no place for a woman who has been massively traumatized and feels depressed or angry to talk through her traumatic memories in a therapeutic setting.” [T Kupers, *Prison Madness - The Mental Health Crisis Behind Bars and What We Must Do About It*, Josey Bass, California, 1999 (forthcoming), 132.].

Dr Kupers warns that unless facilities are able actively to identify women who have been abused and to provide services to assist them, these women are more likely to leave jails and prisons and “return to the kinds of abusive relationships that led to their law-breaking and imprisonment.” [*Ibid.*, 132.]. Similarly, a study of psychiatric disorders among women in jail describes the predominance of post-traumatic stress disorder as “a relatively unexplored, but important, aspect” of women’s mental health needs because of the severe psychological and behavioural repercussions of untreated trauma [L Teplin et al, “Prevalence of Psychiatric Disorders Among Incarcerated Women - I. Pretrial Jail Detainees,” *Archives of General Psychiatry*, Volume 53, June 1996, 511.].

Concerns about the use of psychotropic medication

“Medication shall meet the best health needs of the patient, shall be given to a patient only for therapeutic or diagnostic purposes and shall never be administered as a punishment, or for the convenience of others.”

Principle 10, UN Principles for the protection of persons with mental illness and the improvement of mental health care

In 1990, Arizona prisoner Dannie Martin wrote “it is ironic that men who are spending decades incarcerated for illegal drug activities are now doped up by government doctors to help them bear the agony of their sentences.” In 1998, Amnesty International heard similar comments from former inmates, lawyers and others about the provision of psychotropic medication, which is used for psychiatric disorders, to women held in prisons and jails in the US. As the preceding section

indicates, a number of studies and observers have expressed concern that psychotropic medication is being used because other therapies are not available. Further, concerns have been expressed that some of the circumstances of the use of psychotropic medication are inappropriate because it has been used for purposes other than the treatment of psychiatric disorders, for example, to help inmates to cope with the stress of incarceration.

In a recent study of women in a California prison who had participated in or caused the death of a battering male partner, many women reported that they were pressured into taking psychotropic medication while detained in jail before being tried [K Auerhahn and E Leonard, "Docile Bodies? Chemical Restraints and the Female Inmate," Paper presented at the American Society of Criminology, Washington, DC, November 1998. These researchers hypothesise that the real purpose of the use of psychotropic medication in the circumstances they studied was to change the behaviour of women regarded as deviant, rather than to treat psychiatric illness.]. A number of the women reported that drugs were often ordered by psychologists and even correctional officers, people who are not qualified to diagnose the psychiatric conditions for which the medications are appropriate treatment and who are not legally permitted to prescribe medications. Some of the women in the study reported that the amount and mixture of drugs made it difficult for them to comprehend what was happening and adversely affected their ability to function during their trial. Lawyers in California, Illinois and Pennsylvania have also told Amnesty International that they have had clients who were so heavily drugged they had considerable difficulty communicating with them. A lawyer representing inmates at Valley State Prison for Women has drawn the issue to the attention of the United Nations Special Rapporteur on Violence Against Women:

"Rather than consistent treatment, women are prescribed heavy doses of psychotropic medications...I interviewed one mentally disabled woman who was so heavily drugged that she shook almost uncontrollably and could hardly speak throughout the interview. The relative incapacitation that accompanies such high doses of psychotropic medication renders women extremely vulnerable to sexual abuse and harassment." [Cassandra Shaylor, Memo to Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women, May 18, 1998.].

The use of non-medical staff

In a number of correctional systems inmates must obtain the permission of non-medical staff in order to be attended by a doctor. In 1995, the US Department of Justice investigation into Julia Tutwiler Prison for Women in Alabama was highly critical of the obstacle to medical access created by the use of non-medical staff:

To get an appointment with the doctor, inmates must first sign up for sick call during mealtime. Sick call takes place in the middle of the night, and is primarily a screening process conducted by unsupervised and unqualified (staff). These (staff), who have no training in triage (assessment of urgency) and do not follow written protocols, decide on their own whether an inmate may see the doctor the next day. The process means that an inmate may have to wait days before she can get any medication of any kind - even a simple aspirin. The consequences are much more serious for inmates with severe medical conditions [US Department of Justice "Notice of findings from investigation of Julia Tutwiler Prison for Women," March 27, 1995.].

In 1998, prisoners, lawyers and others told Amnesty International of cases where non-medical staff delayed calling for medical assistance for prisoners because they did not think immediate attention was warranted. Annette Romo, whose letter appears at the beginning of this chapter, is one of these.

Charges for medical attention

In violation of international standards, which require free medical treatment for people in custody, many prisons and jails charge inmates for medical attention [In a recent survey of prison authorities,

27 states reported that they charge inmates for some forms of medical attention, 11 reported that they do not charge and 2 reported that they were considering charging. The charge varies between \$2 and \$5 and the circumstances in which inmates are charged vary: "Inmate Health Care, Part I," Corrections Compendium, October 1998. There is no similar data on the number of jails that charge.]. In California, for example, prisoners are required to pay \$5 in order to receive attention from a doctor, nurse or dentist. There are exemptions for specified circumstances (e.g. follow-up treatment, chronic conditions, mental health) and for prisoners who do not have money to pay the fee. Authorities argue that the imposition of charges is a reasonable measure to deter prisoners from seeking medical attention unnecessarily, for example for minor matters or because they want to avoid work. But charges may also deter poor prisoners from seeking help for what might be serious matters. Prisoners interviewed by Amnesty International said that the payment requirement is a significant deterrent for women who have a small amount of money. Following an investigation of a supermaximum prison in Maryland, where prisoners cannot work at all, the US Justice Department expressed concern that charging prisoners impeded their access to health care [US Department of Justice letter of findings of investigation of Maryland Correctional Adjustment Center, 1 May 1996.].

Commercial companies providing health services

In some states, private companies have been contracted to provide prison health services. According to reports, some investigations have found that inmates have died because essential medical services were restricted in order to save money. For example, in 1996 Melody Bird, an inmate in Pinellas County Jail, Florida, complained of serious chest pains and difficulty in breathing. Nurses at the jail believed she was having a heart attack but were not permitted to call for an ambulance to take an inmate to hospital without prior approval from the medical director of the company contracted to provide health care services at the jail. They contacted the medical director but did not receive permission to call an ambulance for thirteen hours. Melody Bird died before reaching the emergency room. After her death, it is reported, "company nurses came forward to say that they had been pressured to avoid sending inmates to the emergency room because of the expense." As well, it was discovered that the company sometimes paid the medical director bonuses to keep inmates out of the emergency room [The account of Melody Bird's treatment is in M Petersen, "Managed Health Care in Prisons Gains Favor, but Draws Concern," New York Times, 26 December, 1996. See also, for example, "Death, Neglect and the Bottom Line," St Louis Post-Dispatch, 27 September, 1998, an investigation into Correctional Medical Services Inc, reportedly the largest private health care provider in US prisons and jails; "Suicide in Jail Leads County To Cancel Pact," New York Times, 20 June, 1996; A Lomax, "Managed Care Infects Prison Health Services," Prison Legal News, volume 8, Number 10, October 1997.]. Some authorities have reportedly ended contracts with private companies because of concerns about the quality of their services.

Recommendations to ensure adequate health care

Reports received by Amnesty International indicate that many incarcerated women in the USA do not have access to the physical and mental health care to which they are entitled under international standards. The provision of such services is vital for the health of these women and for their rehabilitation. Amnesty International therefore recommends the following measures:

- Local, state and federal authorities should provide resources to enable jails and prisons to identify the physical and mental health care needs of all inmates upon admission and while they are in custody and to provide necessary services and treatment.
- Health care should be provided without charge.
- Health care to women in custody should accord with professionally recognized community standards for services to women.
- Authorities should establish standards of adequacy and appropriateness for jail and prison physical and mental health services and conduct periodic, external reviews of the services.

- People suffering severe mental illness should be housed and treated in mental health institutions and not in jails and prisons.
- The federal government should establish an inquiry into mental health services for women in jails and prisons. One element of the study should be the use of psychotropic medication.

VIII SUPERMAXIMUM SECURITY FACILITIES

In the past few years, many US states have built “super-maximum security” (or “supermax”) facilities designed to house prisoners in long-term isolation in particularly restrictive conditions. Sometimes entire prisons are designated supermax facilities; others are units within prisons [The names given to such units vary; many are called “Security Housing Units” (SHUs). Although the term “supermax” is not the official term given to all such units, it has become a generic term used by experts in the field (and by the National Institute of Corrections in a 1997 survey) to describe high security facilities designed to manage or control inmates considered (on security or disciplinary grounds) to require maximum restrictive custody arrangements.]. Prisoners in these facilities may be confined for nearly 24 hours a day in sometimes windowless cells with solid doors, with no work, training or other programs. The facilities are designed to minimize contact between staff and inmates, and prisoners are often subjected to regimes of extreme social isolation and reduced sensory stimulation. The length of time inmates are assigned to such units varies, but some prisoners spend years, or even their whole sentence, in isolation.

The large majority of prisoners in supermax units are men. However, several states have constructed similar facilities for women prisoners [There appears to be no comprehensive national data on female inmates in US supermax facilities. A telephone survey of 20 states with substantial female inmate populations conducted by Amnesty International in January 1999 suggested that, while most had some administrative or disciplinary segregation cells for women, only a few had constructed units which appeared to fit the “supermax” category for long-term confinement. States which had such facilities included Arizona, California, Colorado, Oklahoma and Mississippi. Women under sentence of death were also held in some of these units.]. As well as harsh physical conditions, the operation of some high security units for women violates standards on privacy and human dignity, as the women are able to be observed at all times by male guards. The isolated nature of these units may increase opportunities for abuse.

Amnesty International believes that conditions in many US supermax facilities violate international standards for the humane treatment of prisoners and exceed what is necessary for security purposes [Some conditions violate specific standards under the UN Standard Minimum Rules, which require, for example, that prisoners should have adequate access to natural light and fresh air; to daily exercise; and to educational, recreational and rehabilitation programs.]. Both the UN Human Rights Committee and the UN Special Rapporteur on Torture have expressed concern about conditions in such facilities [See HRC Comments of 6 April 1995, UN Doc. CCPR/C/79/Add.50, and UN Doc. E/CN.4/1996/35].

Studies have shown that prolonged isolation in conditions of reduced sensory stimulation can cause marked psychological and physical harm. Health experts who have examined prisoners in isolation have documented symptoms including acute anxiety and panic attacks, hallucinations, sudden violent outbursts, self-mutilation, difficulty with concentration and memory, deteriorating vision and weight loss [See, for example, S. Grassian: Psychopathological effects of solitary confinement, *American Journal of Psychiatry*, 140, 1450-1454 (1983)). These and other symptoms have been demonstrated in the case of inmates in modern US supermax units, such as the Pelican Bay Security Housing Unit (SHU) in California (see *Madrid v Gomez* 889 F. Supp. 1146, N.D.Cal.1995). See also Amnesty International: UK Special Security Units - Cruel, Inhuman and Degrading Treatment, 1997, AI Index: EUR 45/06/97 (a report describing how UK prisoners held in similar conditions in Britain were found by doctors to have suffered symptoms including headaches and stomach pains, muscle wasting, anaemia, deteriorating vision and memory, and anxiety symptoms).].

Even small group isolation can be damaging, especially when accompanied by other measures. Three women convicted of politically motivated offences were transferred to a High Security Unit (HSU) in Lexington Federal Penitentiary, Kentucky, in the 1980s. Their mental and physical health was found to have seriously deteriorated after about a year in a highly restrictive and sterile environment in which they had limited association with up to four other inmates [The findings were documented in a lawsuit brought by the National Prison Project of the American Civil Liberties Union, and described in an Amnesty International Report USA: The High Security Unit, Lexington Federal Penitentiary, Kentucky (AMR 51/34/88). None of the women had any record of disciplinary offences or escape attempts while in prison but were placed in the unit on the grounds that their affiliations to outside groups (including, in one case, the Puerto Rican independence movement) could lead to rescue attempts being made on their behalf. Amnesty International said it considered that the conditions of their confinement and their assignment to the unit on grounds of their political affiliations constituted “cruel, inhuman and degrading treatment”. The women were later transferred to other prisons where they were held in less restrictive conditions.]. The physical conditions in the Lexington HSU, which has since been closed, were superior in many respects to those found in many supermax units today (HSU cells, for example, were larger than average and there was recreational equipment in a day room). Some of the more oppressive conditions in HSU - constant surveillance, lack of privacy, the use of restraints and frequent strip searches - continue to be found in some high security units for women.

The US authorities have defended the use of supermax facilities as being necessary to control extremely violent or disruptive prisoners. However, many inmates assigned to high security units do not appear to fit these criteria, or to warrant such an extremely punitive environment. For example, some prisoners have been sent to such units for repeated minor rule violations. In many states, mentally ill or disturbed prisoners are held in supermax units, despite evidence that the conditions are likely to exacerbate their disorders and lead to psychosis [Some US courts have ordered the removal of mentally ill inmates from specific supermax units on these grounds, e.g. the federal district court in *Madrid v Gomez* (op cit) ordered the removal from the Pelican Bay Security Housing Unit (California) of mentally ill inmates “who the record demonstrates are at a particularly high risk for suffering very serious or severe injury to their mental health...”. It defined such inmates as “the already mentally ill, as well as persons with borderline personality disorders, brain damage or mental retardation, impulse-ridden personalities, or a history of prior psychiatric problems or chronic depression.”]. According to prison experts, mentally ill prisoners are often more likely than other inmates to end up in such units because of behavioural problems and because prisons lack adequate mental health treatment programs. Women prisoners, especially, rarely fit the criteria most commonly given by the authorities for justifying such units (a history of prison gang-related activities, escapes or violent assaults).

Although few recent studies have been undertaken of women in supermax facilities, the evidence in some states bears out the above concerns. A 1996 survey of 14 women held in a special unit in Colorado State Penitentiary (CSP), an otherwise all-male facility, found that 11 of the women were serving sentences for minor, non-violent felonies such as theft, forgery and substance abuse [Survey undertaken by the Prisoners Rights Project at the Rocky Mountain Peace and Justice Center, Boulder, Colorado.]. Many of them had been sent to CSP for relatively minor disciplinary infractions and were mentally ill or had histories of mental illness. Yet their conditions were extremely punitive and included 23-hour cellular confinement, with solitary exercise taken in a small cell equipped (like those in the men’s units) with only with a chin-up bar bolted to the wall. No outdoor exercise was provided. The shower unit had glass windows which exposed the women to the view of the predominantly male guards[In January 1999 all female inmates in CSP were transferred to the Denver Women’s Correctional Facility where they continued to be held in isolation.]. The Security Housing Unit in Valley State Prison for Women, California, raises similar concerns, outlined below.

The Security Housing Unit (SHU), Valley State Prison, California

In November 1998, an Amnesty International delegation visited the SHU in Valley State Prison for Women (VSPW) and spoke to staff and inmates [Amnesty International's delegates were Dr Silvia Casale, a prison consultant and UK member of the European Committee for the Prevention of Torture, and two staff members of Amnesty International's International Secretariat. Amnesty International was given access to all parts of the prison and was allowed to interview individual prisoners in private, as well as talk freely to inmates and staff during their tour. At the time of writing, Amnesty International was preparing its detailed findings and recommendations to the California Department of Corrections on various aspects relating to the operation of VSPW.]. The SHU is situated, with the Administrative Segregation unit, in a separate block within the prison complex. It is the highest security unit for female prisoners in California, housing prisoners from across the state who are classified as a "threat to safety or security". Forty six women were confined in the unit at the time of the visit, most in cells by themselves [The SHU has 44 cells with two concrete bunks for potential double-occupancy. The SHU is next to the Administrative Segregation Unit (Ad-Seg) where the conditions are similar, and where 63 women were detained at the time of Amnesty International's visit. Prisoners are generally held in Ad-Seg pending hearings into alleged serious misconduct (including SHU hearings) or criminal investigations. They may also be sent to Ad-Seg for up to ten days for less serious disciplinary offences. SHU terms may only be imposed following a hearing by the Institutional Classification Committee (ICC). Anyone in Ad-Seg must have their custody reviewed every 30 days.]. Most prisoners are assigned to the unit for disciplinary offences carrying determinate SHU terms; inmates may also be sent to the unit for indeterminate periods because of general behavioural problems. Consecutive sentences may be imposed for misconduct while in the unit, which can considerably extend time served in the SHU. More than half the women in the SHU in November 1998 were serving SHU terms of a year or more, some for apparently minor breaches of discipline (see below) [These sentences ranged from 12 to 54 months in one case (SHU roster of November 19, 1998)]. Inmates could accumulate SHU terms long enough to spend their entire sentence in the unit [The SHU terms could be extended up to a "maximum" release date which is the date at which the inmate is due to be discharged from prison on serving her prison sentence.].

Unlike the general population at VSPW, the inmates have no work, education or other programs and are locked in small concrete cells for 22-24 hours a day. The narrow windows at the back of each cell are frosted over so there is no view of the outside. The cells have solid steel doors, cutting off contact with other inmates, with a window through which the guards can view the prisoners at any time. The women take all meals in their cells and are generally allowed out only for 15-minute showers, non-contact visits and exercise (alone or in small groups) in a bare yard surrounded by high walls. SHU inmates are allowed a limited number of possessions in their cells, including a radio and TV which they must purchase themselves. No clocks or watches are allowed.

The security measures are stringent and follow statewide rules designed originally for high security units in maximum security prisons for men. All custody staff are required to wear special protective (stab-proof) jackets while escorting the prisoners or patrolling the unit. The psychiatric and medical staff also voluntarily wear protective jackets if they need to talk to prisoners at their cell doors, even though the women are locked inside. Armed guards oversee the exercise yards and the control booth inside the unit. The women are placed in mechanical restraints [The women are handcuffed behind their backs while being escorted within the SHU, and are required to wear handcuffs and waist chains outside the unit, e.g. during visits. One inmate told Amnesty International she had been required to wear leg shackles for two months whenever she left her cell, including for showers and exercise, after she had attempted to kick an officer. Bruising around her ankles, consistent with shackling, was still visible at the time of the interview.] and strip searched every time they leave their cells; they are also strip searched again after returning from visits and the exercise yard.

Amnesty International considers that many aspects of the security procedures imposed in the unit are oppressive and go beyond what is appropriate or necessary for the population confined there. Some of the procedures breach international standards on human dignity and privacy and are open to abuse. For example, the rules require that SHU inmates be “in full view” at all times and they are not allowed to cover their cell windows, even when using the toilet in their cells. Some prisoners have complained that male guards peer at them while they are on the toilet or undressing. Prisoners told Amnesty International that some women deliberately expose themselves to male guards for extra provisions and that several guards have encouraged this.

The showers are in an area in full view of the custody staff and have only small panels to cover the middle part of the prisoners’ bodies. Male guards have been removed from the control booth following complaints that they could see into the showers from this position. However, women taking showers can still be observed by male guards in the unit itself [Two of Amnesty International’s delegates were in the central floor of the unit while several women were showering on the tiers above, and noted that the “modesty” panels did not protect all women from exposure of their buttocks and genital area, especially those taking showers on the upper tier.].

The constant exposure and lack of privacy has reportedly contributed to severe stress in some cases; some prisoners said they found the constant strip searches stressful and humiliating and, although they were conducted by female guards, male guards were often standing nearby. One woman said she had not taken exercise during four months in the SHU because she did not want to undergo the strip searches before and after each visit to the yard.

Amnesty International raised concern about the SHU conditions at a meeting with the California Department of Corrections following its visit to VSPW. The prison authorities said that the conditions were deliberately severe in order to deter inmates from repeated, serious rule violations. They also said that the security measures were necessary to protect both staff and prisoners from the small percentage of highly assaultive and predatory inmates in the system.

However, the records indicate that some women are assigned to the SHU, or have had their stay extended, for relatively minor offences. For example, several women had received long consecutive SHU sentences for acts such as spitting at a guard, or issuing a verbal threat [Although the SHU roster showed that a significant proportion of women were serving SHU terms for offences such as “battery” or “assault” on an officer or inmate, these included such acts as “gassing” (throwing liquid, which could include urine, a cold drink or an unknown liquid) or “spitting”. One woman received an 18 month consecutive SHU term for “spitting” at a guard and blocking her toilet; this was later reduced to 9 months.]. Some had lost “good conduct credits” (thus extending their stay still further) for covering up their cell windows. Officials told Amnesty International that an inmate’s stay on the unit could be extended if she “acts out” (misbehaves).

A significant proportion of women in the SHU also suffer from mental health problems which may make it particularly difficult for them to cope with the conditions imposed. Some have histories of sexual and physical abuse, depression, and attempted suicide. Amnesty International was told that all prisoners undergo a mental health evaluation by the prison mental health staff before being sentenced to a SHU term. However, in practice it appears that only acutely ill prisoners qualify for exclusion, or removal, from the SHU. Many of the women in the SHU are in the prison’s “clinical case management system” for mental health problems, for which treatment is largely confined to the prescription of psychotropic drugs [The Quarterly Management Report for VSPW shows that, in October 1998, 546 prisoners out of a total VSPW inmate population of 3,676 were identified as “CCCMS” (Correctional Clinical Case Management System), meaning that they had been diagnosed as suffering from various forms of mental disabilities requiring monitoring and treatment. Amnesty International was told that more than half the SHU inmates were designated as CCCMS.]. Other treatment, such as individual or group therapy, was unavailable due to lack of resources [Some limited counselling services were available to a few inmates.].

The prison psychiatrist told Amnesty International that any inmate suffering from a mental health crisis, such as psychotic decompensation (or breakdown), would be transferred to the Emergency Out-Patient (EOP) unit in a neighbouring prison. However, Amnesty International is concerned about the adequacy of the monitoring of SHU inmates for mental health. After the initial screening, there is no regular examination of each inmate by the psychiatric or other qualified mental health staff and the system appears to rely primarily on self-referrals by inmates or referrals by custody staff and health technicians [Officials told Amnesty International that custody staff, including medical and psychiatric technical assistants, do daily rounds and ask inmates through the cell doors if they are OK. However, inmates who are mentally ill may not necessarily seek help. Some inmates told AI they were not seen by psychiatric staff despite requests and complaints that they felt “stressed out”]. This falls short of international and US professional correctional health care standards [The National Commission on Correctional Health Care (NCCCHC) standards require that inmates in administrative segregation should be evaluated by qualified health personnel at least three times a week, and prisoners in disciplinary segregation should be seen daily (Standards for Health Services in Prison, 1997, pages 45 and 53). Rule 32(3) of the UN SMR requires prisoners in close confinement to be visited daily by the medical officer to assess their physical and mental health.]. According to inmates and their attorneys, many of the women are reported to have deteriorated while on the unit, crying or shouting uncontrollably, banging their heads against the cell walls, or committing acts of self-mutilation [One of the women interviewed by AI was reportedly in the SHU for repeated acts of cutting, and had made several suicide attempts for which had been transferred at various intervals to a quiet room, or observation cell, then returned to the SHE - when AI mentioned this to a senior staff member, she said that she would be removed from the SHE when her behaviour changed.].

Recommendations on Supermaximum Security Facilities

The state, federal and prison authorities should urgently review their criteria for confining prisoners in supermax units; they should amend their policies to ensure that no prisoner is required to be confined long-term in conditions of isolation and reduced sensory stimulation.

The authorities should immediately improve conditions in such units so that prisoners receive more out-of-cell time, improved exercise facilities and adequate access to natural light and fresh air.

Security measures should be conducted in a way that does not violate standards requiring that prisoners be treated with respect for human dignity.

Inmates who are mentally ill or disabled, or at risk of mental illness, should not be placed in supermax units. All prisoners in disciplinary or administrative segregation should have their physical and mental health regularly evaluated by qualified health personnel in accordance with professional health standards, and should receive adequate treatment.

IX SUMMARY OF RECOMMENDATIONS

Recommendations relating to international commitments

The USA's reluctance to fully accept international human rights treaties and standards denies women in the USA rights and protections which many other governments around the world have agreed to recognise. Amnesty International recommends that the USA should:

- ratify without reservations the human rights treaties that it has not yet ratified and in particular the Convention on the Elimination of All Forms of Discrimination Against Women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the American Convention on Human Rights;
- withdraw its reservations to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination;

- give people in the USA recourse to international human rights protection mechanisms;
- submit to the international monitoring bodies the USA's overdue reports on its implementation of the Convention against Torture and the Convention on the Elimination of All Forms of Racial Discrimination.

Recommendations to protect female inmates from sexual abuse

Amnesty International considers that the nature and extent of sexual abuse of female inmates by male staff in jails and prisons in the USA, and the harm that sexual abuse causes, warrants strong and immediate action by authorities responsible for jails and prisons to provide the protection to which incarcerated women are entitled under international standards. Amnesty International calls upon authorities to publicly recognise that sexual abuse constitutes torture or cruel, inhuman or degrading treatment or punishment and to take the following measures to combat it:

Female inmates should be guarded only by female officers. Male staff who provide professional services in female facilities should always be accompanied by female officers.

Sexual abuse of inmates by staff should be expressly prohibited and action taken against staff who sexually abuse inmates.

Sexual abuse should be widely defined to include sexual assault and threatened sexual assault; sexual contact; and sexually explicit language and gestures.

- All staff and inmates should be informed that sexual abuse is prohibited and that inmates have a right to complain if they are abused.
- staff have a duty to report if they know that an inmate has been abused.
- All complaints must be investigated independently, promptly and thoroughly in line with best practice for the investigation of sexual assault.
- Victims of sexual abuse must be provided with appropriate care and redress.
- Inmates and staff who report abuses should be protected from retaliation by measures including:
- inmates and staff must be informed that they have a right to protection from retaliation;
- as far as practicable, reports of abuse by inmates and staff should be treated in strict confidence;
- disciplinary and/or legal action, as appropriate, should be taken against any member of staff who seeks to deter inmates and staff from reporting abuse or who, in any manner, harasses or intimidates inmates or staff who report abuse.

Recommendations on the use of restraints

In prisons and jails around the USA, restraints are commonly used when they are not essential to prevent escape or to protect people and property. This is particularly evident in cases of women who are in labour or who have just given birth, or who are seriously ill. The use of restraints in these circumstances violates international standards that prohibit the imposition of torture and other forms of cruel, inhuman and degrading treatment and punishment.

Amnesty International recommends that jails and prisons should adopt policies on the use of restraints that accord with international standards, as follows.

Restraints should be used only when they are required as a precaution against escape or to prevent an inmate from injuring herself or other people or damaging property. In every case, due regard must be given to an inmate's individual history.

Policies on the use of restraints should prohibit their use on:

- pregnant women when they are being transported and when they are in hospital awaiting delivery
- women who have just given birth
- seriously sick inmates when they are being transported to and when they are in hospital.

- Policies on restraints should specify that the types of restraints and the circumstances of their use must not be hazardous to the health and safety of inmates.
- The use of restraints should be monitored to ensure strict compliance with policies.

Recommendations to ensure adequate health care

Reports received by Amnesty International indicate that many incarcerated women in the USA do not have access to the physical and mental health care to which they are entitled under international standards. The provision of such services is vital for the health of these women and for their rehabilitation. Amnesty International therefore recommends the following measures:

- Local, state and federal authorities should provide resources to enable jails and prisons to identify the physical and mental health care needs of all inmates upon admission and while they are in custody and to provide necessary services and treatment.
- Health care should be provided without charge.
- Health care to women in custody should accord with professionally recognized community standards for services to women.
- Authorities should establish standards of adequacy and appropriateness for jail and prison physical and mental health services and conduct periodic, external reviews of the services.
- People suffering severe mental illness should be housed and treated in mental health institutions and not in jails and prisons.
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Security measures should be conducted in a way that do not violate standards requiring that prisoners be treated with respect for their privacy and human dignity.

Inmates who are mentally ill or disabled, or at risk of mental illness, should not be placed in supermax units. All prisoners in disciplinary or administrative segregation should have their physical and mental health regularly evaluated by qualified health personnel in accordance with professional health standards, and should receive adequate treatment.