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*Human Rights  
& Refugees  
Publications*



# Children Imprisoned by Circumstance

*by Oliver Robertson*

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## *Human Rights & Refugees Programme*

# Children Imprisoned by Circumstance

By Oliver Robertson

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## The Quaker United Nations Office

The Quaker United Nations Offices (QUNO) located in Geneva and New York represent Friends World Committee for Consultation (Quakers), an international non-governmental organisation with General Consultative Status at the United Nations.

QUNO works to promote the peace and justice concerns of Friends (Quakers) from around the world at the United Nations and other global institutions. They are supported by the American Friends Service Committee, Britain Yearly Meeting, the worldwide community of Friends and other groups and individuals.

## Women in Prison and Children of Imprisoned Mothers – Project Background

QUNO Geneva, has since 2004 been undertaking research on Women in Prison and the Children of Imprisoned Mothers as part of a joint project with the Quaker Council for European Affairs (Brussels), Quaker Peace & Social Witness (UK) and the Friends World Committee for Consultation representation to the UN Commission on Crime Prevention and Criminal Justice and the UN Crime Congress.

The project aims to gain a clearer understanding of the particular problems faced by women prisoners and children of imprisoned mothers and how these problems can be better addressed by governments and policy makers.

QUNO's work on the Women in Prison Project is funded by Irish Aid.

## QUNO Women in Prison and Children of Imprisoned Mothers publications

Rachel Taylor (2004) *Women in Prison and Children of Imprisoned Mothers: Preliminary Research Paper*


Marlene Alejos (2005) *Babies and Small Children Residing in Prisons*

Megan Bastick (2005) *Women in Prison: a commentary on the Standard Minimum Rules for the Treatment of Prisoners* (discussion draft – final version forthcoming)

Laurel Townhead (2006) *Women in Prison and Children of Imprisoned Mothers: Recent Developments in the United Nations Human Rights System*

Laurel Townhead (2007) *Pre-Trial Detention of Women and its impact on their children*

Oliver Robertson (2007) *The impact of parental imprisonment on children*

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# Contents

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<i>Executive Summary</i>	v
<i>1 Introduction</i>	1
<i>2 Children Entering Prison</i>	2
2.1 Introduction	2
2.2 Children entering prison after birth	2
2.2.1 Arrest and investigation	2
2.2.2 Pre-trial detention	4
2.2.3 Trial and sentencing	5
2.2.4 Policies and regulations on children living in prison	6
2.2.5 Preparations for entering prison	9
2.2.6 Conditions in prison	10
2.3 Children born in prison	13
2.3.1 Pre-trial detention	14
2.3.2 Trial and sentencing	14
2.3.3 Conditions in prison	15
2.3.4 Childbirth	16
2.3.5 Policies and regulations on babies living in prison	17
2.4 Additional issues	17
2.4.1 Children living in prison with fathers	17
<i>3 Leaving Prison</i>	19
3.1 Introduction	19
3.2 Leaving with mother	19
3.2.1 Flexibility in regulations	19
3.2.2 Preparations for leaving prison	20
3.2.3 Reintegration of mothers into the community	20
3.3 Leaving without mother	22
3.3.1 Who decides	22
3.3.2 Preparations for leaving prison	23
3.3.3 Alternative carers	23
3.3.4 Death of mother or child	24

3.3.5	Ongoing contact with mother	25
3.4	Additional issues	27
3.4.1	Children leaving or not leaving inappropriately	27
3.4.2	Siblings living inside and outside prison	27
3.4.3	Prison transfer	28
3.4.4	Temporary leave	28
3.4.5	Reintegration of children into the community	29
4	<i>Alternatives and Recommendations</i>	31
4.1	Alternatives	31
4.2	Recommendations	32
	<i>Endnotes</i>	34
	<i>Appendices</i>	43
	Appendix 1: Policies regarding ages children allowed to live in prison	43
	Appendix 2: Research questionnaire	45

# Executive Summary

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Around the world children who have committed no crime live in prison. There with mothers accused or convicted of an offence, these children are too often ignored by prison systems and officials, with their needs and best interests unmet.

The decision whether to allow a child to live in prison with her/his mother involves two unpalatable options: do you separate a child from her/his mother or have the child live in prison? But the issue is much broader than a single decision and the impact on the child is felt before, during and after the period of imprisonment. At all stages of the criminal justice process, from the point of arrest to the time of release and reintegration into the community, a woman may have children living with her. At all of these stages the needs and best interests of the children should be considered.

The issue of children living in prison has many features, but in this paper the focus is primarily on the times before and after imprisonment: the situations in which children enter prison and the effect it has on them after they leave.<sup>1</sup> Different children are affected differently. As well as living with a mother serving a custodial sentence, children may also stay with her while she is in police custody during the investigation or during a period of pre-trial detention. Some children move into prison from a home in the community, others are born during the mother's imprisonment. When they leave, children either do so with their mother or before her. Some have spent time in the community before or during their time in prison; others have lived in prison their entire lives.

Some children are detained with their mother prior to her trial, either when she is arrested and questioned or during a period of pre-trial detention. Conditions in pre-trial detention centres and police stations may be even more inappropriate than those in prison and they are less likely to include specialist child-friendly facilities.<sup>2</sup> This is particularly significant in jurisdictions where people are held in pre-trial detention for months or even years and underlines the importance of ensuring that pre-trial detention is used only as a last resort. Caring responsibilities may mean that a suspect is less likely to abscond and should be taken into account when deciding whether pre-trial detention is needed.

When a case comes to trial and a woman is found guilty, some courts take into account the impact of a sentence on any children. Women with children may be given a fixed sentence (in Kyrgyzstan first-time women offenders with children under 14 generally have their sentences suspended)<sup>3</sup> or the sentence may vary depending on the best interests of the child (this is now required in South Africa, following a Constitutional Court judgement in 2007).<sup>4</sup>

However, if a mother is imprisoned, children may live in prison with her only in certain circumstances. If they are too old or have reached certain developmental stages (for example, have stopped breastfeeding) or if the prison does not have appropriate facilities to house them, children may be denied entry. In some countries children born during a mother's imprisonment are allowed to stay with her, but children born before the imprisonment are not. This issue, of the restrictions on entry, is one where there is little consensus among States: some countries ban children of any age from living in prison; in others children can stay until they are four, five or six years old or even older. It is also an area with no acknowledged best practice – the conditions in which children live, the opportunities they have for development and the contact they have with the outside world all vary widely – and there has been very little long-term or comparative research which assesses the effects that different policies have on children's future prospects.

The entry of children into prison should be recorded in the same way as happens to prisoners, to prevent their becoming 'lost' or forgotten by the authorities. While they remain in prison, children, who have committed no crime, should not be subject to the same restrictions as prisoners. Their physical, emotional, social and/or intellectual development should not be damaged by living in prison. Support for children may include provision of nurseries or schools, visits outside the prison and/or contact with relatives living in the community. Acclimatising them to the world outside is important not only to promote their development, but also to prepare them for living in the community once they leave prison. There are reports of children being scared of aeroplanes, cars, trees or men when they are released because they have not encountered them before.

When children do leave prison, they may do so with or without their mother. There is often a preference for mothers and children to leave together so as to avoid separating then reuniting them months or possibly weeks later. For this reason, rules about when children must leave prison frequently include some flexibility to allow them to stay longer than the official maximum if the mother herself is shortly to be released.

When children leave before their mothers, they will be looked after by alternative carers. These are often other family members, but may include other members of the community or foster carers or being placed in institutional care. Meetings between the children, the mother and/or the new carers sometimes take place before and after the children's release from prison to help them adjust to their new living situation.

Many children, particularly those with no experience of life outside prison, may have difficulty integrating into the community. Many women in prison were poor to begin with and come out of prison poorer than they went in. They may have difficulty finding stable work and accommodation, which will obviously impact on any children with her. Ongoing post-release support should be provided to both mother and child, both for humanitarian reasons and to prevent future criminal behaviour on the part of either the mother or (in the future) the children.<sup>5</sup>

More so than many other issues, this is one where prevention really is better than cure. Due to the problems that occur by having children living in prison, officials should consider alternatives at every stage of the criminal justice process. Crime prevention strategies to support women in avoiding criminal behaviour altogether, diverting women away from formal judicial procedures by using measures such as restorative justice processes, avoiding pre-trial detention and imposing non-custodial sentences on woman with caring responsibilities: all of these should be utilised to avoid the negative effects of parental imprisonment on children. Whether they live in prison or remain outside, the children of prisoners have committed no crime and should suffer for none. It is the responsibility of all involved in the criminal justice process to ensure that this is so.

# I Introduction

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In countries across the world, when women are imprisoned, children are affected. Neither the absolute number of children affected nor the proportion of women prisoners with children are known because this information is not recorded by the authorities, though some countries have approximate figures: up to 90% of women in prison in Chile are estimated to have children for whom they were caring at the time of arrest.<sup>6</sup> In general, most children live outside prison and must adjust to life without a mother,<sup>7</sup> but some are taken into prison with their mothers.

The circumstances in which children go to live in prison vary between (and sometimes within) countries, with some States refusing to allow children to live in prison at all, others allowing children to stay with an imprisoned mother up to school age and many more somewhere in between these extremes. It is difficult to say which approach is most appropriate – issues such as the conditions in the prison, quality of care received and the age and situation of the individual child (including the availability of another parent/family member as carer) must all be considered – but there seems to be a broad consensus that sometimes the least bad option is for children to live in prison with a mother (or very occasionally father), despite the child having committed no crime.<sup>8</sup>

However, despite possibly being the better option, having children live in prison frequently causes problems for mothers, family members outside prison, prison staff, other prisoners and the children themselves.

There is a limited body of research examining the impact of children living in prison;<sup>9</sup> within this research, the focus is almost exclusively on the conditions in which children live in prison. The time and events leading up to the children's residence in prison and the period after release are mentioned only in passing.

This paper aims to fill that gap. In contrast to other literature, it will focus primarily on the times before and after imprisonment (though the prison conditions in which children live will be considered to a limited extent). In doing so, it focuses on the events that precede a child's living in prison, the ongoing effects after release and some ways in which the negative effects of living in prison can be avoided or mitigated.

As mentioned above, the literature about this issue is limited. In order to supplement it, the Quaker UN Office, Geneva, commissioned field research in a number of countries in different regions of the world to determine the variety of both policy and practice in this area. Case studies were carried out in Chile, Egypt, India, Kyrgyzstan, Sierra Leone and Venezuela, with additional (and highly valued) input from primary and secondary sources in other States and previous research by the Quaker UN Office and its partners.<sup>10</sup> Due to time and resource constraints, only a small number of case studies were possible, but the quality and depth of that research, as well as the professionalism with which it was carried out, has greatly strengthened this paper. It would be much diminished without the efforts of the following: members of AdvocAid, Vipin Nathaniel, Matthew Naumann, Maria Angelica Sepulveda, Rebecca Wright and Rachel Yordy.



## 2 Children Entering Prison

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### 2.1 Introduction

Children who live in prison with a parent get there in one of two ways: they move there or they are born there. These methods of entry are quite distinct and prison authorities therefore deal with them in different ways, to the extent that some will, for example, allow children to live in prison if they were born there but not if they were born before the mother entered prison. However, there also tend to be policies and practices applicable to all children living in prison. Such regulations may relate to a minimum standard of provision for the children (for example, mothers with children may be housed separately from the rest of the prisoners) or to restrictions on when a child is allowed to live in prison (for

example, a child must be below a certain age). In some jurisdictions these rules are enforced strictly, in others less so.

In all situations, having a child remain in prison for an extended period is not a decision to be taken lightly. Prisons, particularly those with a restrictive regime which allows prisoners little control over their lives, are rarely appropriate places for children to grow and develop. Yet sometimes it may be the least bad option; the key issue for officials and policymakers to consider is the child's best interests, and to remember that the child is not a criminal and should not be treated as such.

### 2.2 Children entering prison after birth

Babies and children living in the community may go to live with an imprisoned mother (or, rarely, father). Entering prison can happen at the beginning of a sentence, part-way through a sentence or while the mother is detained before her trial. All countries surveyed for this paper have limits on how long a child can live in prison;<sup>11</sup> this is either for a fixed number of days or until s/he has reached a particular age or stage of development. The issue of how long a child can remain in prison is one of the areas with the greatest variation in policy between jurisdictions.

Children living in prison almost always live in more restrictive conditions than they did outside, even though they are not themselves prisoners and should not be treated as such. In particular, the greatly reduced contact with the world outside prison (especially with family members) and the often limited opportunities for development can be damaging to children, both during and after their time in prison. It is, therefore, important when deciding whether

or not a child should live in prison to weigh up the likely benefits of maintaining the mother-child relationship against the negative effects of a prison environment.

Like their mothers, the majority of children living in prison come from poorer socio-economic backgrounds: women prisoners in Venezuela are usually first-time delinquents, young, single mothers with three to four children, under-educated and unemployed at the time of imprisonment,<sup>12</sup> while 70% of children living in prison in India are from 'backward classes and weaker sections of society'.<sup>13</sup>

#### 2.2.1 Arrest and investigation

The arrest and subsequent investigation of a mother is the first time many children come into contact with the police and this experience can profoundly affect them whether or not they subsequently live with her in prison. However, the particular issue of relevance to this paper is what happens to

children when their mother is investigated and questioned for a prolonged period. Whether or not the mother is eventually charged, if she is held for several hours or days then her children may end up staying with her in the police station.

There are limits on how long suspects may be held and questioned: these vary, depending on the jurisdiction and the nature of the crime, from a few hours to several weeks or more. For example, within the UK suspects can normally be held and questioned for one day, extendable to four with the permission of a magistrate,<sup>14</sup> but for those suspected of terrorist-related crimes this limit rises to 28 days. However, regardless of the length of the questioning, this period can still be difficult for any children, particularly if no arrangements have been made for their care and welfare. If a woman does not expect to be questioned or is unaware of how long the process will take, she may not make adequate provisions for her children. She may not make alternative childcare arrangements (one UK study found that most children who were with their mothers during arrest and while being charged were there because the mothers were not allowed to contact carers to come and collect them<sup>15</sup>); if children come with her to the police station there may not be appropriate activities or food for them (this is particularly important for young babies). Such preparations are even harder if a woman is arrested but not told so:

*In innumerable instances women are not informed that they are being arrested. The police merely asks [sic] them to come to the police station for questioning – this procedure is illegal, since the law provides for women to be questioned in their own houses instead of being taken to a police station.*

*Once women reach the police station they are sometimes detained there for days on end – this again is illegal, since legally women are not supposed to be kept overnight in a lockup before being produced in the courts.<sup>16</sup>*

Police stations are often even less suited to having children live there than prisons: the conditions in police stations in Nepal are considered so bad that one organisation recommended that women with children should stay in prisons rather than police stations.<sup>17</sup> Children may become distressed, tearful and frightened if they are present while their mothers are photographed and fingerprinted and are held in cells (cases of this have been reported from the UK).<sup>18</sup> Police may be viewed with fear by many children, adding to the uncertainty and trauma of parental arrest and questioning.<sup>19</sup>

Some countries have specific regulations on how to deal with children of suspects. In Kyrgyzstan, when a woman is arrested her children are given to relatives upon production of identity documents (though no written records are made of the exchange and sometimes children are given over without any documents being produced). Additionally, investigating officials are meant to inform the children's inspectorate, who then investigate and report to the Commission for Trusteeship and Guardianship of the district administration within 10 days. If the mother is detained for significant periods of time (around 10 days or more) her children are meant to be cared for by State authorities, unless relatives write to ask for temporary guardianship.<sup>20</sup>

However, these and other regulations are not always followed. Women arrested in Punjab state, India, were in 2003 allowed to bring children under five years old with them when being arrested, but police regularly arrest them 'without allowing women to communicate with their families. As a result, children [living outside prison] have sometimes spent days alone, unaware that their mother is in prison'. The justification given for this was that women were well aware of their rights and did not need to be informed of them at the time of arrest.<sup>21</sup>

There are situations of police officers refusing to believe that a woman has children – one woman in Zimbabwe allegedly had to squeeze milk from her breast to persuade the

arresting officers that she had a baby<sup>22</sup> – or even worse, of police officers using children as a means of putting pressure on women during investigations. One woman was reportedly threatened with having her parental rights removed if she did not provide information or cooperate at the trial, even though the police did not have the authority to deny her those rights.<sup>23</sup>

### 2.2.2 *Pre-trial detention*

As well as serving a prison sentence as punishment for a crime, a woman may be detained prior to conviction. This may happen while being questioned in relation to an offence, after being charged and awaiting trial, or after being convicted and awaiting sentencing. In all cases, children may be affected.

Women in pre-trial detention may be held in the same facilities as convicted women (and sometimes in the same facilities as men), or they may have dedicated detention centres. Although women in pre-trial detention, having not been convicted of a crime, should not be subject to the same restrictions as sentenced prisoners, their freedom in reality is often more heavily restricted.<sup>24</sup> This may be because of a lack of staff and facilities, an unwillingness to devote resources to a population that may soon leave prison (if tried and acquitted) or restrictions placed on the detainee while an investigation and trial is ongoing. Among other ways in which they could be affected is their ability to have children live with them in detention.

The length of time women spend in pre-trial detention, also known as being ‘remanded in custody’ or ‘under trials’, varies enormously by country and as such should be a major determinant of whether children should be allowed to live in detention. Over three quarters of children living in prison in India are there with a mother who is awaiting trial,<sup>25</sup> whereas in Venezuela and several other Latin American countries about half of the prisoners are in pre-trial detention and women spend an average of around

twelve months there.<sup>26</sup> Additionally, in some jurisdictions it is more common for a child to live with her/his mother in pre-trial detention: non-governmental workers in Egypt state that children of women in pre-trial detention commonly accompany their mothers into prison at this stage, rather than after waiting to see whether a custodial sentence is imposed.<sup>27</sup>

Depending on the length of detention, space within the prison, location of the prison and the regulatory requirements that must be met, a mother may be unable to arrange for a child to stay with her. For example, if child welfare officials must assess whether the child’s best interests are served by being in prison, the assessment may take longer than the period the mother spends in pre-trial detention.<sup>28</sup> Regulations for convicted women and those in pre-trial detention may differ: for example, in England and Wales, women in pre-trial detention can only enter a Mother and Baby Unit as a temporary admission, meaning that they can only stay there for a fixed time.<sup>29</sup> Even if a mother can have her children live with her, conditions in pre-trial detention facilities may be inappropriate for children. This is particularly worrying in jurisdictions where detainees are held for months or even years in pre-trial detention.<sup>30</sup>

A woman’s ability to have her children live with her following imprisonment should not be prejudiced by any time spent in pre-trial detention: one study in England and Wales found that women can lose contact with children after arrest, with women kept in pre-trial detention until sentencing being particularly affected.<sup>31</sup> One study claims that a Zimbabwean woman who was not allowed to keep her child with her in pre-trial detention subsequently lost the opportunity to have the child with her after sentencing because during the period of pre-trial detention the child was involuntarily weaned: weaned children may not live in prison in Zimbabwe.<sup>32</sup>

In some countries, alternatives to pre-trial detention are allowed when a woman has children or childcare responsibilities: in Nepal

there are cases of individual police officers allowing women with children to be given bail rather than pre-trial detention.<sup>33</sup> This is commendable but such alternatives should be included and used as part of the formal judicial process and bail or other conditions should not be imposed which are unreasonable or which the defendant is unable to meet. For example, women defendants in particular may be unable to find the money necessary for a financial guarantee, due both to the tendency for criminal suspects to come from poorer socio-economic backgrounds and to the fact that most women occupy a lower economic status than men.<sup>34</sup> Additional problems may occur where many women are detained far from their home communities and, therefore, have difficulty contacting potential guarantors.<sup>35</sup>

### 2.2.3 *Trial and sentencing*

The outcome of a trial and the sentence handed down can have a major effect on the children of convicted offenders, both those who subsequently go to live in prison with the convicted parent and those who remain on the outside. Awareness of this and of the requirement under international law to take the best interests of the child into account in all actions concerning them<sup>36</sup> mean that some countries either require or empower judges to take into account the children's needs and best interests when sentencing.

Enabling defendants to receive adequate legal representation and a fair trial is crucially important for all involved, including defendants' children. Unfortunately, issues such as illiteracy, unemployment, weak institutions and extreme poverty as well as a general lack of legal support and/or understanding of a complex legal system frequently conspire to prevent proper access to justice.<sup>37</sup> Additionally, a shortage of qualified, practicing lawyers in a country<sup>38</sup> and unaffordably high costs of legal representation mean that many defendants go without adequate support, resulting in protracted hearings and trials and unreasonable delays in the judicial system.<sup>39</sup>

Conditions for mothers and children during trials may also be inadequate. The law courts in Freetown, Sierra Leone, have extremely cramped holding cells for prisoners and any children with them, who are forced to stand and often wait entire days for their turn in court without food or water being routinely provided (family members or guards may provide supplies in individual cases).<sup>40</sup>

When sentencing, some courts will consider the impact of a sentence on any children, while others do not, for a variety of reasons. Nigerian courts 'certainly' take the impact on children of the convicted into account, according to a senior official within the country's women's prison system.<sup>41</sup> Kyrgyz judges are supposed to consider the effect on children when sentencing, though many do not study the family circumstances of convicted women.<sup>42</sup> In other countries it is down to the discretion of individual judges: Nepalese judges are given no guidance about taking the impact on children into account when passing sentence, though some will consider it.<sup>43</sup> Within England and Wales judges can request pre-sentence reports on the likely impact of a prison sentence on children, though again this depends on a judge's individual discretion.<sup>44</sup> In Scotland, Social Enquiry Reports fulfil a similar role, though they do not always include an analysis of the impact on children. They may always be requested and in some circumstances are mandatory.<sup>45</sup>

A ruling in September 2007 by South Africa's Constitutional Court found that Section 28(2) of the country's constitution, which states that '[a] child's best interests are of paramount importance in every matter concerning the child', applies when sentencing a child's primary caregiver. Furthermore, it issued guidelines to 'promote uniformity of principle, consistency of treatment and individualisation of outcome':

1. *The sentencing court should find out whether a convicted person is a primary caregiver whenever there are indications that this might be so.*

2. *The court should also ascertain the effect on the children of a custodial sentence if such a sentence is being considered.*
3. *If the appropriate sentence is clearly custodial and the convicted person is a primary caregiver, the court must apply its mind to whether it is necessary to take steps to ensure that the children will be adequately cared for while the caregiver is incarcerated.*
4. *If the appropriate sentence is clearly non-custodial, the court must determine the appropriate sentence, bearing in mind the interests of the children.*
5. *Finally, if there is a range of appropriate sentences, then the court must use the paramountcy principle concerning the interests of the child as an important guide in deciding which sentence to impose.<sup>46</sup>*

Sometimes judges are unaware of the consideration they should give to the impact on children, particularly when laws dealing with children in prison are not contained in one specific section of the legislation.<sup>47</sup> Possibly for this reason, some judges rarely suspend sentences or take the wider family situation into account when sentencing, or decide where the mother will serve her sentence based only on the severity of her crime without considering how far the prison is from her family.<sup>48</sup> Similarly, women themselves, legal representatives or social services may fail to make judges aware of any children, thus resulting in the children's needs being ignored when sentencing.

However, some judges do not or will not take into account 'maternal considerations'. In neither Chile nor Venezuela are sentences affected by motherhood (though the former does give particular attention to placing the mother in the nearest possible prison to her former residence).<sup>49</sup> One British woman whose baby was in court when she was convicted of a first (petty) property offence, said: 'the judge interrupted my probation officer who was stressing to him the importance of "bonding"

between a mother and her baby and said "I will not have a pistol put to my head". He sentenced me to 18 months imprisonment. There wasn't a place available for my baby on a prison MBU [Mother and Baby Unit] and I had to hand my baby over to my boyfriend in the court to care for. I'm not sure he can cope.'<sup>50</sup>

Judges in some jurisdictions have greater discretion than others regarding sentencing. Scottish courts have a very wide discretion, due to the fact that Scotland 'appears to occupy an almost unique position in having neither a penal/criminal code nor a formal, operational system for the provision of comprehensive sentencing guidance'.<sup>51</sup> Other countries may have guidelines relating to childcare considerations but allow judges discretion within those guidelines: in Egypt, when both parents of a child below the age of fifteen are imprisoned, in certain circumstances the imprisonment of one of them may be delayed until the other is released.<sup>52</sup>

Chile has established a system of specialist Family Courts, which take the final decision on issues such as whether a child should be allowed to live in prison. Family Courts were created to speed up the judicial processes by introducing new ways of working, such as mediation and oral procedure, as well as ensuring there were adequate numbers of tribunals in the country.<sup>53</sup>

#### *2.2.4 Policies and regulations on children living in prison*

Most criminal justice systems agree that in some situations it can be in the best interests of the child to live in prison with her/his mother, and that while there the child should not be subject to the same treatment and restrictions as convicted or detained persons. However, views about which children should be allowed to live in prison vary greatly both between and within countries.

In those jurisdictions where children are allowed to live in prison, they can do so if they meet one or more of the following criteria:

1. They are below a certain developmental level (for example, they have yet to be weaned off breast milk).
2. They are below a certain age.
3. They have lived in prison for fewer than a fixed number of days.

The only example found in this research of the third criterion is that of children living in pre-trial detention in England and Wales. There, pre-trial detainees can only enter Mother and Baby Units on a temporary basis and for a fixed period; therefore, a child may be removed from the Unit (and therefore the prison) if the time limit has been reached.<sup>54</sup>

Some regions, such as the former Soviet bloc, have common policies regarding children living in prison; in others, such as Western Europe, policies vary widely. However, as noted by the European Committee for Children of Imprisoned Parents (EUROCHIPS) in their 2006 book *Children of Imprisoned Parents: European Perspectives on Good Practice*, different policies within this region tend to reflect different prison conditions and cultures. In Germany, where the prison system is more open and professionals stress the importance of mothers personally caring for their children for as long as possible, children up to three, four or six years old can live in prison; in the UK, where conditions are much more severe, the upper limit for children living in prison is 18 months and there are concerns about children being damaged if they live in prison beyond six months.<sup>55</sup>

Similarly, the two-year age limit in Sierra Leone stems from the belief that children will be far more affected by the experience of living in prison the older they are. However, the policy also represents an attempt to take into account other child welfare issues: for example, it allows mothers to breastfeed their young children during their time in prison. These children thus receive the health benefits of exclusive breastfeeding, which is considered to increase chances of surviving infancy threefold.<sup>56</sup> This is something of critical importance given the extremely high

rates of infant mortality in Sierra Leone.<sup>57</sup>

Some countries have a strong emphasis in their penal codes on maintaining family links. The Danish penal system, which emphasises the importance of 'normalisation' and helping prisoners reintegrate into the community, tries to ensure that conditions in prison differ as little as possible from those outside.<sup>58</sup> Countries in the former Soviet Union commonly have a provision in their penal codes for women who are pregnant or have children under 14 years to have their sentences suspended until the children reach 14, unless they were convicted for a 'grave' offence.<sup>59</sup> Within Kyrgyzstan (where this provision applies only to first-time offenders) this often means in practice that as long as a woman is deemed to be taking good care of her children she will not be sent to prison.<sup>60</sup> In Zimbabwe, having a child can result in a woman's sentence being reduced or partially suspended.<sup>61</sup> In contrast, some countries hold the view that, when convicted, women forfeit their rights, including parental rights, which is one of the reasons for low age limits for children living in prison.<sup>62</sup>

Who decides whether a child will go to live in prison differs in different countries. Within England and Wales the prison governor decides whether a baby should be allowed to live in prison, based on the recommendation of an admissions board.<sup>63</sup> In France it is the children's custodians who make the decision; once there, the mother makes all the health and socialisation decisions about her child, so as to empower her and create more links to the community.<sup>64</sup> Similarly, in Nigeria a child's parents will make the decision over whether the child will enter prison, a decision with which the authorities must comply (providing the child is below the upper age limit of 18 months).<sup>65</sup> Within India, the mother, family and courts may all be involved, though the small survey carried out for this research suggested that mothers are the most likely to make the decision themselves.<sup>66</sup> In Chile, the mother requests that her child be allowed to join her, with a Family Court judge making the

decision;<sup>67</sup> in Venezuela the director and social worker at the penal institution make the final decision after the mother makes her request.<sup>68</sup> In both these countries, one of the considerations is whether there is sufficient space and facilities. Sierra Leonean policy is that magistrates often make the initial decision to place children in prison, with the prison service then required to implement these decisions.<sup>69</sup> In Australia, the designated Superintendent makes a decision based upon ‘the recommendation of a “Paediatric Committee” consisting of prison management staff, uniformed staff, a nurse or a medical practitioner and the Assistant Superintendent Prisoner Management’; prisoners allowed to bring their children into prison must sign a contract acknowledging the conditions, accepting full responsibility for the care of the children and acknowledging having been informed about restrictions that may apply.<sup>70</sup> Within Kyrgyzstan, the one child who went into prison in the last four years (as opposed to being born there) did so on the recommendation of an Italian baby masseuse who worked initially in the women’s prison, and later in a children’s home where she found a prisoner’s child. She was convinced that the facilities in the prison were superior and that the child would in any case be better off near the mother, and so lobbied for the transfer to the prison.<sup>71</sup>

Due to the low age limits that many countries impose on children living in prison (often two years or less), children are rarely consulted or considered when deciding whether to place them in prison. One country where this does occur is Canada, where the Programme Board assessing what should happen to the child is required to assess ‘where feasible, the wishes of the child’.<sup>72</sup> However, it is uncertain from the policy ‘how children’s views are sought and if the views of the child are given due weight in accordance with the age and maturity of the child, in particular for children participating in the full-time residency, which is for children up to four years of age.’<sup>73</sup>

The issue of when a child goes into prison varies considerably between countries. Children in India and Nigeria, among other countries, may enter prison either when the mother goes in or at a later point,<sup>74</sup> whereas in the UK a child is never taken immediately to prison when the mother is sentenced and imprisoned, even if the child was present in the court. This is because the authorities must carry out a risk assessment to determine how the child’s best interests are served, meaning that it will be at least the next day before a child goes to prison.<sup>75</sup> In contrast, most children who enter prison in Chile do so with their mothers, assuming places are available.<sup>76</sup>

Most countries in Western Europe and North America only allow children to live in prison if there are specialist mother and baby facilities (see 2.2.6: *Conditions in prison*, below, for details of these). The corollary to such requirements is that when these facilities are unavailable, either because they are full or because they only exist in certain prisons, women are unable to have their children with them. This means that some women may have to decide between being in a prison closer to their family and community and being in a prison where their children can accompany them. Specialist mother and child facilities may also impose conditions on the mother before she is allowed to live there (and therefore have her children live in prison); these may include good behaviour and being drug-free.<sup>77</sup> Sierra Leone has a policy of transferring all women with children to Pademba Road prison in the capital Freetown, which is considered to be the only prison suitable for children. However, this policy is not strictly implemented, with issues such as funding available for transport between prisons affecting degrees of implementation.<sup>78</sup>

Countries without the requirement for specialist facilities may still have provisions on how children living in prison should be treated. Jails in Bihar state, India, must plan a nutritious diet for children living in prison and the state government has set aside 900 rupees per child for this purpose.<sup>79</sup>

Unusually, Venezuela has both a prison with specialist mother and baby facilities and a practice of allowing children to live in prisons without such facilities. Research in 1999 found that 22 facilities nationwide received female inmates and their children, but only one had a Mother and Baby Unit.<sup>80</sup>

Children living in prison have special rules both because they have special needs which must be addressed and because they are not prisoners so should be treated differently. Prison rules in England and Wales specify that the needs of children living in prison 'must, unless there are very strong reasons of security or control to the contrary, be put first'.<sup>81</sup> Women should not be discriminated against or arbitrarily denied their rights to have their children live with them in prison.

Some groups of prisoners, such as foreign nationals, may have additional problems. Some States, such as Nepal, have identical rules for both citizens and foreign national women relating to children living in prison,<sup>82</sup> though others may have different policies. There may be difficulties for non-resident foreign national women in getting their children to the prison, particularly if policies in the country of residence and country of imprisonment differ, or if the children cannot be or are not transported from the country of origin.<sup>83</sup>

It is also important to remember that attitudes and policies vary over time. In the USA children lived in prison during colonial times<sup>84</sup> and nurseries were common throughout the 1950s,<sup>85</sup> but by the late 1960s these had almost all gone, due to budget constraints and concerns over the impact of living in prison on children. This has begun to swing the other way in recent years, with (for example) women in Nebraska able to have children up to a year old living in prison with them in private rooms with cribs.<sup>86</sup> According to one former Kyrgyz prison worker, during the time of the USSR, policies on children leaving Kyrgyz prisons when they reached three years old were more strictly enforced than they are now, children's needs were taken into account when sentencing and children

living in state institutions were more likely to be brought to visit an imprisoned mother, to prevent the mother and child forgetting one another.<sup>87</sup>

A select list of countries/jurisdictions and their policies on how long children may live in prison can be found in Annexe I.

### 2.2.5 *Preparations for entering prison*

Some women may be able to make preparations for their children's welfare before entering prison, particularly if they are aware that they will be or are likely to be imprisoned. These preparations could include arranging alternative care for children living outside prison, collecting toys or personal effects to bring into prison, and explaining to children going into prison what is happening.

Sentenced prisoners in the Netherlands are given time between being sentenced and beginning their imprisonment in which to make alternative childcare arrangements for any children remaining outside prison.<sup>88</sup> Even in countries where such 'grace periods' do not exist, parents and (more rarely) children may be encouraged to consider what will happen when they enter prison and the changes this will mean for both them and family members on the outside. For parents this advice may come from a variety of sources including non-governmental organisations (NGOs), state officials and personal contacts; for children, when they are told at all, it is their parents who tend to talk to them.<sup>89</sup> The reason for not informing children about what is happening is that many children entering prison are seen as too young to understand.

Women may also make practical preparations for their children entering prison. Children's clothes, toys, books and cradles have all been taken into prison, though in some countries the children's mother/family may be so poor that they find more resources in prison than they have outside.<sup>90</sup> Prison authorities may check these items to ensure they are not being used to smuggle in prohibited substances or items.



Responsibility for ensuring the child is delivered to prison varies between countries. In some the child's relatives or carers must take them there,<sup>91</sup> while in others the authorities are responsible. Once there, prison authorities in some countries record the admission of the child, while in others they do not and children live in prison on a more informal basis.<sup>92</sup>

However, many women may not consider in advance what will happen if they are imprisoned. Some may not be in a fit state to discuss their children's situation, particularly if they have experienced a traumatic event such as killing a partner.<sup>93</sup> Others may assume right up until the verdict that they will be acquitted and everything will be fine:

*Emma, who was heavily pregnant at the time, described her feelings:*

*'The judge said "3 years" and the policeman led me away. I was dazed and I didn't believe what I'd heard. I'd had no experience of courts and I said to the policeman "What does he mean? Is the case over? I haven't said anything yet" and he said I would be taken straight to prison. I started to panic. "I'm going to be locked up?! But what about my son? He's at playgroup! And my baby? I'm going to have a baby in prison!" But he just led me away.'*<sup>94</sup>

Of the women interviewed for one UK study, 8% explained that they 'had had to make an on-the-spot decision about taking their babies into prison with them, but, as most of them had not been in prison before, they did not know the conditions under which they would be doing so. Although it is possible for mothers to bring their babies in at a later date, there are frequently waiting lists for places and two of these women said they felt that they had missed out on an opportunity ... A further 3 (5%) women who wanted to bring their babies in with them were unable to do so as there were no places available in the prison MBUs [Mother and Baby Units] at this time.'<sup>95</sup>

The problem of women being unable to have their children enter prison when desired, may occur for various reasons. Full child-friendly facilities, a need by authorities to assess whether living in prison is in a child's best interests and practical problems of distance and/or expense in transporting children to prison can all prevent timely entry.

There are cases of women not being told that they can take their children into prison with them, resulting in children being needlessly left outside.<sup>96</sup> Similarly, policies and practices may be unclear or poorly explained, meaning that women are unaware of their rights and those of their children. However, other women may decide not to have their children live with them in prison and make alternative childcare arrangements, such as placing them with relatives or foster carers or into state care. One UK-based report stated that 'women who had been in prison before frequently described mother and baby regimes as restrictive and/or decided that prison was not the best place to bring up their child.'<sup>97</sup> Similarly, mothers may hide the existence of children unable to go into prison with them due to fears of their children being placed in poor-quality institutions.<sup>98</sup>

### 2.2.6 Conditions in prison

The conditions in which children in prison live vary widely between, and sometimes within, countries. Both their physical surroundings and the restrictions placed on their lives are affected by prison; even when living in facilities which closely mimic those in the community, children living in prison will have different lives from those on the outside.

It appears that almost all countries treat children living in prison (and their mothers) differently from the rest of the prison population. Separate facilities, additional food, greater access to the outside world: all of these are privileges given to children. Some countries will not allow children into prison unless appropriate facilities, such as

child-friendly accommodation, are available. Others allow them in more readily but provide extra support once the children are there. In practice some countries give little or no support to children living in prison, either due to a lack of resources or a failure by officials to prioritise them and their needs.

Where special child-friendly accommodation exists (many countries in Europe and the Americas have at least one such facility) it is often located separately from the rest of the prison, either in a separate wing or in stand-alone buildings. It may have colourfully-painted walls, unlocked doors, toys and soft furnishings and provisions made for child safety (such as no sharp edges). Mothers living in such facilities may be allowed to wear their own clothes and could have additional support: Preungesheim Prison in Frankfurt, Germany, had a cook in its mother and baby facility who taught the women food preparation,<sup>99</sup> while the mother and child residences in Chile are supported by a team of professionals which includes a psychologist and a social worker, who ensure that the needs of mothers and children are adequately met.<sup>100</sup>

In other jurisdictions, women with children may be accommodated in conditions identical to but separate from the rest of the prison population. Qanater, Egypt's largest women's prison, divides prisoners into group cells based on the type of crime they have committed and their status within the justice system (convicted or unconvicted); women with children, however, are all placed together in one cell. Each mother has a single bunkbed to share with her child or children within the 'nursery' cell, which is somewhat less crowded than other parts of the prison, has an official open door policy between 7am and 5pm which allows mothers and children to move about and play and contains showers and toilets.<sup>101</sup>

Children living in prison are often looked after during the day while their mothers work or receive education or training. Prisons in several countries have childcare or child development facilities: Policharki prison in

Afghanistan runs its own school,<sup>102</sup> Venezuela's sole women-only prison has a child daycare facility which includes twice-weekly visits by a psychiatrist<sup>103</sup> and prisons across India are obliged, following a Supreme Court ruling in 2006, to provide crèches for children under three and nurseries for children aged three to six. These Indian facilities must also be available to children of warders and other female prison staff<sup>104</sup> and some have also opened themselves to children living in the local community, thereby enabling children from different groups to mix. However, some parents are uneasy about their children playing with the children of prisoners: the Deputy Inspector General (Prisons) in Bangalore explained that 'it took a while for them to convince the police personnel and public to send their children to the nursery. "Once they got to know that my son had played and studied with prisoners' children, they were a little open to the idea," he said.'<sup>105</sup>

In Chile, children are evaluated by professionals and a development plan is drawn up for the mother to implement. If the mother does not want to participate in this programme, the professional team and the SENAME (National Service of the Minor) will consider whether to keep the child in prison, the alternative being to send them to a SENAME centre outside the prison. When the child is six months old s/he attends the 'Sala Cuna', which is in charge of a socio-educational programme for all children. If the prison has no Sala Cuna children may attend outside pre-school centres.<sup>106</sup>

Children's needs may be met in other ways, such as additional food or special diets: provision of child vitamins over the course of a few weeks made a noticeable improvement to the health of many babies in prison in Sierra Leone.<sup>107</sup> Some States require mothers to be responsible for their children's meals (this happens in all prisons in Venezuela except one, where an NGO provides their breakfast and lunch<sup>108</sup>); others provide the children's nutrition themselves. Additionally, a mother in prison may be given state support for her child, just like any other mother: in Chile, not

only do mothers keep their state benefits when imprisoned, they also receive specific benefits when the child enters prison with the mother which are extended for up to six months after leaving prison. These benefits include nutrition, scheduled visits, outside support networks and meetings with parents/carers living on the outside.<sup>109</sup>

However, not all prisons within a jurisdiction have special facilities for children,<sup>110</sup> meaning that some mothers will have to live with their children in less suitable conditions or will be barred altogether from having children live in prison.

Sparse provision of women's prisons means that children living with their mothers will often be imprisoned far from home; this is particularly likely if they are in one of a limited number of child-friendly facilities. Within the UK, half of women are imprisoned over 50 miles (80km) from their homes<sup>111</sup> and there are women who have chosen not to reside in Askham Grange women's open prison in York (which has a Mother and Baby Unit, 'state-of-the-art nursery and fantastic atmosphere') because they are from London and do not want to be so far from home.<sup>112</sup> However, there are those who argue that 'better run and specialised institutions would always be more sought after by users e.g. children voluntarily came from distant districts [in India] in order to be in the model juvenile home in Hyderabad.'<sup>113</sup>

Problems of distance and alienation can be particularly damaging for minorities and those from communities based far from the prison. Within the UK there are no women's prisons at all in Wales,<sup>114</sup> but there may be restrictions on speaking Welsh within English jails. In the USA, prisoners may be imprisoned hundreds of miles away in different states: though this may have a particularly strong impact on prisoners moved from Hawaii to continental USA,<sup>115</sup> it will be damaging in all cases in terms of maintaining family/community links.

However, many prisons do not provide even the services they should. As recently

as 2005 the children living in Kyrgyzstan's one women's prison had 'no toys, no proper furniture ... There was also no programme of support for the children – the mothers just fed their babies and went away again.'<sup>116</sup> Similarly, a report by India's National Institute of Criminology and Forensic Sciences found that most children living in prison 'suffered deprivation relating to food, healthcare, accommodation, education and recreation.'<sup>117</sup> Weaned children in prison in Sierra Leone were given the same food rations as adult prisoners, most often three small meals of rice and sauce.<sup>118</sup>

The lack of state support may be filled by NGOs and religious groups such as local churches, who often provide material assistance to children living in prison. Children in Zimbabwe have 'churches and people from abroad [who] give them cereal, peanut butter and clothes',<sup>119</sup> while Nigerian children living in prison are given 'childcare kits' either on entry or at a later time.<sup>120</sup> Imprisoned mothers in Egypt have had to use their own resources to acquire such goods as food, medicine, milk, clothes and blankets,<sup>121</sup> whereas many of those in other countries are unable to buy things for their children, either due to a lack of goods or a lack of money.<sup>122</sup> One Egyptian NGO working with children living in prison provides one-time payments to mothers to improve their situation.<sup>123</sup>

These individual acts of generosity – which may also come from prison officers and others inside the prison – are obviously beneficial to the recipients but open up the possibility of unequal provision, with some children being ignored, forgotten or receiving inadequate provision. Also, just as staff can be kind, they can also be cruel: access by mothers in prison in Sierra Leone to (extremely limited) supplies for their children is often dependent on the discretion of prison officers, who allegedly sometimes take supplies for their own families or distribute goods to favoured inmates.<sup>124</sup> Comprehensive policies and practices are required to ensure that all children are treated equally and their needs are met.

There also exist situations where prisoners themselves are involved in – or even responsible for – providing facilities. A convicted teacher in Bihar state, India, worked with other prisoners to set up a school for children living in her prison,<sup>125</sup> while one Zimbabwean prison has been reported to have a prisoner in charge of children’s food, telling the authorities how many there were and therefore how much was needed.<sup>126</sup>

Contact between children and their mothers may be severely and/or inappropriately restricted. Within Kyrgyzstan, once a child has reached the age of a few months s/he is, while remaining in prison, separated from her/his mother during the day except as a visiting/contact regime (decided upon by a doctor) permits. This may be as little as one or two hours a day: the rest of the time the child is cared for at the prison nursery. Mothers in some countries may be punished by being temporarily separated from their children.<sup>127</sup>

Within Sierra Leone, many prisons have been severely damaged as a direct or indirect consequence of that country’s recent conflicts. Prisons were neglected and left to decay by the government but were also deliberately targeted by rebel forces.<sup>128</sup> While there are plans to rehabilitate various prisons, this process has been slow and many remain partially destroyed.

There may be occasions when the facilities in prison are preferable to those on the outside. Staff in Kyrgyzstan’s sole women’s prison felt that prison was a better environment than having children live in residential care or on the streets and that it provided the children with shelter, food and

protection.<sup>129</sup> Several countries, including Nepal,<sup>130</sup> have documented cases of children going to live in prison because there is nobody to look after them. This can happen even with older children: one nine-year-old Sri Lankan girl entered prison with her mother because she had nowhere else to go.<sup>131</sup> An Indian prison superintendent argued that free education for children living in prison meant that those from poor backgrounds were better off than they would be outside: ‘Here we are providing free education, and everything to the children – except for freedom, we are providing everything better.’<sup>132</sup>

However, this is not always the case and prison can be detrimental or even dangerous for children. One Indian prison worker remembers: ‘I found that these children were picking up bad habits – men were taking drugs secretly in prison and there was also a lot of ill-treatment of young boys, including sexual abuse’.<sup>133</sup> Restrictive prison regulations could potentially harm children: within one Venezuelan prison, mothers and children were locked inside their rooms at 6pm with no access to phones in case of an emergency: their only recourse was to knock on walls to wake the guards.<sup>134</sup> Babies held in Pademba Road prison in Freetown, Sierra Leone regularly fall ill, with medical personnel attributing many of their health problems to the overcrowding, poor sanitation standards and malnourishment experienced inside prison walls.<sup>135</sup> Within India it was found that some children living in prison with their mothers were in unsegregated accommodation meaning that they were living in the male section.<sup>136</sup>

## 2.3 Children born in prison

In addition to the issues described above, children born in prison may face extra difficulties, which are detailed below. Some sections (2.3.1: *Pre-trial detention*, 2.3.2: *Trial and sentencing* and 2.3.3: *Conditions in prison*) mirror those above: within these are additional or different issues which must be considered

when a child is born rather than moves to prison. Other sections are new and relate to specific issues that only arise when children are born during a mother’s detention.

Some women enter prison pregnant or become pregnant while imprisoned. Prisoner pregnancy rates vary between countries

(studies have estimated that 6-8% of women entering prison in the USA are pregnant,<sup>137</sup> while 3.03% of women prisoners in India give birth in prison<sup>138</sup>) but regardless of the numbers affected, the particular needs and requirements of pregnant women should be met. Equally, the needs and rights of children born in prison should be addressed: in countries where most children living in prison are born there it is particularly important to develop policies and practices in this area.

Pregnancy affects many areas of a woman's life, including health, diet and exercise requirements. Pregnant women may have genuine and legitimate reasons for being exempted from certain aspects of the prison regime and authorities should have plans in place to ensure they can give birth in appropriate, hygienic and professionally-staffed conditions.

Once children are born, if they are to stay in prison steps should be taken to minimise the negative effects of living there. Stunted emotional, physical, social and/or intellectual development, as well as stigma from those outside prison, are some of the ways they may be affected.

### 2.3.1 *Pre-trial detention*

Some women who are pregnant or have newborn babies may be detained while being investigated in relation to an offence, or while awaiting trial or sentencing. Generally their situation is broadly similar to that of women with children, but there are some differences. They may be given additional nutrition or other support because of their pregnancy: pregnant women in pre-trial detention in India should be supplied with a nutritious diet, proper drinking water and medical facilities. In addition, their cases should be decided on a priority basis.<sup>139</sup>

As with convicted pregnant prisoners, women who give birth in pre-trial detention are in many countries taken to a hospital to deliver their child (see 2.3.4: *Childbirth*, below). However, because pre-trial detention facilities are less likely than prisons to have appropriate

conditions for babies, pre-trial detainees with newborn children may be placed with convicted prisoners. Such situations violate the rules that convicted prisoners and unconvicted detainees should not be held together, and in any case the need to keep the woman in pre-trial detention should be reassessed after childbirth: having a baby to care for may make her less likely to abscond.

It may become clear either at birth or later that living in pre-trial detention is not in a baby's best interests: when this happens, conditions should be changed to accommodate those best interests. This may involve the baby leaving prison, either with or without her/his mother: there is a report of one woman who gave birth while in pre-trial detention in Zimbabwe taking her baby to prison but finding that conditions were not suitable. When she commented on this she was told she should not have committed a crime if she wanted to bring the baby up right. The baby later became ill and was taken away by the woman's parents but died in hospital.<sup>140</sup> This example shows the importance of looking at the welfare of children living in prison from a child rights and needs viewpoint rather than seeing it as a part of a mother's punishment. Additionally, women who commit crimes may still be good mothers and their ability to care for their children should not be automatically linked to their offending behaviour.

### 2.3.2 *Trial and sentencing*

Both the trial and the sentence passed may be affected by pregnancy. In some countries (e.g. India, Egypt) courts are obliged to take pregnancy into account when sentencing. Other jurisdictions (e.g. Chile, England and Wales) have no rule on this, instead leaving consideration of pregnancy to the discretion of individual judges. Additionally, trials may be either delayed or accelerated due to pregnancy.

Since a 2006 Indian Supreme Court ruling, judges in that country have been required to decide the cases of pregnant women in pre-trial detention on a priority basis.<sup>141</sup> Additionally,

'before sending a pregnant woman to jail, the authorities must ensure that the jail has the basic minimum facilities for delivery as well as prenatal and post-natal care for both mother and child.'<sup>142</sup> Kyrgyzstan, Russia and other ex-Soviet states suspend prison sentences for women convicted of non-grave offences and who are pregnant or with children under 14.<sup>143</sup> A judge in the UK is reported to have delayed the start of a pregnant woman's sentence until her baby was four months old, but then sent her – without her baby – to prison.<sup>144</sup>

Within Egypt, the public prosecutor's office is allowed to delay proceedings against women who are at least six months pregnant until two months after delivery.<sup>145</sup> Laws relating to pregnant women suspects and offenders are strongly influenced by Islamic (Sharia) jurisprudence and in particular one hadith<sup>146</sup> in which the prophet Mohammed says that if a 'woman is to be executed, she should not be killed until she delivers what is in her belly if she is pregnant, and until she cares for her child. If she committed or commits adultery she should not be stoned to death until she delivers what is in her belly and raises the child.'<sup>147</sup>

Some prison systems, including those in Kyrgyzstan and a number of US states, generally allow children born to prisoners to live in prison but refuse to permit children born outside prison (even if a similar age) to stay with their mothers.<sup>148</sup>

### 2.3.3 *Conditions in prison*

As with women who bring their children into prison, pregnant and nursing prisoners are frequently accorded special conditions and treatment. These may consist of separate, specially-designed facilities, additional healthcare and dietary supplements, or exemption from some of their normal prison duties, such as work. However, such support is not always provided, which has negative consequences for the rights and wellbeing of both the mother and the child.

Special facilities range from being housed in different cells away from other prisoners to accommodation in purpose-built pre- and post-natal centres. Several US states have these centres, which are available in the months surrounding birth (usually two to three months either side).<sup>149</sup> Nursing mothers in Zimbabwe may, depending on the nature of their crime, be given their own cell in prison, rather than stay in shared accommodation.<sup>150</sup> Twenty-five out of 27 Chilean prisons have 'Albergue provisorio para lactantes' (provisional residences for breastfeeding children) which allow for pre- and post-natal care.<sup>151</sup>

Many jurisdictions guarantee additional healthcare services and dietary supplements during and after pregnancy. Women may be allowed to access pre-natal screenings and health checks with the same frequency as non-imprisoned women, or they may be provided with additional or different food before and/or after birth. Nursing mothers in Kyrgyz prisons are given milk,<sup>152</sup> while pregnant prisoners in Egypt are entitled to special treatment for forty days after delivery, including all necessary pre-natal and post-natal care and treatment. This support is available for both convicted prisoners and pre-trial detainees.<sup>153</sup>

Following childbirth, new mothers may be allowed to stay outside of prison with their baby for a time, or be allowed greater contact with the baby than is allowed with older children living in prison. For example, women in Holloway prison in England are exempted from attending education or training during the day when they have a baby under eight weeks old.<sup>154</sup> In Kyrgyzstan mothers may keep their babies with them overnight for a month (or longer if the baby is weak) for breastfeeding,<sup>155</sup> and many other States also allow and/or encourage a mother to breastfeed. Unfortunately, because of the often limited quality of prison diets, prisoners may be unable to breastfeed or to produce enough milk for their babies: this was reported by seven out of ten women prisoners with babies in a Cambodian study.<sup>156</sup> Furthermore,

the milk that is produced may lack some or all of the nutrition needed by developing babies and result in high rates of malnutrition amongst both imprisoned women and children.<sup>157</sup> However, a volunteer in Holloway prison in England stated that the breastfeeding rate in prison is higher than outside 'because there aren't any men to not support it'.<sup>158</sup>

Additionally, there may be programmes available targeted specifically at mothers and babies. One example is the 'Melodias desde a-dentro' (Songs from Inside) project in Argentinean prisons, which uses music to strengthen the links between pregnant women and their children both before and after birth.<sup>159</sup>

However, conditions for both expectant and new mothers and their children may be inappropriate. One US facility available for heavily pregnant or newly delivered women nearing the ends of their sentences was discontinued because the facility was based in a nursing home for the elderly; when the nursing home needed all the space for old people, the prisoners had to stop using it.<sup>160</sup> Again within the USA, there are cases of babies being kept in the prison infirmary, with children living in prison being a temporary measure.<sup>161</sup> Health services in prison are often related to screening and diagnosis, rather than treatment, meaning that the health needs of pregnant and newly delivered women and their children will need to be addressed by outside services.<sup>162</sup>

Additionally, promised services may not materialise. A report by the Indian government found that in the jails they observed pregnant prisoners received no special attention,<sup>163</sup> which may mean that problems affecting the mother or baby go unnoticed. Healthcare services and dietary supplements for pregnant prisoners and nursing mothers in Egypt are not always provided in practice.<sup>164</sup> Extra food rations for pregnant women in Sierra Leone's biggest prison, including items such as eggs, are not reliably provided.<sup>165</sup> Sometimes this may be due to a lack of resources or ignorance of prisoners' rights; sometimes corruption

by officials. One Indian prisoner said: 'Our fate depends on the mood of the wardens or medical officer. I didn't have regular check-ups during my pregnancy, which is against the rules. Irfan [my child] was not weighed at birth. There are no cribs, baby food or warm milk'.<sup>166</sup> There have been cases of pregnant and nursing mothers being prevented from bringing food into detention with them and worse, situations where the torture of pregnant women induced miscarriages.<sup>167</sup>

However, despite these problems there have been reports of pregnant women in countries including India, Zimbabwe and Kyrgyzstan deliberately committing crimes in order to be imprisoned, so that they can benefit from state-provided food and healthcare, including childbirth facilities.<sup>168</sup>

### 2.3.4 Childbirth

Few (if any) prisons around the world are adequately equipped to deliver children and deal with any complications that may arise. Many have no childbirth or paediatric facilities or expertise at all and some are keen to avoid taking on such a role.<sup>169</sup> For this reason, it is standard (as well as best) practice for pregnant prisoners to give birth in a hospital or other medical facility and then return to prison at some point after delivery.

Sometimes a birth will take place in prison, either through accident or design. Cambodia aims to deliver babies in hospital, but 'if childbirth occurs inside the prison, a health care provider is to attend, or the female prisoner and child are to be examined by a health care provider, as soon as possible after the birth'.<sup>170</sup> In contrast, prisoners in Pademba Road prison, Sierra Leone, are required to give birth within the prison itself, with only some births attended by the prison doctor and many performed without any medical supervision.<sup>171</sup> Only if there are serious complications are women transferred to hospital.<sup>172</sup>

Children born to imprisoned mothers should be provided with a birth certificate as is the case with any other child. However, this

should not give prison as the place of birth in order to protect the child from stigma and other problems in the future. This is the case in many countries. Mothers may also be concerned about the name to give children born in prison (one Indian prisoner said: ‘This baby was born in jail. What do I call him?’<sup>173</sup>) or may not be able to carry out naming rites and ceremonies, particularly if the mother is part of a cultural minority whose practices are not well-known or appreciated by prison authorities. Aware of this, a 2006 ruling by the Indian Supreme Court directed that: ‘As far as circumstances allow, facilities for the naming rites of children born in prison should be extended.’<sup>174</sup>

### 2.3.5 *Policies and regulations on babies living in prison*

Following birth, newborn children may or may not be allowed to stay with their mothers. If there are not appropriate facilities in prison or it is not judged to be in the child’s best interests to stay in prison with the mother, then mother and child will most likely be separated. On the other hand, many children are allowed to live in prison: the decision about this is taken by different actors in different jurisdictions, but the mother, her family, the prison authorities and children’s or social services may all be involved.

## 2.4 Additional issues

### 2.4.1 *Children living in prison with fathers*

In a few countries children may live in prison with their fathers. This is unusual, partly because of the greater tendency for women to be the main or sole carer to a child, partly because of different regulations for whether men can have children living in prison with them and partly because of a lack of facilities for children to live in men’s prisons. Even when children can live with their fathers, they do so far more rarely than with the mothers.

Many countries have no provision for allowing children to live with their fathers in

Often decisions about a newborn baby staying in prison are decided in the same way as decisions about older children. In Egypt, the baby is given to the father or to a relative of the mother’s choice, with the prison chief and governor making arrangements to place the baby in institutional care should no relatives be available.<sup>175</sup> Some countries have different practices regarding children born in prison: in Kyrgyzstan such children are allowed to live in prison whereas children born before the sentence began are only on very rare occasions permitted to enter.<sup>176</sup> (However, recent ‘humanisation’ of Kyrgyzstan’s prison system has resulted in around half of women with babies in prison being released.<sup>177</sup>)

While many mothers may opt to keep their children with them, others feel that prison is ‘no place to bring up a child’. Prisoners in Nigeria have voiced anxieties about ‘the “unnatural” way of life without fathers, siblings, and an ordinary home’ and worry that a prison environment could harm their children,<sup>178</sup> while violence, abuse and bad language within jails mean some prisoners feel their children are better off outside.<sup>179</sup> This view has been echoed by some governments, with a government-sponsored commission in India arguing in 2006 that children should not live in prison<sup>180</sup> and the Swedish government having a general policy that ‘children should not live in a prison environment’.<sup>181</sup>

Neither Chile nor Venezuela allow it,<sup>182</sup> while in Nepal children are not allowed to stay with their fathers in prison because it is seen as too dangerous, especially for girls: there have been cases of abuse of children living in the men’s prison.<sup>183</sup> However, in Denmark fathers can have their children in prison provided they will be released before the child is three,<sup>184</sup> Australia’s policy on children living in prison does not differentiate between fathers and mothers and small children are also reportedly living with their fathers in prisons in Bangkok, Thailand.<sup>185</sup>



Some jurisdictions have strict regulations separating male and female prisoners, meaning that even when both parents are held in the same facility, they (and children living with them) cannot meet.<sup>186</sup> In contrast, Aranjuez prison in Spain has a facility for families to

live together in prison. If both parents have been imprisoned, they may live together with children under three in specially-furnished 'family cells', complete with 'cribs, Disney characters on the walls and access to a prison playground.'<sup>187</sup>

## 3 Leaving Prison

### 3.1 Introduction

When children living in prison leave, they may do so either before the mother or with the mother.<sup>188</sup> Children leave prison before a mother if either the mother or authorities consider it to be in the child's best interests, or if the child has reached a point after which s/he is not allowed to stay in prison.<sup>189</sup>

Most mothers leaving prison with their children continue to care for them; in contrast, when children leave before their mother arrangements will need to be made for alternative childcare, whether by family, neighbours, foster care or institutional care. Children should be (but only sometimes are) prepared for this change and helped to acclimatise to life in the community, whether or not they leave separately from or together with their mothers. Mothers may also need help to adjust to life outside prison, particularly if they have become 'institutionalised' by long sentences or have not had to care for a

child before entering prison. They may need support both with practical issues such as finding work and accommodation and with caring for children upon release. However, post-release support is often minimal and short-term or entirely lacking.

Strengthening the ability of mothers and children to interact with the community is something that should happen before, during and after release. Not only is it important in humanitarian terms – enabling the mother and child to lead a better life – but it also reduces the negative impact of imprisonment on the children, who have committed no crime and should therefore suffer as little as possible because of it. Additionally, preparing women and children for release may help to prevent both recidivism on the part of the mother and future criminality on the part of the children.<sup>190</sup>

### 3.2 Leaving with mother

Children leave prison with a mother if she has completed the custodial part of her sentence.<sup>191</sup> Re-adjusting to the outside world can be difficult for both the children and the mother, particularly if they have received little or no support to prepare for the change. Even in jurisdictions where children are prepared for life outside prison, such preparations tend to be focussed towards children leaving without their mother and who are changing carer after leaving prison, rather than those who leave with their mother.

Often, authorities utilise the built-in flexibility in regulations to enable children and their mothers to leave together. Staff have stated that it is easier if the children leave with the mother<sup>192</sup> and the release statistics in some countries suggest that prison administrations try to ensure this: two thirds of children who have left Kyrgyzstan's

only women's prison during the tenure of the current governor have done so with their mothers.<sup>193</sup>

Once outside, many mothers find it difficult to readjust to life without bars. Many have difficulties finding stable homes and jobs and in reconnecting with their families because of the negative effects of having been imprisoned. It can be even more difficult if the mother has not cared for children outside prison before or was given very little responsibility for her children's care while in prison.

#### 3.2.1 Flexibility in regulations

There is a preference in many countries against separating children from their mothers if possible. This has been explicitly stated by some prison authorities and is also

seen by policies permitting children to stay in prison beyond the normal maximum age or developmental stage allowed by the prison regulations. However, the discretion to extend a child's time in prison tends to be exercised only when the mother is nearing the end of her sentence and removing the children would cause the trauma and disjunction of separation followed by reunification shortly afterwards.

Some jurisdictions adhere strictly to rules on when children must leave prison; in others either the rules, or officials administering them, can accommodate some flexibility. In the UK, children may stay in prison for up to two months beyond the official leaving age provided the mother will complete her sentence in that time.<sup>194</sup> In Nigeria, the eighteen-month limit 'is often flexible at times up to reasonable infancy'.<sup>195</sup> Within Kyrgyzstan, children staying in prison beyond the three-year maximum may do so at the discretion of the prison governor.<sup>196</sup>

Both Chile and Venezuela allow the maximum age to be exceeded by up to six months in exceptional circumstances.<sup>197</sup> In Chile, these 'exceptional circumstances' are only for situations such as the new carer having some mishap just before s/he begins caring for the child, in which case the technical team which recommends what to do with the child will revisit the case and make recommendations to the director of the residence. The director will then, with the national children's authority and in some cases the Family Court, make a final decision.<sup>198</sup>

### 3.2.2 *Preparations for leaving prison*

Some prisons prepare children and their mothers for leaving. These may be joint activities or they may be separate (a two-year-old child will not need advice on job-hunting, for example). For women, preparation may well include education or skills training to help them find a job, but it may exclude advice on how best to look after their children outside a prison environment. For children, particularly younger children,

preparation will be about familiarising them with the world outside, rather than explicitly telling them what will happen. When planning such activities, particular care should be taken to familiarise children with objects and situations which are commonplace and encountered daily. For example, Holloway prison in the UK has 'baby-walkers' who take the babies around the streets outside prison in order for them to get used to the noise of traffic.<sup>199</sup> However, some countries do not prepare mothers and children for leaving, either because no facilities are available, or because it is assumed that children are too young to understand and so do not need to be prepared.<sup>200</sup>

More detail about preparations for children leaving prison can be found below, in 3.3.2: *Preparations for leaving prison*.

### 3.2.3 *Reintegration of mothers into the community*

Upon leaving prison, mothers often have difficulty reintegrating into society, both because of the effects of living in a prison environment and because of the stigma with which ex-prisoners are viewed. Support from prison authorities following release is often inadequate or non-existent, meaning that a woman will have to rebuild her life outside without any continuing assistance. The difficulties women face will impact on any children who leave prison with her and should therefore be considered when thinking about how best to support a child's needs and rights. While children have their own difficulties readjusting, many of these are broadly similar whether or not they have left prison with their mother and are covered in 3.4.5: *Reintegration of children into the community*, below. However, any difficulties faced by the mother will almost certainly have an impact on the children, particularly if she continues to care for them: it is for this reason that this section is included.

Often a mother may find it difficult to look after a baby outside following the relatively closed environment of prison. This

is particularly likely if others did most or all of the childcare in prison or if the child is the mother's first. For example, mothers released from Askham Grange prison in the UK are expected to care for the baby full-time, even though babies in prison older than eight weeks old are cared for by others during the day.<sup>201</sup> Such difficulties may be compounded if the mother has become institutionalised in prison, although they can occur even for women who have been heavily involved with their children during detention.

Many women have difficulty reintegrating into the community after leaving prison, with one NGO prison worker in Kyrgyzstan estimating that it took six to eight months for released women to feel that they had the confidence to reintegrate into the community.<sup>202</sup> Some may enter 'halfway houses', environments where they are given partial control over their own lives while they get used to living in normal society. Pre-release centres in Australia allow women on probation to apply for a place in small facilities (Boronia in Western Australia has space for 70) where they and their children can live. The Department of Corrective Services finds jobs for the women and looks after their children while they work, with the aims of making the women better able to reintegrate into the community and empowering them to provide for their children.<sup>203</sup> Similarly, a women's resettlement colony in Kyrgyzstan is supposed to provide work and accommodation for women prisoners, though nowadays in practice most women live at home and just go to the colony to work when it is available.<sup>204</sup>

Some women require documentation to be able to access work, housing, support for children or other services after release. Within Kyrgyzstan women need residency permits in order to, among other things, regain custody of children in state care, yet research for this paper suggest that almost no Kyrgyz women released from prison have these.<sup>205</sup>

Even returning home can be difficult if a woman is not given the necessary support

from the prison. Particularly in large countries with dispersed populations, a woman may be imprisoned tens or hundreds of miles from her home and will need a substantial amount of money to be able to afford to return there. One woman released from prison in Sierra Leone found herself and her child on the streets of a city she had never been to before and where she knew not a single person, without the transport money to get to her hometown or any other funds in order to ensure that she and her baby would be able to eat or find a place to stay.<sup>206</sup> Such insecurity places former prisoners and their children in extreme danger – they are effectively at the mercy of strangers and their personal welfare is very much compromised as they are without adequate shelter or food. Similar outcomes occur in Kyrgyzstan, where a lot of women end up living on the streets after being released from prison.<sup>207</sup>

Family members in the community may themselves disown the woman, either because of the stigma attached to her from having committed a crime and/or being in prison or to avoid being stigmatised themselves by association with an ex-prisoner. Case studies for this paper revealed that in both Sierra Leone and Kyrgyzstan there are major problems of women being abandoned by boyfriends or husbands and their families; in Kyrgyzstan it was estimated that of 360 women in prison, only about three were visited by their partners. (Wives and girlfriends of prisoners, in contrast, were far more likely to visit their imprisoned male partners.) For this reason, some women try to hide their imprisonment from their families, by methods such as pretending they are working elsewhere or by having photographs taken in prison but against a non-prison backdrop.<sup>208</sup> Such practices by either party obviously hinder family and community reunification and produce negative outcomes in terms of lost support networks for the mother.

Women leaving prison are usually poorer than when they went in. A woman's ability to earn an income is often adversely affected by her imprisonment, given the stigma attached to

the prisons as well as the loss of property and resources that often occurs in their absence. Partners and family members may have moved or abandoned them, meaning that the woman's social support networks have been severed. Such problems can make it harder still for a woman to get back on her feet.

If women are released suddenly or unexpectedly (for example due to an amnesty),

### 3.3 Leaving without mother

Children leaving prison without their mother generally do so because they have reached an age or developmental stage at which they are required to leave. Some children leave before they reach this stage, for various reasons: because the mother, the authorities or others consider that the child's best interests are not being met living in prison; because the mother is being transferred to another prison without appropriate childcare facilities; or because the mother has died.

A child leaving prison without her/his mother will have to learn to live with new carers at the same time as acclimatising to a new environment. This is a major change, particularly for children who have no prior experience of life outside prison, and efforts should be made to ensure a child is prepared for this as much as possible. Doing so is beneficial not only for the child's rights and welfare, but may also have an impact on the child's likelihood to commit criminal acts in future: plans were developed in Sri Lanka to house children and their mothers in a prison where the children could lead as normal a life as possible, following evidence that children who lived in prison had a tendency to subsequently commit crimes themselves and be imprisoned.<sup>210</sup>

#### 3.3.1 *Who decides*

Decisions about when children leave prison are made differently in different countries. When a child has reached the age or developmental stage where s/he must leave

extra consideration should be given to post-release support. When Kyrgyzstan's criminal justice system was 'humanised', around half of the women who had given birth in prison were released, but without any support once they left the prison gates.<sup>209</sup> With no time for either the mother or other family members to prepare, reintegrating into the community will likely be even harder.

prison, the decision has essentially been taken already and all that is left is for the authorities to implement it (sometimes working with the mother and/or other relatives). When a child leaves at other times, this could be the decision of the mother, other family members, prison authorities, healthcare or child welfare professionals and potentially even the child her/himself.

In some settings, the wishes of some override the wishes of others: in Egypt, the mother has a right to decide where her child will go and the General Prosecutor must arrange for this to happen,<sup>211</sup> while in Canada children (who can stay in prison during weekends and holidays until they are 12 years old) have a right to request an end to their living in prison.<sup>212</sup> Elsewhere, different groups work together to agree on a decision: in Venezuela, the social worker at the prison and the mother jointly decide on the alternative carer.<sup>213</sup>

Some relatives may be able to exercise stronger claims on the children than others. For example, in Kyrgyzstan cultural norms dictate that a child living in prison can be taken by relatives on the father's side.<sup>214</sup>

While many women may want their children to stay with them, others may prefer them to live outside: as one Zimbabwean woman prisoner put it: 'I so much wanted my baby to be free'.<sup>215</sup> Some children may be removed for their own welfare: the 'crowded environment, lack of appropriate food and shelter, deprivation of affection by

other members of the family, particularly the father, were perceived as stumbling blocks in the development of these children in their formative years' by a 2006 Indian report.<sup>216</sup> Some leave because their parents are concerned that they are becoming too acclimatised to prison: there are reported cases in Zimbabwe of fathers coming to collect children from the women's prison because the children had started saying hello to the prison guards and this pained the mothers.<sup>217</sup>

### 3.3.2 Preparations for leaving prison

In several countries children leaving prison without their mother are prepared for this. Preparation may include contact with future carers and regular or extended periods spent outside prison, so as to acclimatise children to the outside world.

In Jharkhand state, India, the prison authorities started taking inmates' children on excursions to the zoo and for picnics, movies and entertainment shows twice a fortnight. 'The idea is to refresh their spirits, give them a real childhood, and also prepare them for the future,'<sup>218</sup> according to Sabhapati Kushwaha, the former inspector general of prisons in Jharkhand during whose tenure this policy was implemented. Chile has a programme of scheduled visits between children and their future carers outside prison; these visits also include advice to the carers about the resources available for medical and psychosocial support.<sup>219</sup>

However, other countries do not prepare children for leaving prison. Officials in both Egypt and Kyrgyzstan, where children can stay in prison until the age of two or three respectively, stated that preparations are not necessary because at that age, children do not understand such things.<sup>220</sup> Children living in one prison in Sierra Leone were not given any preparations for leaving: indeed, many of the mothers incorrectly assumed that their children would stay with them throughout their sentence.<sup>221</sup>

Sometimes a mother may be permitted to leave prison temporarily with her children to help them settle into a new life with relatives or in care. In Kyrgyzstan a woman has the right to seven days' leave for this purpose (though it is not clear whether this occurs in practice: finances might not allow for guards if the woman is judged likely to abscond).<sup>222</sup>

Following release, children's progress may be followed by the authorities. Chile has a six month monitoring programme whereby officials make home visits, telephone calls and pre-school visits (if the child has started education). They look for evidence of good mother/child contact (arranged by the carer), education, nutrition and health.<sup>223</sup>

### 3.3.3 Alternative carers

Once a child has left prison, her/his life will be very different. S/he will have to get used to being part of a non-prison community, with new carers who could be relatives, neighbours, foster carers or state institutions. However, despite the vital importance of finding appropriate carers, too often prison authorities do not consider what will happen to a child after s/he leaves prison and do not liaise effectively with other agencies working in this area. Such failures can lead to children living in unstable or inappropriate situations, parents being unable to reunite successfully with their children once they come out of jail or even children staying in prison long after they should have left.

There is a strong preference in many countries for children to live with other family members, such as the woman's partner or parents. This may be both because of the natural links such persons will have to the child (and mother) and because of the relative ease in contacting them and arranging for transfer (for example, the alternative carer may already have guardianship over the children as the mother's partner). Contacting relatives and arranging for transfer of the child is more difficult when the family lives far from the prison, as is the case for many Sierra Leonean

prisoners.<sup>224</sup> Additionally, some relatives may be unwilling to take in all children: ‘Saritha [a child living in prison in India] will soon have to leave the jail when she turns six, but her father is unwilling to accept her. He will only look after his two sons.’<sup>225</sup> In cases where relatives are unavailable, unsuitable or unwilling to care for the children, other solutions will need to be found.

Fostering and adoption may take place, though such processes (particularly for adoption) can be time-consuming, taking many months. Aware of this, Kyrgyzstan is currently simplifying its secondary legislation about fostering and guardianship to cut out some of the bureaucracy and make such options easier; in some pilot districts, these options are becoming more common.<sup>226</sup> However, different populations may be covered by different regulations: India has specific laws governing adoption within Hindu but not Muslim law and there are no uniform policies and practices relating to adoption by foreigners.<sup>227</sup> Occasionally, other residency solutions may be found. Prison officials in Sierra Leone stated that several years ago a child in prison with its mother was actually taken into the care of one of the prison officers.<sup>228</sup>

The other alternative, placing children in state institutional care, is common in some countries. In Zimbabwe children with no family members willing or able to care for them become the responsibility of the Department of Social Welfare. According to a teacher working in a Sri Lankan prison: ‘Most of the times, they [the children] are sent to orphanages as no relatives come forward to accept them’.<sup>229</sup> Within Kyrgyzstan, while most children leaving prison go to relatives, the vast majority of those in care are in residential institutions rather than with foster families. However, there is strong pressure for children without care of parents or relatives to be placed in family environments.<sup>230</sup>

Sadly, relatives are not always the most appropriate alternative carers: there have been reports in both India and Kyrgyzstan

of children being abused or exploited by relatives, potentially including child labour, exploitation and trafficking.<sup>231</sup> Additionally, if the family severs links with the mother, she may have difficulty maintaining contact with her released children during the rest of her sentence and upon her own release. The daughter of a prisoner in Egypt has suggested that in some cases if the child goes to the family ‘the mother will not know whether she will see the child again – maybe the child’s father has remarried and moved. The child may grow up in the family and not remember its mother, and the family may be too far away or may choose not to visit regularly.’<sup>232</sup> For this reason mothers may decide to place their children in state custody instead of sending them to the family, even if family members are available. (However, there are also cases where problems with state care – not least the difficulty in retrieving children following release – mean that women choose to leave their children in the informal care of relatives or neighbours rather than risk losing their children by telling the authorities about them.<sup>233</sup>)

### 3.3.4 *Death of mother or child*

On occasion, either a child or mother may die in prison. In some States poor prison conditions and medical support may contribute to a high mortality rate among those living in prison, while in others such deaths are so rare that there are neither examples nor policies on how to deal with it. Where regulations do exist, they frequently include provision for what should happen to a child after a mother’s death and many also detail any special provisions that can be made for bereaved mothers or children (such as allowing participation in funerals and death rites).

Some mothers or children may die unexpectedly and unavoidably but, particularly in prisons with poor health and hygiene conditions, they may succumb to avoidable illnesses and infections. Sub-standard prison conditions in Sierra Leone impact significantly on the health of all prisoners, with young

children in prison particularly affected by the lack of basic hygiene and adequate food. Due to a lack of record keeping it is unknown how many children die in Sierra Leonean prisons each year, but the country overall has the worst child mortality rate in the world, with 27% dying before the age of five.<sup>234</sup>

Regulations focus primarily on the death of the mother.<sup>235</sup> Within India, when a female prisoner dies ‘the district magistrate must arrange for the child to be properly looked after, either by a concerned relative or a responsible person, or put into a social welfare department home.’<sup>236</sup> However, in reality this may not always happen: one in five Indian women prisoners surveyed for this paper expected that if they died another prisoner would take responsibility for their children.<sup>237</sup> Similarly, in Chile, Family Courts decide what should happen to the children, with the assistance of a social worker, psychologist and relatives. They will be taken into a government institution if no suitable carer can be found.<sup>238</sup>

Where no official policies exist, informal caring arrangements may take place: in Nepal other prisoners take on the responsibility of looking after a child after a mother dies or is hospitalised (though the extra food allowance for children living in prison does not always get transferred to the new caring prisoner).<sup>239</sup> Such situations, where children effectively ‘drop out’ of the system, are deeply concerning in terms of the child’s future, particularly how they will leave prison and who will care for them afterwards.

Having a child die is a traumatic and distressing experience for any mother and for this reason sensitivity should be shown to the needs and feelings of such mothers. Prisoners in Egypt are permitted to leave the prison for forty-eight hours upon the death of a relative (it is unclear whether this refers solely to outside family members or can also apply when a child living in prison dies).<sup>240</sup> However, this is not always so, with women in some cases being denied even the chance of attending the funeral: ‘Those who lost children

in prison [in Zimbabwe] were not given the chance to bury them. Again it all depended on the officer on duty’, reported one study.<sup>241</sup> Some countries do not have a clear or well-understood policy, which may add to distress: there is confusion among both staff and prisoners in Sierra Leone about whether a mother can attend her child’s funeral, though this may be due to the difference between policy (which apparently allows mothers to attend a funeral accompanied by a prison officer<sup>242</sup>) and practice (where a lack of resources means officials cannot accompany the woman to the funeral<sup>243</sup>). In many countries the state (either prison authorities or other departments) will provide a funeral if the mother and her family cannot afford it, though it may be of a lower standard than a family-funded one.

There is a report from Sierra Leone of a prisoner (Juanita – not her real name) giving birth to twins, one of whom was stillborn. The cause of death was not ascertained as no post-mortem was conducted. The dead baby was given to Juanita’s mother to bury, although Juanita does not know where the burial actually took place. She did not ask whether she could attend the funeral as she did not think she would be allowed and it does not appear that Juanita had any access to counselling following her bereavement.<sup>244</sup>

### 3.3.5 *Ongoing contact with mother*

Once a child has left prison, her/his relationship with her/his mother does not end. Contact may continue both while the mother remains in prison and after she comes out, but the ease, nature and frequency of this contact will vary depending on the mother’s and child’s situations.

While a mother remains imprisoned, her contact with any children who have left prison will be reduced, often drastically so. Visits by children to the prison (which can themselves be fraught with difficulties – for more on this see QUNO’s paper *The impact of parental imprisonment on children*) are often allowed, with some children being given enhanced



visiting rights. Egyptian children under 12 living in state care may visit their mothers twice a month, separately from the mother's normal visiting schedule. Of the problems faced in visiting mothers in prison, difficulties in reaching the prison, particularly if children live far away and/or costs of reaching prison were high, were frequently mentioned in the research carried out for this paper.<sup>245</sup>

Alternatively, a mother may be allowed to visit her children. Work by the International Catholic Child Bureau in Togo allowed two mothers to visit their children living in state institutions every three months for three hours at a time.<sup>246</sup> Similarly, Ecuadorian mothers have been allowed to visit children living with foster families.<sup>247</sup>

However, contact may be prevented or restricted because of decisions by alternative carers or failure to keep the mother informed of changes. New carers may be unable or unwilling to allow children contact with their mothers: there is a big problem in some countries of family members, particularly partners or husbands, disowning imprisoned mothers and therefore refusing to let released children visit them.<sup>248</sup> One Kyrgyz woman was unable to make contact with her son living outside because his carer had died and his new care arrangements were not known to her.<sup>249</sup>

When a mother leaves prison, it can be difficult for her to regain her relationship with a child who has already left prison. These difficulties may be practical (finding accommodation close to the children), procedural (being allowed to regain custody of children) or emotional (regaining a close emotional bond).

A woman may be required to fulfil certain conditions before regaining custody of her children. These may include having a stable home or job, which can be difficult to obtain for women recently released from prison, or production of identity documents: in Kyrgyzstan women require a residency permit before they can take their children out of state institutions, but women leaving prison rarely have the necessary papers.<sup>250</sup> Some

countries prioritise women with children when allocating state housing; this can lead to a vicious circle where mothers cannot regain custody of their children because they lack a home, yet cannot secure housing because they are not caring for children at the time.<sup>251</sup>

Regaining custody of children living with other family members is often easier than doing so for children in foster care or state institutions, because of the positive attitude of family members towards the prisoner and the general absence of official procedures that must be followed. However, if the family does not wish to return the children to their mother, it can be extremely hard for the mother to gain custody of them, particularly if the alternative carer is also a guardian of the child. Additionally, if the family has moved away the mother may have difficulty tracing them.

Reclaiming a child from state care may take weeks or months because of the official procedures and checks that must be undergone. This can be made more difficult if the precise location of the child within the state system is unknown: within Kyrgyzstan the police do not record when a child is passed into the care of social services and many children arrive at state childcare institutions without identity documents, making it far harder to trace them.<sup>252</sup> Some mothers may decide not to reclaim children from institutional care because they think they cannot provide as good a home,<sup>253</sup> while some of those who want to reclaim them may be deemed unable to provide an appropriate environment for the children and denied custody (this may happen particularly if the woman does not have a stable home or income). Women in prison in Kyrgyzstan may request that the police look for her children by going to the prison administration, which then passes on the request to locate a child to the local police station. However, this may not work in practice: communication between state organs in Kyrgyzstan has been described as 'weak'.<sup>254</sup>

Even when other forms of assistance are given upon release, emotional support

for women and children is often lacking. Emotional difficulties may be caused by several different situations. Separation of mothers and children can lead to depression in both parties, according to an NGO worker heavily involved in this area.<sup>255</sup> One woman in prison in the UK who had her baby removed six months before the end of her sentence found it very hard at first to relate properly to the baby upon her release. She received no help outside her family.<sup>256</sup> Women may find it very difficult to lose all control over their child's life when the child is released before them but then have to take full responsibility when they themselves leave, which could be as little as a few days or weeks later. For many of these

women, who may have been poorly parented themselves and whose responsibility for the children while in prison is often limited, this can be extremely challenging.<sup>257</sup> Greater support in this area is required.

Non-resident foreign national women may face particular difficulties in reuniting with their children after release, particularly if they are removed to a different country while their children remain in the country of imprisonment. One woman imprisoned in the UK for four years for couriering drugs said: 'My baby's going out before me. I've still got another 18 months to go, after that I'll be deported. I'm worried I'll lose my baby.'<sup>258</sup>

## 3.4 Additional issues

### 3.4.1 *Children leaving or not leaving inappropriately*

Children may leave or fail to leave prison because of problems in prison policies or practices. Some may be forced to leave because they cannot be appropriately cared for within the prison rules: there are reports of children living in Zimbabwean prisons being unable to walk but being barred from being carried; this meant that they could not stay with their mothers.<sup>259</sup> One child who was born to an imprisoned mother was never placed on the (concrete) floors and therefore cried whenever people tried to put her on the ground.<sup>260</sup>

Other children may stay in prison long beyond the prescribed limit, because there is nowhere else for them to go or because no alternative carers come forward. Some babies in Sierra Leone remain in prison after the age of two due to the difficulty of contacting family members living in other parts of the country and arranging alternative care while the mother remains in prison.<sup>261</sup> There are reports of some Indian children aged 15 still living in prison because nobody came to collect them<sup>262</sup> and of others reaching the age of six, 'after which, if they do not have any family outside, they are forcibly separated

from their mothers and put in remand homes for juveniles along with juvenile offenders.'<sup>263</sup> Using detention centres as alternatives to childcare institutions is not appropriate.

Bureaucratic attitudes can impede effective responses, as was shown in the case of one Zimbabwean child who was brought to prison after the mother had been imprisoned because there was nobody to look after it: the maid left, the child's grandmother was ill and the landlord of the child's home was unable or unwilling to support it. However, because the child was over two it was not allowed to stay in prison so the authorities asked relatives to come to collect it. When the mother's brother-in-law came to collect the baby, he came outside visiting hours and was refused entry; when he was asked to return at another time he did not come back, so the child stayed in prison.<sup>264</sup>

### 3.4.2 *Siblings living inside and outside prison*

When a child leaves prison, s/he may leave behind siblings who are still staying with their mother, or s/he may go outside to live with

siblings. In both situations, everyone involved will have to adjust to the new arrangements.

If a child leaves prison when there are other children living on the outside, especially if the children have never met or have only spent limited amounts of time together, they may have difficulties relating to one another. In planning for release and life after prison it is important to include other family members who will be affected and to explain things in a manner the children will understand. One British woman who had given birth while in prison and who had an older child outside, said: 'I don't know what effect bringing home the new baby from prison will have on my eldest child. The baby will be a toddler by the time of my release, and I'm worried that my son might not like the baby and will blame him for taking me away. I think it best if I don't have any more children as I don't want him to think I might leave him again.'<sup>265</sup>

### 3.4.3 Prison transfer

A woman may at times be transferred to another prison, either because her security classification has changed, because the prison has been reclassified (either to higher or lower security or changing from a women's to a men's prison) or because demands on space require a move. When a woman is transferred her children will either go with her (if the facilities at the new prison are deemed appropriate) or have to leave prison (if they are not). Such moves will cause a change to the children's life and environment and, according to a report on Indian prisons by the Tata Institute of Social Sciences, transfers 'unsettles them'.<sup>266</sup> It may also affect the ease of the child's contact with outside family members, if the new prison is closer to or further from them and if the visiting conditions are different.

### 3.4.4 Temporary leave

As well as leaving prison on a permanent basis, some children may leave prison temporarily, for medical, compassionate or educational reasons or to help acclimatise

them to the outside world. Such absences may be regular, repeated occurrences or may be one-off events. Some periods of leave, such as a child living outside the prison during the week, may be more like regular extended visits by children living outside prison. However, other jurisdictions have no provisions to allow children out, meaning any temporary leave will occur only with the consent of individual guards.<sup>267</sup>

Both children and mothers may be allowed out for medical reasons – either planned visits to the doctor or emergency hospitalisation. In both situations, some prison authorities allow mothers and children to go together, though this does not always happen: in Kyrgyzstan, children may accompany their mothers only if they are still breastfeeding. (However, a lack of staff available to accompany the mother out of prison may mean that nobody leaves.<sup>268</sup>)

If a mother is placed in medical care long-term, alternative arrangements may need to be found for any children living with her. Egyptian rules state: 'In case a woman prisoner is placed in a mental hospital, her child shall not be sent with her. The child shall be handed to the father, one of the father's relatives, or sent by the competent governor to an institution.'<sup>269</sup>

Children themselves may leave prison temporarily on medical grounds, which may not always be emergency hospitalisations. The lack of paediatric medical specialists in prison may require children to visit doctors outside prison, but if mothers are refused permission to accompany sick children this can be distressing for both parties.<sup>270</sup> When making decisions about accompaniment, authorities should consider both the impact on a mother of having a seriously ill child taken from her (particularly if she is given little or no information about the child while s/he is away) and the possibility of the mother having to give consent for any medical procedures. If a mother is allowed to accompany her child, consideration should also be given to any other children living in prison with her and whether they should also be allowed to accompany the mother.

Children may be allowed out for compassionate reasons, such as the death of a family member. However, regulations on compassionate leave tend to refer only to the prisoner and not to any children living with her: both Scottish and Egyptian prison rules fail to mention whether women released temporarily on compassionate grounds can take their children with them.<sup>271</sup>

Some children may leave prison to attend schools or nurseries: children at the open mother-child house in Sevenum in the Netherlands attend nurseries outside the prison on a daily basis,<sup>272</sup> while in Andhra Pradesh state in India a system was introduced in November 2002 for children living with their mothers in one prison to be enrolled in a private nursery. 'The children (all aged under five) were given uniforms and shoes and sent to a nursery outside the jail. The reasoning for this policy, according to the Deputy Inspector General of Police, was to give them an opportunity to grow up normally along with other children.'<sup>273</sup>

This motivation, of enabling children to lead as normal a life as possible, is the reason for permitting or arranging trips and other visits outside prison. Children living in Nigerian prisons may be allowed to go on outings organised by relatives or NGOs. Children in the crèche in Tihar prison in New Delhi, India, are taken for a picnic every two months, explained one prison guard, to help them get used to 'things you and I take for granted. Most of the children are withdrawn and shy. It takes them time to adjust to the traffic, sit in a bus, see many people – especially men and women together.'<sup>274</sup>

Sometimes these outside visits are sporadic and unstructured, but at other times they are part of an ongoing programme of development. Within Chile, 'each time a woman enters into prison with a nursing child the director of the establishment will have to communicate immediately the arrival to the National Service of the Minor (SENAME) for arranging the respective subsidy and programs that the above-mentioned institution will

have to develop for the suitable care of the child'.<sup>275</sup> Babies living in Holloway prison in London, UK, are taken outside prison so they can get used to the noise of traffic.<sup>276</sup>

Some children spend part of their time living in prison and the rest outside. In Canada, mothers classified as a minimum or medium security risk can participate in the Mother-Child Programme: their children may live in the prison either on a full-time basis (until the age of four) or on a part-time basis (weekends and holidays – possible until the age of 12).<sup>277</sup> Similarly, children in Peru were allowed to stay with their mothers in prison during school holidays,<sup>278</sup> ten Venezuelan girls living under the care of nuns could visit their imprisoned mothers during the weekends<sup>279</sup> and a programme in northeast USA permitted children to live with volunteer host families near the prison for a week, visiting their mothers in prison for six hours a day during that time.<sup>280</sup>

### 3.4.5 *Reintegration of children into the community*

Children, whether or not they leave prison with their mother, can have problems readjusting to life outside. The world outside prison can be a frightening and alien place, particularly for those children born in prison or with no memory of life before prison. Both the child and the society to which they return may have changed considerably compared with the time before imprisonment. The children could suffer from stigma, with their status as a prisoner's child or the way they respond to the world affecting how others perceive and react to them.

Work on reintegrating children into the community needs to begin before they leave prison. Children who become too acclimatised to prison may have difficulty living in the community, with some prison officials arguing that older children are more severely affected.<sup>281</sup> Many aspects of a child's life can be affected, including their education (a prison worker in an Indian jail said: 'Once when I asked them to draw animals they

couldn't – because they hadn't seen any, only a cat<sup>282</sup>) and their ability to interact socially ('The children are unnaturally docile, lack self-confidence and don't like being cuddled or touched. "They are reserved because they don't receive regular love and care like normal children," Kaur said<sup>283</sup>). A 2006 report on Indian prisons concluded:

*Many children born in prison have never experienced normal family life up to the age of four-five years. The socialisation pattern of children gets severely affected due to their stay in prison. Their only image of a male authority figure is that of the police and prison officials. They are unaware of the concept of a 'home'. Boys sometimes talk in the female gender, having grown up only among women in the female ward. Sights like animals on roads frighten these children because of lack of exposure to the outside world.<sup>284</sup>*

The problem of children becoming distressed by things others consider 'everyday' and normal is one that has been observed time and again. Aeroplanes, traffic, trees, men: all of these have scared children coming out of prison.

A particular problem for children leaving prison is that of creating or rebuilding relationships with outside family members and the community. This may be made more difficult because the stigma attached to prisoners often extends to their families. As mentioned above (in 3.2.3: *Reintegration of mothers into the community*), either the families and community or the women themselves may break off contact, making it much harder for children living in prison to be able to return to their family and community, despite having done nothing wrong.

Other reasons for losing contact may be that records are not kept or passed on of the location of either the prisoner and her children or of the outside family. Women in prison may be unable to contact families who change address, particularly if they have moved abroad (one Kyrgyz woman prisoner

was unable to contact her child in Russia because she did not have the appropriate envelope<sup>285</sup>); conversely, the family may not be informed if a woman is transferred between prisons (as often happens in Sierra Leone when women are relocated to prisons in the capital Freetown<sup>286</sup>).

Support for children, both in terms of providing programmes for reintegration and in terms of monitoring progress upon release, often comes from NGOs rather than governments. Within Kyrgyzstan, Moya Semya (My Family) tries to reintegrate children into their own families, or failing that places them with other relatives, with guardianship or foster care considered later.<sup>287</sup> Prisoners Assistance Nepal (PA Nepal) takes children out of Nepalese prisons (both children living in prison with parents and juvenile offenders) and places them together in communal 'homes', where they go to school and learn skills such as farming and gardening which will serve them well in their home communities. PA Nepal argues that a focus on skills that will help children live in their own communities are more valuable than, for example, teaching them English or encouraging them to go to the city to get a job. Many people who go to Kathmandu, it says, find no work and end up themselves turning to crime. The focus on training is particularly important because government support to such children consists of providing them with places in orphanages rather than providing them with education and training for their development.<sup>288</sup>

However, some prison authorities are trying to tackle the issue of reintegration of children, with Kyrgyzstan using psychologists, social workers and teachers to help children living in prison reintegrate and get used to their parents again, as well as focussing on placing children who do not return to their families in smaller institutions rather than large children's homes.<sup>289</sup> Chile's policy of monitoring children for six months after leaving is positive, though it is unclear what interventions they can make if there are problems with reintegration.<sup>290</sup>

## 4 Alternatives and Recommendations

### 4.1 Alternatives

Having children live in prison can clearly give rise to many problems for the authorities, the mother, the outside family and the children themselves. This being the case, what are the alternatives?

In the first instance, efforts should be made to prevent the situation arising at all. Measures to reduce offending, such as job training programmes, micro-enterprise schemes, housing support and drug treatment programmes should be employed. Multiple studies have found that crime among women is usually a symptom of severe underlying deprivation and painful life experiences, so a less punitive and more supportive approach could better address their and their children's needs and at the same time promote long-term community safety.<sup>291</sup>

Secondly, dealing with a woman's offending using alternatives to or diversions from formal judicial processes should be considered. These may include community mediation, traditional tribal adjudication systems or restorative justice processes as well as treatment of any mental health or addiction issues the woman faces.

Thirdly, if a criminal case is made against a woman, pre-trial detention should not be used except where absolutely necessary to prevent a woman absconding, interfering with witnesses or committing further crimes. When considering whether to detain a woman pending trial, her pregnancy or caring responsibilities should be taken into account as possible evidence of her being less likely to abscond. Alternatives to pre-trial detention, such as providing financial guarantees or giving undertakings about movements or behaviour, should be considered, but they must be designed to enable the woman to comply with any such requirements. In countries where women are held for a very long time (months or years) in pre-trial detention, particular

consideration should be given to alternatives. If pre-trial detention is used the children's living arrangements should be considered and arranged either in advance (where this is possible) or at the least at the same time as the detention decision.

Fourthly, if a case does come to court and a woman found guilty, non-custodial sentences should be considered, with imprisonment being used only as a last resort. Most women offenders do not commit violent offences, are not a danger to society and do not need to be imprisoned for reasons of public safety. Consideration should be given to the impact of a sentence on any children or others for whom the offender has caring responsibilities; such responsibilities may mean a non-custodial sentence is more appropriate. Some jurisdictions already do this – a Constitutional Court ruling in South Africa in 2007 set out guidelines on how the best interests of a child can be met when sentencing.<sup>292</sup> Other jurisdictions may prohibit particular sentences for pregnant women or those with children: Kyrgyzstan restricts the situations in which custodial sentences can be enforced against such women and also prevents certain non-custodial sentences from being given to them.<sup>293</sup>

Fifthly, there is the possibility of keeping the children of imprisoned mothers out of prison. Doing so may involve placing them with other family members, friends, neighbours, adopted parents or in state or foster care. There are positive and negative aspects to each of these alternatives but each of them involve separation from the mother, with all the negative consequences that can have for everyone involved. Therefore, decisions should be individual, taking into account the best interests of the specific child in the particular circumstances, rather than imposed as a blanket policy.

## 4.2 Recommendations

Children of prisoners have committed no crime and should suffer for none. Those children who live in prison should lead lives at least as good as the ones they would have lived outside prison. The best interests of the children should at all times be a primary consideration. Children living in prison should be viewed from a child rights and welfare angle, rather than seeing them as a facet of prison management or failing to take account of them at all.

Both children and the prisons they may enter differ around the world: for this reason each child's situation should be considered individually. However, within this individuated system there are certain general practices that can be followed to try to produce the most positive outcome.

### *Identify any children*

At all stages of the criminal justice process, authorities should identify whether suspects, detainees or prisoners have any children for whom they have caring responsibilities. The situation and needs of these children should be ascertained and their best interests should be taken into account when making any decision that affects them. Authorities should also note that some mothers may conceal the existence of children because of (justifiable) fears that they will be removed and taken into state care.<sup>294</sup> In such situations a punitive approach to non-disclosure is less helpful than developing systems to support mothers in maintaining contact and regaining custody, where it is in the child's best interests.

### *Seek alternatives to custody*

As mentioned above, efforts should be made to prevent a mother (and her children) going to prison by using alternative measures to deal with any offending. These alternatives may be crime prevention strategies, restorative justice processes such as family group conferencing and sentencing circles and other diversions from formal judicial processes, or the imposition of non-custodial

sentences. The alternative measures also need to be assessed to ensure that they take the best interests of the child into account, and that the mother can take advantage of them: for example, do drug treatment/rehabilitation programmes have childcare arrangements?

### *Consider the impact of a sentence on children*

When sentencing a woman, the impact on any children (both those who would accompany her to prison and those staying outside prison) should be considered. If a custodial sentence is imposed, consideration should be made of where the mother will be imprisoned, with a preference for placing her (and any children living with her) close to her family and community. The length of any prison sentence may also affect what happens to the children and should be taken into consideration.

### *Register any children living in prison*

Many prison authorities register the entry and any particular requirements of prisoners and detainees. The same should be done of children living in prison to ensure that their needs are properly met and to prevent their being forgotten or 'lost'. Furthermore, the movements of such children out of or between prisons and their subsequent addresses should also be registered.

### *Provide suitable conditions*

Children should not be placed in an environment where they are at risk, either from the conditions in which they live or from the people with whom they live; where conditions are not suitable, children's entry should be delayed until improvements have been made.<sup>295</sup> It may be in the child's best interests to live with her/his mother separately from the rest of the prison population. While in prison, children's nutritional, material, medical, educational, emotional and developmental needs should be met.

### *Plan for children leaving prison*

Preparations should be made well in advance for what happens to children when they leave prison. In particular their living situation following release and ongoing contact with their mother should be addressed. It is important to avoid multiple placements for children, instead finding a stable carer. Such carers may need information about the children and economic, legal and psychosocial support to successfully carry out their caring responsibilities. They should be encouraged and assisted to maintain contact between child and parent unless it is not in the child's best interests to do so.

### *Prepare the children for leaving*

Before leaving, children should be prepared for and acclimatised to life outside prison. Such preparations should involve getting children used to the people and situations they will encounter in the community. It may need to continue throughout the children's time in prison and should be provided to children of all ages. It may involve both allowing children to leave prison to experience the wider community and enabling them within prison to receive visits from outside family members and/or participate in activities common on the outside, such as playing games or watching television.

### *Continue supporting children after they leave*

Following release, children may need continuing support to help them successfully reintegrate into the community. This support may be extended to, or be channelled through, the children's mother or alternative carer, and may take the form of financial benefits, training, childcare support for working mothers or access to services such as healthcare.

Within these general recommendations there are detailed practices which will need to be decided. However, this paper does not make such specific recommendations for two reasons. Firstly, the scarcity of research in this area means that it is presently impossible to ascertain the 'best' outcomes or solutions to

the problems described above. Secondly, each prison system is different both in policies and practices and a detailed technical study would be required in order to make appropriate recommendations. For similar reasons, no attempt is made to define the optimum age or stage at which a child should leave prison: individual differences between children and the different conditions in which children in prison live around the world mean that such a recommendation would be a gross over-generalisation.

Where good policies exist they should be known, shared and practised. Copies of the policies should be made readily available and free of charge to prisoners, staff and others in a language they can understand. General policies should be supplemented by secondary (implementing) legislation to ensure clarity about procedures and the division of responsibilities: Kyrgyz rules about alternatives to institutionalisation of children without the care of adults are difficult to enforce because of a lack of secondary legislation.<sup>296</sup>

However, good policies should also be put into practice. Across large parts of the world there is a gap between what should happen and what does happen to children living in prison. Many children do not receive the treatment they are due because of incoherent or unknown policies, a lack of resources and negative attitudes towards prisoners and their children ('There are so many people in need more deserving to be helped. They deserve their trouble'<sup>297</sup>). Yet these children, who often come from the lowest socio-economic sections of society, in many cases actually need additional support and protection compared to other children. When they are separated from their communities and families and placed in institutions designed largely to secure and control adult offenders, they may well be disadvantaged compared to their peers. It is vitally important that these children, who are not themselves offenders and should not be treated as such, receive the assistance necessary to succeed in life and, hopefully, never return to prison again.



# Endnotes

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- 1 For a greater focus on the period of imprisonment, see Marlene Alejos (2005) *Babies and Small Children Residing in Prisons* (QUNO).
- 2 Of course, many pre-trial detainees are held together with sentenced prisoners, which may assist in terms of access to child-friendly facilities but raises many other problems.
- 3 Case study Kyrgyzstan.
- 4 South Africa: Constitutional Court *S v M* (CCT53/06) [2007] ZACC 18 (26 September 2007), paragraph 36.
- 5 Sri Lankan prison officers have reported that children who lived in prison had a tendency to subsequently commit crimes themselves and be imprisoned. Isuri Kaviratne (2007) 'No fairy tales but scary stories' in *The Sunday Times* Vol. 42 No. 23
- 6 Case study Chile.
- 7 For more on this issue, see Oliver Robertson (2007) *The impact of parental imprisonment on children* (QUNO).
- 8 'Research has suggested that having young (pre-school-aged) children in prison with mothers can enhance bonding and avoid some of the negative impacts of separation for both mothers and children', quoted from Oliver Robertson (2007) *The impact of parental imprisonment on children* (QUNO).
- 9 QUNO's contribution to this literature can be found in Marlene Alejos (2005) *Babies and Young Children residing in Prisons*.
- 10 Notable among the work by partners is: Quaker Council for European Affairs (2007) *Women in Prison: A Review of Conditions in Member States of the Council of Europe*.
- 11 However, some countries are more likely than others to adhere to the set limits.
- 12 Case study Venezuela.
- 13 S. P. Pandey and Awdhesh K. R. Singh (2006) *Women prisoners and their dependent children: The Report of the Project Funded by Planning Commission, Government of India, New Delhi* (Serials Publications), pp.33-4
- 14 Home Office | Custody website <http://www.homeoffice.gov.uk/police/powers/custody/> (accessed March 2008).
- 15 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), pp.96-7
- 16 Saba Dewan (1995) *Women and Institutionalisation: A Report* (Coordination Unit, World Conference on Women), p. 10
- 17 Nepalese non-governmental prison worker, personal communication.
- 18 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), pp.96-7
- 19 Oliver Robertson (2007) *The impact of parental imprisonment on children* (QUNO), pp.15-16 and case study Kyrgyzstan. The level of fear children have for police officers in Kyrgyzstan is said to be because the police commit offences against children.
- 20 Case study Kyrgyzstan.
- 21 Unknown author (2003) 'Women prisoners' children suffer most' in *Times of India*, quoted in case study India.
- 22 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.258
- 23 Case study Kyrgyzstan.
- 24 See further Laurel Townhead (2007) *Pre-Trial Detention of Women and its impact on their children* (QUNO) and Oliver Robertson (2007) *The impact of parental imprisonment on children* (QUNO), pp.16-17
- 25 S. P. Pandey and Awdhesh K. R. Singh (2006) *Women prisoners and their dependent children: The Report of the Project Funded by Planning Commission, Government of India, New Delhi* (Serials Publications), pp.33-4. Figures from the Indian National Crime Records Bureau show that in 2006 1,075 children lived with 1,123 women awaiting trial, compared to 321 children with 272 convicted women prisoners.
- 26 M.A. Sepúlveda (2006) *Lessons from a Micro-enterprise Training Programme for Imprisoned Women in Venezuela*, delivered at School for Social Studies, University of Bristol.
- 27 Case study Egypt.
- 28 This may be particularly likely if the woman successfully appeals against her pre-trial detention.
- 29 HM Prison Service (1997) *Mother and Baby Units*, p.9
- 30 Case study Sierra Leone.
- 31 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), p.101
- 32 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.258
- 33 Nepalese non-governmental prison worker, personal communication.
- 34 For a detailed analysis of pre-trial detention, see Laurel Townhead (2007) *Pre-Trial Detention of Women and its impact on their children* (QUNO).
- 35 Case study Sierra Leone.

- 36 Convention on the Rights of the Child, Article 3(1).
- 37 Case study Sierra Leone.
- 38 For example, the Sierra Leonean Bar Association has approximately two hundred members in the country. Case study Sierra Leone.
- 39 Case study Sierra Leone.
- 40 Case study Sierra Leone.
- 41 Nigerian Prison Service official, personal communication.
- 42 Case study Kyrgyzstan.
- 43 Nepalese non-governmental prison worker, personal communication.
- 44 The Corston Report, a major study of women prisoners in England and Wales, recommended that a pre-sentence report on the impact of a custodial sentence on children should always be provided, but this was rejected by the UK government on the grounds that the existing optional system appeared to work well enough.
- 45 Kathleen Marshall (2008) *Not Seen. Not Heard. Not Guilty: The Rights And Status Of The Children Of Prisoners In Scotland* (Scotland's Commissioner for Children and Young People), p.21
- 46 South Africa: Constitutional Court *S v M* (CCT53/06) [2007] ZACC 18 (26 September 2007), paragraph 36.
- 47 Case study Egypt.
- 48 Case study Egypt.
- 49 Case studies Chile and Venezuela.
- 50 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), p.108
- 51 Kathleen Marshall (2008) *Not Seen. Not Heard. Not Guilty: The Rights And Status Of The Children Of Prisoners In Scotland* (Scotland's Commissioner for Children and Young People), p.20. The report goes on to say that in Scotland there are only three circumstances which require a mandatory minimum sentence of imprisonment:
- Life imprisonment for murder;
  - 3 or 5 years imprisonment (depending upon age) for illegal possession or distribution of firearms; and
  - 7 years imprisonment for offenders over 18 in respect of some drug trafficking offences.
- 52 Article 488, Egyptian Criminal Procedure Code, quoted in case study Egypt. Article 488 states that it is possible to delay the sentence of one of the parents until the other is released, but three conditions must be present:
- 1) the husband and wife must be sentenced for less than one year of imprisonment and cannot be sentenced for the same crime;
  - 2) the parents must be first-time offenders;
  - 3) the parents must have a known residence.
- 53 Case study Chile. Within Chile there are apparently some criticisms about the implementation of the Family Courts and there is still some crossover between the old system and the new one.
- 54 HM Prison Service (1997) *Mother and Baby Units*, p.9
- 55 Liz Ayre, Kate Philbrick and Marielle Reiss (eds.) (2006) *Children of Imprisoned Parents: European Perspectives on Good Practice* (EUROCHIPS), p.72
- 56 UNICEF (2006) *Progress for Children: a report card on nutrition*  
[http://www.unicef.org/progressforchildren/2006n4/index\\_introduction.html](http://www.unicef.org/progressforchildren/2006n4/index_introduction.html) (accessed March 2008), quoted in case study Sierra Leone.
- 57 Case study Sierra Leone.
- 58 Quaker Council for European Affairs (2007) *Women in Prison: A Review of Conditions in Member States of the Council of Europe: Country Report: Denmark*, p.1
- 59 UK-based prison researcher, personal communication. It should be noted, however, that the definition of 'non-grave' offences can be and is changed by governments. Additionally, there are different formulations of this general rule: in the Russian Federation, 'non-grave' means five years or less (Quaker Council for European Affairs (2007) *Women in Prison: A Review of Conditions in Member States of the Council of Europe: Country Report: The Russian Federation*, p.5).
- 60 Case study Kyrgyzstan.
- 61 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.173
- 62 Duncan Kennedy (2008) 'Mexico's programme to aid jailed mothers at BBC News online  
<http://news.bbc.co.uk/2/hi/americas/7215739.stm> (accessed March 2008).
- 63 HM Prison Service (2005, updated 2008) *Prison Service Order 4801: The Management of Mother and Baby Units*, Section 12.1
- 64 James Boudrais (1996) *Parents in Prison: Addressing the Needs of Families* (American Correctional Association), p.14. According to Marlene Alejos (2005) *Babies and Small Children Residing in Prisons* (QUNO), p.37, 'judicial authorities are nevertheless required to make all efforts to find alternative solutions "to prevent" a child accompanying his/her mother in prison. But, if the mother refuses to be separated from the child, neither the judiciary nor the penitentiary authorities can interfere or oppose the decision of the mother', except where the child is at risk.

- 65 Nigerian Prison Service official, personal communication.
- 66 Case study India. 19 women responded to the survey; of these, in 14 cases the mother had made the decision, in two the court and in three the family.
- 67 Case study Chile.
- 68 Case study Venezuela.
- 69 Case study Sierra Leone.
- 70 Marlene Alejos (2005) *Babies and Small Children Residing in Prisons* (QUNO), pp.38-39
- 71 Case study Kyrgyzstan.
- 72 Marlene Alejos (2005) *Babies and Small Children Residing in Prisons* (QUNO), p.41
- 73 Marlene Alejos (2005) *Babies and Small Children Residing in Prisons* (QUNO), p.41. 'Full-time residency' refers to Canada's 2003 regulations on this issue, which state that children may live in prison full-time (upper age limit four years) or part-time (i.e. during weekends and holidays, upper age limit 12 years).
- 74 Nigerian Prison Service official, personal communication and case study India.
- 75 British non-governmental prison worker, personal communication.
- 76 Case study Chile.
- 77 HM Prison Service (2005, updated 2008) *Prison Service Order 4801: The Management of Mother and Baby Units*, Section 9.8
- 78 Case study Sierra Leone.
- 79 Amitabh Srivastava (2007) 'Innocence in Shackles' at India Today website [http://indiatoday.digitaltoday.in/content\\_mail.php?option=com\\_content&name=print&id=2463](http://indiatoday.digitaltoday.in/content_mail.php?option=com_content&name=print&id=2463) (accessed January 2008).
- 80 M.A. Sepúlveda, G. López and Y. Guaimaro (1999) *Meeting the needs of mothers and children in prison*, delivered at the conference 'Children and Violence: Our Individual, Family and Collective Responsibilities' in Montreal, Canada, quoted in case study Venezuela.
- 81 HM Prison Service (1997) *Mother and Baby Units*, p.3
- 82 Nepalese non-governmental prison worker, personal communication.
- 83 This study has not found any examples of children crossing borders to live with a mother in prison, though it may occur.
- 84 Joann Morton and Deborah Williams (1998) 'Mother-Child Bonding' in *Corrections Today* Vol. 60, No. 1, pp.98-103
- 85 Kauffman, Kelsey (2001) 'Mothers in prison' in *Corrections Today* Vol.63, No.1, pp.62-64
- 86 Venetta D Young and Rebecca Reviere (2005) *Women Behind Bars: Gender & Race in US prisons*, p.122
- 87 Case study Kyrgyzstan.
- 88 Rachel Taylor (2004) *Women in Prison and Children of Imprisoned Mothers: Preliminary Research Paper* (QUNO), p.35
- 89 Nepalese non-governmental prison worker, personal communication.
- 90 Case studies Chile and Venezuela.
- 91 Case studies Chile and Venezuela.
- 92 Chilean prisons keep a record of each child which includes their birth certificate, documents accrediting economic support from the state, medical history, vaccinations, psychosocial and psychomotor evaluations (which are repeated every three months), notes of all exits from the prison with the authorisation from the mother and Director, registry of attendance to the 'Sala Cuna' (the socio-educational programme for children living in prison) and registry of entering and leaving prison. All these records have to be kept for a year after a child leaves the prison. Case study Chile.
- 93 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), p.107
- 94 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), p.107
- 95 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), pp.108-109
- 96 S. P. Pandey and Awdhesh K. R. Singh (2006) *Women prisoners and their dependent children: The Report of the Project Funded by Planning Commission, Government of India, New Delhi* (Serials Publications), p.34
- 97 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), pp.108-9
- 98 Case study Venezuela.
- 99 James Boudrais (1996) *Parents in Prison: Addressing the Needs of Families* (American Correctional Association), pp.13-14
- 100 Case study Chile.
- 101 Human Rights Watch (1993) *Prisons Conditions in Egypt: a Filthy System* and case study Egypt. The 'nursery', however, is simply a regular dormitory cell where all mothers and children are in the same space. Apart from the additional toilets and showers it is like other cells in the prison. There are also doubts about whether the open door policy is fully operational – during a visit prisoners and children were observed being kept in the cell 'to eat lunch', even though there was no evidence of food being prepared or served.
- 102 Brinley Bunton (2007) '22 to a cell – life in a notorious Afghan prison' in *The Guardian*, London.
- 103 Case study Venezuela. The psychiatrist provides psychological and medical support to the mothers rather than the children, but there is also a paediatrician who attends to the children's needs.

- 104 Rakesh Shukla (2006) 'Looking after children of women prisoners' at *InfoChange news and features* <http://www.infochangeindia.org/analysis/128.jsp> (accessed March 2008), quoted in case study India.
- 105 Chitra V. Ramani (2006) 'Women prisoners' children learn nursery rhymes here' in *The Hindu* <http://www.thehindu.com/2006/11/14/stories/2006222420850300.htm> (accessed March 2008), quoted in case study India.
- 106 Case study Chile.
- 107 Sierra Leonean NGO AdvocAid donated supplies of baby vitamin drops to the prison medical team, with the babies' wellbeing noticeably improving during this period. The prison service in Sierra Leone does not have its own resources to provide such supplies. Case study Sierra Leone.
- 108 Case study Venezuela.
- 109 Case study Chile.
- 110 Some States, such as India, are meant to provide facilities at all their prisons, but research for this paper found that the facilities required by law are not present at all the country's jails. For example, although Indian jails are now all meant to provide support to women with children in prison, including to pregnant and lactating women, discussions with women prisoners suggest that such support is still rare. Case study India.
- 111 Action for Prisoners Families (2006) *Press release: Record numbers call helpline as families face Christmas with a loved one in jail* at <http://www.prisonersfamilies.org.uk/opus719.html> (accessed March 2007).
- 112 British non-governmental prison worker, personal communication. York is about 280 kilometres (175 miles) away from London.
- 113 Saba Dewan (1995) *Women and Institutionalisation: A Report* (Coordination Unit, World Conference on Women), p.22
- 114 Quaker Council for European Affairs (2007) *Women in Prison: A Review of the Conditions in Member States of the Council of Europe: Country Report: England and Wales*, p.2
- 115 Associated Press (2006) 'A long way from home, Hawaiian inmates held in eastern Kentucky', featured at [www.kentucky.com](http://www.kentucky.com) (accessed February 2006), quoted in Oliver Robertson (2007) *The impact of parental imprisonment on children* (QUNO), p.23
- 116 Case study Kyrgyzstan. In this instance, UNICEF worked with donors to renovate the children's wing, bring in toys for the children and carry out training for mothers and staff on the importance of attachment. The renovation, carried out by women prisoners with UNICEF providing the materials, equipment and items for the children, was completed by winter 2005.
- 117 Rakesh Shukla (2006) 'Looking after children of women prisoners' at *InfoChange news and features* <http://www.infochangeindia.org/analysis/128.jsp> (accessed March 2008).
- 118 Case study Sierra Leone. Such meals are composed of basic items such as rice and sauce, often made of ground potato leaf or casava leaf, with extremely limited protein.
- 119 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.76
- 120 Nigerian Prison Service official, personal communication.
- 121 Case study Egypt.
- 122 Nepalese non-governmental prison worker, personal communication.
- 123 Case study Egypt. Specifically, the Association for the Protection of Children Imprisoned with their Mothers (APCIM) has supported ten families with one-time payments of 10,000 Egyptian pounds and has helped to pay for one pregnant woman to get out of jail so she could deliver her baby outside the prison. The organisation also supports the children of imprisoned parents with supplies and occasional money. It is reported that this extra support is necessary for prisoners' families because, although the government provides pensions for these families under the 'social security scheme' enacted by Law No. 30 in 1977, in many cases families are still struggling with inadequate means to live. See also Community and Institutional Development (2007) *Final Report: A Rights-Based Analysis of Child Protection in Egypt* (Save the Children UK).
- 124 Case study Sierra Leone. AdvocAid, an NGO supporting women living in prison in Sierra Leone, has brought in supplies such as Vaseline, talcum powder and vitamins for the babies in Pademba Road prison on several occasions and each time prisoners reported that the guards take items for themselves or unfairly distribute them amongst the prisoners.
- 125 Prabhakar Kumar (2007) '500 kids in Bihar jails, for no crime' at *IBNlive* <http://www.ibnlive.com/news/500-kids-in-bihar-jails-for-no-crime/42790-3.html> (accessed March 2008), quoted in case study India.
- 126 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.146
- 127 Case study Egypt.
- 128 Case study Sierra Leone, quoting Malan et al (2003) 'Sierra Leone: Building the Road to Recovery' in *ISS Monograph No. 80*. Rebel attacks have been both attempts to free certain prisoners and a symbolic act against the government's power.
- 129 Case study Kyrgyzstan.
- 130 Nepalese non-governmental prison worker, personal communication.
- 131 Isuri Kaviratne (2007) 'No fairy tales but scary stories' in *The Sunday Times* Vol. 42 No. 23

- 132 Unknown author (2005) 'Helping India's prison children' at *BBC News online* [http://news.bbc.co.uk/2/hi/south\\_asia/4354712.stm](http://news.bbc.co.uk/2/hi/south_asia/4354712.stm) (accessed March 2008), quoted in case study India.
- 133 Unknown author (2005) 'Helping India's prison children' at *BBC News online* [http://news.bbc.co.uk/2/hi/south\\_asia/4354712.stm](http://news.bbc.co.uk/2/hi/south_asia/4354712.stm) (accessed March 2008), quoted in case study India.
- 134 M.A. Sepúlveda, G. López and Y. Guaimaro (1999) *Meeting the needs of mothers and children in prison*, delivered at the conference 'Children and Violence: Our Individual, Family and Collective Responsibilities' in Montreal, Canada, quoted in case study Venezuela.
- 135 Case study Sierra Leone.
- 136 Unknown author (2004) 'India: Children stay in Indian prisons with their mothers' at *Asia Child Rights* <http://acr.hrschool.org/mainfile.php/0173/293/> (accessed March 2008), quoted in case study India.
- 137 Venetta D.Young and Rebecca Reviere (2005) *Women Behind Bars: Gender & Race in US prisons*, p.110
- 138 S. P. Pandey and Awdhesh K. R. Singh (2006) *Women prisoners and their dependent children: The Report of the Project Funded by Planning Commission, Government of India, New Delhi* (Serials Publications), p.76. The figure in the original report does not specify that it refers to a percentage of women prisoners rather than prisoners in general; however, as women make up only 3.7% of the prison population (according to the International Centre for Prison Studies [www.prisonstudies.org](http://www.prisonstudies.org)), 82% of women prisoners would give birth in prison if the 3.03% related to prisoners as a whole. This appears highly unlikely.
- 139 Unknown author (2006) 'Court guidelines on children of undertrial women' in *The Hindu* <http://www.hindu.com/2006/04/14/stories/2006041410331700.htm> (accessed March 2008), quoted in case study India.
- 140 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.108
- 141 Unknown author (2006) 'Court guidelines on children of undertrial women' in *The Hindu* <http://www.hindu.com/2006/04/14/stories/2006041410331700.htm> (accessed March 2008), quoted in case study India.
- 142 Rakesh Shukla (2006) 'Looking after children of women prisoners' at *InfoChange news and features* <http://www.infochangeindia.org/analysis/128.jsp> (accessed March 2008), quoted in case study India.
- 143 UK-based prisons researcher, personal communication and case study Kyrgyzstan.
- 144 British non-governmental prison worker, personal communication.
- 145 Case study Egypt.
- 146 A hadith recounts the words and deeds of the Islamic prophet Mohammed. All traditional schools of Islamic jurisprudence refer to hadith collections in determining the Sunnah, or Muslim way of life. Case study Egypt.
- 147 Hadith from Daief Ibn Megaa, <http://arabic.islamicweb.com/Books/albani.asp?id=4767>, quoted in case study Egypt.
- 148 However, as noted above there is one case in Kyrgyzstan in recent years of a child born outside prison subsequently being admitted.
- 149 Venetta D Young and Rebecca Reviere (2005) *Women Behind Bars: Gender & Race in US prisons*, p.123
- 150 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.62. However, the same work later reported (p.123) that prisoners with babies and those who were pregnant shared the same cell. These apparently contradictory practices may be compatible if those women not eligible for single cells are placed with other women in similar positions. The authors also noted (p.134) that prisoners seemed supportive of this arrangement because the pregnant and nursing mothers understood each others' problems.
- 151 Case study Chile.
- 152 Case study Kyrgyzstan.
- 153 Case study Egypt.
- 154 British non-governmental prison worker, personal communication.
- 155 Case study Kyrgyzstan. Later on, a doctor develops an individual timetable for the hours in which a mother should be with her child.
- 156 Hillary Margolis (2002) *Innocent Prisoners: a LICADHO report on the rights of children growing up in prisons*, p.17
- 157 Case study Sierra Leone.
- 158 Women's Resource Centre (2006) *why women? The women's voluntary and community sector: changing lives changing communities changing society*, quoted in Oliver Robertson (2007) *The impact of parental imprisonment on children* (QUNO), p.32
- 159 Oliver Robertson (2007) *The impact of parental imprisonment on children* (QUNO), p.32
- 160 James Boudrais (1996) *Parents in Prison: Addressing the Needs of Families* (American Correctional Association), p.13
- 161 James Boudrais (1996) *Parents in Prison: Addressing the Needs of Families* (American Correctional Association), p.13
- 162 Case study Venezuela.
- 163 S. P. Pandey and Awdhesh K. R. Singh (2006) *Women prisoners and their dependent children: The Report of the Project Funded by Planning Commission, Government of India, New Delhi* (Serials Publications), pp.33-34
- 164 Case study Egypt.

- 165 Case study Sierra Leone.
- 166 Unknown author (2004) 'India: Children stay in Indian prisons with their mothers' at *Asia Child Rights* <http://acr.hrschool.org/mainfile.php/0173/293/> (accessed March 2008), quoted in case study India.
- 167 Human Rights Center for the Assistance of Prisoners (2002) *The Condition of Women Prisoners in Egypt*, pp.80-89, quoted in case study Egypt.
- 168 S. P. Pandey and Awdhesh K. R. Singh (2006) *Women prisoners and their dependent children: The Report of the Project Funded by Planning Commission, Government of India, New Delhi* (Serials Publications), p.76; Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.303; case study Kyrgyzstan.
- 169 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.301
- 170 Proclamation by Cambodian Ministry of the Interior, quoted in Marlene Alejos (2005) *Babies and Small Children Residing in Prisons* (QUNO), p.43
- 171 Case study Sierra Leone.
- 172 Case study Sierra Leone.
- 173 Anindita Ramaswamy (2003) 'Jailed by circumstances' in *The Hindu Sunday*, quoted in case study India.
- 174 Rakesh Shukla (2006) 'Looking after children of women prisoners' at *InfoChange news and features* <http://www.infochangeindia.org/analysis128.jsp> (accessed March 2008), quoted in case study India.
- 175 Egypt Prison Law 396, Article 20, quoted in case study Egypt.
- 176 Case study Kyrgyzstan. This difference is because women with children under 14 have their sentences suspended, except for particularly serious offences. Suspension should also happen for pregnant women; those who are imprisoned are either unaware of their pregnancies at the time of the court case or become pregnant subsequently.
- 177 Case study Kyrgyzstan.
- 178 J. Nnamdi Aduba (1993) 'Overcrowding in Nigerian prisons: A critical appraisal' in the *Journal of Criminal Justice* Vol. 21, pp.185-192
- 179 Anindita Ramaswamy (2003) 'Jailed by circumstances' in *The Hindu Sunday*, quoted in case study India.
- 180 S. P. Pandey and Awdhesh K. R. Singh (2006) *Women prisoners and their dependent children: The Report of the Project Funded by Planning Commission, Government of India, New Delhi* (Serials Publications), p.35. However, this recommendation has not been adopted.
- 181 *Council of Europe Parliamentary Assembly* website <http://assembly.coe.int/Documents/WorkingDocs/doc00/EDOC8762.htm> (accessed March 2008).
- 182 Case studies Chile and Venezuela.
- 183 Nepalese non-governmental prison worker, personal communication.
- 184 Liz Ayre, Kate Philbrick and Marielle Reiss (eds.) (2006) *Children of Imprisoned Parents: European Perspectives on Good Practice* (EUROCHIPS), p.74
- 185 Marlene Alejos (2005) *Babies and Small Children Residing in Prisons* (QUNO), p.36
- 186 IANS (2007) 'No takers for children of jailed parents' at *PxPG news* website [http://www.rxpnews.com/india/No-takers-for-children-of-jailed-parents\\_11779.shtml](http://www.rxpnews.com/india/No-takers-for-children-of-jailed-parents_11779.shtml) (accessed March 2007).
- 187 Mar Roman (2007) "Toddlers behind bars: Spanish prison offers family cells for couples with children", featured at <http://www.cantonrep.com/index.php?ID=335464&Category=24> (accessed February 2007).
- 188 Presumably there could be situations where children are left behind when a mother leaves prison; however, the present research has uncovered no examples of this.
- 189 While this paper focuses upon the children, the impact on mothers of having children leave who were living with them in prison is also an important issue and one which deserves further study.
- 190 A Sri Lankan prison's decision to house children living in prison and their mothers in conditions which closely replicated those in the community followed the realisation on the part of officers that children who lived in prison had a tendency to subsequently commit crimes themselves and be imprisoned. Isuri Kaviratne (2007) 'No fairy tales but scary stories' in *The Sunday Times* Vol. 42 No. 23
- 191 Some women may have both a custodial and non-custodial parts to their sentences, such as being electronically tagged.
- 192 Case study Kyrgyzstan.
- 193 Case study Kyrgyzstan.
- 194 British non-governmental prison worker, personal communication.
- 195 Nigerian Prison Service official, personal communication.
- 196 Case study Kyrgyzstan.
- 197 Case studies Chile and Venezuela.
- 198 Gerdarmeria de Chile and SENAME (undated) *Interview with the National Social Worker Director of Residences*, quoted in case study Chile.
- 199 British non-governmental prison worker, personal communication.

- 200 Case study Kyrgyzstan.
- 201 British non-governmental prison worker, personal communication.
- 202 Case study Kyrgyzstan.
- 203 Unknown author (2006) 'Innocence in jail, Inmates' children face impaired growth' in *The Tribune* (Chandigarh, India), quoted in case study India and *Boronia Pre-release Centre for Women* website [http://www.correctiveservices.wa.gov.au/B/boronia\\_women\\_prison.aspx](http://www.correctiveservices.wa.gov.au/B/boronia_women_prison.aspx) (accessed March 2008).
- 204 Case study Kyrgyzstan.
- 205 Case study Kyrgyzstan.
- 206 Case study Sierra Leone.
- 207 Case study Kyrgyzstan.
- 208 Case study Kyrgyzstan.
- 209 Case study Kyrgyzstan. Currently there are no formal links between prisons and local government, though this is expected to change as part of the country's reform of children's policies.
- 210 Isuri Kaviratne (2007) 'No fairy tales but scary stories' in *The Sunday Times* Vol. 42 No. 23
- 211 Prison Law No. 396, Art. 20, quoted in case study Egypt.
- 212 Marlene Alejos (2005) *Babies and Small Children Residing in Prisons* (QUNO), p.41. However, it is not clear in the policy how they can request this and if they have direct access to the Institutional Head to whom the request must be made.
- 213 Case studies Chile and Venezuela.
- 214 Case study Kyrgyzstan.
- 215 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.135
- 216 Rakesh Shukla (2006) 'Looking after children of women prisoners' at *InfoChange news and features* <http://www.infochangeindia.org/analysis128.jsp> (accessed March 2008), quoted in case study India.
- 217 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.238
- 218 Amitabh Srivastava (2007) 'Innocence in Shackles' at *India Today* website: [http://indiatoday.digitaltoday.in/content\\_mail.php?option=com\\_content&name=print&id=2463](http://indiatoday.digitaltoday.in/content_mail.php?option=com_content&name=print&id=2463) (accessed January 2008).
- 219 Case study Chile.
- 220 Case studies Egypt and Kyrgyzstan. The situation in Kyrgyzstan is particularly worrying for two reasons: firstly, children living in prison have all been born there and so have no experience of living outside prison; secondly, children may stay in prison beyond the official upper limit of three, possibly for another one or two years.
- 221 Case study Sierra Leone.
- 222 Case study Kyrgyzstan.
- 223 Case studies Chile and Venezuela.
- 224 Case study Sierra Leone.
- 225 Unknown author (2004) 'India: Children stay in Indian prisons with their mothers' at *Asia Child Rights* <http://acr.hrschool.org/mainfile.php/0173/293/> (accessed March 2008), quoted in case study India.
- 226 Case study Kyrgyzstan.
- 227 Case study India.
- 228 Case study Sierra Leone.
- 229 Isuri Kaviratne (2007) 'No fairy tales but scary stories' in *The Sunday Times* Vol. 42 No. 23
- 230 Case study Kyrgyzstan.
- 231 Unknown author (2005) 'Helping India's prison children' at *BBC News online* [http://news.bbc.co.uk/2/hi/south\\_asia/4354712.stm](http://news.bbc.co.uk/2/hi/south_asia/4354712.stm) (accessed March 2008), quoted in case study India; case study Kyrgyzstan.
- 232 Case study Egypt.
- 233 Oliver Robertson (2007) *The impact of parental imprisonment on children* (QUNO), p.34
- 234 270 children out of 1,000 in Sierra Leone die before they reach 5 years old, according to 2006 statistics. UNICEF (2008) *The State of the World's Children*, available at [http://www.unicef.org/sowc08/docs/sowc08\\_table\\_U5MR.pdf](http://www.unicef.org/sowc08/docs/sowc08_table_U5MR.pdf), quoted in case study Sierra Leone.
- 235 One situation which has not been covered here is what happens when a woman with children living in prison is sentenced to death. Some of the issues this raises, such as questions of alternative carers, will be similar or identical to other situations in which mothers die in prison, though there will also be impacts unique to this kind of sentence, such as the psychological impact on children of knowing a mother is condemned to death.
- 236 Rakesh Shukla (2006) 'Looking after children of women prisoners' at *InfoChange news and features* <http://www.infochangeindia.org/analysis128.jsp> (accessed March 2008), quoted in case study India.

- 237 Case study India. From a survey of 19 women, six thought that the prison would arrange care for their children in the event of their death, four expected another prisoner would look after their children and nine didn't know what would happen to their children.
- 238 Case study Chile.
- 239 Nepalese non-governmental prison worker, personal communication.
- 240 Egyptian Ministry of the Interior website <http://www.moiegypt.gov.eg/English/Departments+Sites/Prisons/prisonHumanRights/default.htm>, quoted in case study Egypt.
- 241 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.150
- 242 Case study Sierra Leone.
- 243 Case study Sierra Leone.
- 244 Case study Sierra Leone.
- 245 Case studies in Egypt, Kyrgyzstan and Sierra Leone all reported this as a problem.
- 246 Enyo Gbedemah, International Catholic Child Bureau Togo, personal communication.
- 247 Martin Estrella, International Catholic Child Bureau Ecuador, personal communication.
- 248 Case studies Sierra Leone and Kyrgyzstan.
- 249 Case study Kyrgyzstan.
- 250 Case study Kyrgyzstan.
- 251 There can be additional difficulties in this area. In the UK, ex-prisoners are deemed to have made themselves intentionally homeless (they did the crime so accepted the consequence of losing their home, goes the theory), which pushes them down the priority list when allocating public housing.
- 252 Case study Kyrgyzstan.
- 253 Enyo Gbedemah, International Catholic Child Bureau Togo, personal communication.
- 254 Case study Kyrgyzstan.
- 255 Nepalese non-governmental prison worker, personal communication.
- 256 Gill Pugh (2004) *Sentenced Families: Signs of change for children with a parent in prison* (Ormiston Children and Families Trust), p.46
- 257 British non-governmental prison worker, personal communication.
- 258 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), p.205
- 259 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.238
- 260 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.281
- 261 Case study Sierra Leone.
- 262 IANS (2007) 'No takers for children of jailed parents' at PxPG news website [http://www.rxpnews.com/india/No-takers-for-children-of-jailed-parents\\_11779.shtml](http://www.rxpnews.com/india/No-takers-for-children-of-jailed-parents_11779.shtml) (accessed March 2007).
- 263 Saba Dewan (1995) *Women and Institutionalisation: A Report* (Coordination Unit, World Conference on Women), p.5
- 264 Chiedza Musengezi and Irene Staunton (eds.) (2003) *A Tragedy of Lives: Women in Prison in Zimbabwe* (Weaver Press, Harare), p.146
- 265 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), p.208
- 266 Rakesh Shukla (2006) 'Looking after children of women prisoners' at *InfoChange news and features* <http://www.infochangeindia.org/analysis128.jsp> (accessed March 2008), quoted in case study India.
- 267 Nepalese non-governmental prison worker, personal communication.
- 268 Case study Kyrgyzstan.
- 269 Human Rights Center for the Assistance of Prisoners (2002) *The Condition of Women Prisoners in Egypt*, p.47, quoted in case study Egypt.
- 270 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), p.123
- 271 Kathleen Marshall (2008) *Not Seen. Not Heard. Not Guilty: The Rights And Status Of The Children Of Prisoners In Scotland* (Scotland's Commissioner for Children and Young People), p.27; Egyptian Ministry of the Interior website, <http://www.moiegypt.gov.eg/English/Departments+Sites/Prisons/prisonHumanRights/default.htm>, quoted in case study Egypt.
- 272 D. Caddle (1998) *Age limits for babies in prison: some lessons from abroad: Home Office Research Study No 80* (London, Home Office), quoted in case study Chile.
- 273 Anindita Ramaswamy (2003) 'Jailed by circumstances' in *The Hindu Sunday*.
- 274 Unknown author (2004) 'India: Children stay in Indian prisons with their mothers' at *Asia Child Rights* <http://acr.hrschool.org/mainfile.php/0173/293/> (accessed March 2008), quoted in case study India.



- 275 Chilean prison regulation D/MINJU No 19, 1997, quoted in case study Chile.
- 276 British non-governmental prison worker, personal communication.
- 277 Marlene Alejos (2005) *Babies and Small Children Residing in Prisons* (QUNO), p.35. Alternative age limits may be approved by the Deputy Commissioner on an exceptional basis.
- 278 Jane Woodrow (1992) *Mothers in Prison: The Problem of Dependent Children* (Cambridge University), p.280, quoting Alliance of NGOs on Crime Prevention and Criminal Justice 1987.
- 279 Case study Venezuela.
- 280 Venetta D Young and Rebecca Reviere (2005) *Women Behind Bars: Gender & Race in US prisons*, p.130, quoting Karen Casey-Acevedo and Tim Bakken (2002) 'Visiting women in prison: who visits and who cares?' in the *Journal of Offender Rehabilitation* Vol. 34, No. 2
- 281 Case study Sierra Leone.
- 282 Unknown author (2004) 'India: Children stay in Indian prisons with their mothers' at *Asia Child Rights* <http://acr.hrschool.org/mainfile.php/0173/293/> (accessed March 2008), quoted in case study India.
- 283 Unknown author (2004) 'India: Children stay in Indian prisons with their mothers' at *Asia Child Rights* <http://acr.hrschool.org/mainfile.php/0173/293/> (accessed March 2008), quoted in case study India.
- 284 Rakesh Shukla (2006) 'Looking after children of women prisoners' at *InfoChange news and features* <http://www.infochangeindia.org/analysis/128.jsp> (accessed March 2008), quoted in case study India.
- 285 Case study Kyrgyzstan.
- 286 Case study Sierra Leone.
- 287 Case study Kyrgyzstan.
- 288 Nepalese non-governmental prison worker, personal communication.
- 289 Case study Kyrgyzstan. However, interviewees for this research also suggested that for the next two years the focus would be on institutional reform; only in the third year onwards would the problems of children themselves be addressed. This means that in the interim some authorities, such as the Guardianship Agency, will continue to operate as before.
- 290 Case study Chile.
- 291 See, among others, A. Cunningham and L. Baker (2003) *Waiting for Mommy: Giving a Voice to the Hidden Victims of Imprisonment* and P. F. Radosh (2002) 'Reflections on Women's Crime and Mothers in Prison: a Peacemaking Approach' in *Crime and Delinquency* Vol. 48 No. 2, pp. 300-315, as quoted in case studies Chile and Venezuela.
- 292 South Africa: Constitutional Court *S v M* (CCT53/06) [2007] ZACC 18 (26 September 2007), paragraph 36.
- 293 For example, confiscation of a percentage of a woman's earnings for a period cannot be applied to a pregnant woman or one with children under three. Case study Kyrgyzstan.
- 294 Nell Bernstein (2005) *All Alone in the World: Children of the Incarcerated* (The New Press) p.18
- 295 S. P. Pandey and Awdhesh K. R. Singh (2006) *Women prisoners and their dependent children: The Report of the Project Funded by Planning Commission, Government of India, New Delhi* (Serials Publications), pp.101-4
- 296 Case study Kyrgyzstan.
- 297 Case study Kyrgyzstan.

# Appendices

## Appendix I: Policies regarding ages children allowed to live in prison

Country/ jurisdiction	Children allowed in prison until		Explanatory notes	Date in- formation provided	Source
	Age	Developmen- tal stage			
Belgium	3 years			2006	EUROCHIPS
Bolivia		Finish nursing		1996	Boudrais
Canada	4 years/12 years		Full time up to 4 years, part time (weekends and holidays only) up to 12 years	2005	Alejos
Chile	2 years			2008	Case study Chile
Denmark	3 years		Only in open prison. Fathers may have children living with them in prison	2006	EUROCHIPS
Egypt	2 years	Not of breastfeeding age	Breastfeeding age has been determined to be children under two years	2008	Case study Egypt
England & Wales	9 or 18 months (depending on prison)		Some flexibility in provisions if mother is nearing the end of her sentence	2008	UK government
Estonia	3 years			2007	QCEA
Finland	2 years (4 years in open mother-baby unit)			2006	EUROCHIPS
France	18 months		Up to 24 months possible in exceptional and 'well-justified' cases	2006	EUROCHIPS
Germany	3, 4 or 6 years depending on institution			2006	EUROCHIPS
Greece	4 years			2006	EUROCHIPS
India	6 years		Before 2006, age varied between states	2007	Case study India
Ireland	1 year			2006	EUROCHIPS
Italy	3 years		Pregnant women should not be imprisoned	2006	EUROCHIPS, QCEA
Japan	1 year			1996	Boudrais
Kyrgyzstan	3 years		Generally only children born in prison stay there; an additional year is allowed (and in practice more than this) if mother is nearing the end of her sentence	2008	Case study Kyrgyzstan
Latvia	4 years			2007	QCEA

Country/ jurisdiction	Children allowed in prison until		Explanatory notes	Date in- formation provided	Source
	Age	Developmen- tal stage			
Mexico	6 years			2008	BBC
Netherlands	6 or 9 months in closed pris- ons, 4 years in open mother- child house			2006	EUROCHIPS
Nigeria	18 months			2002	PRI
Norway			Children not allowed in prison	2007	QCEA
Poland	3 years			2006	EUROCHIPS
Portugal	3 years			2000	Council of Europe
Romania	1 year			2007	QCEA
Russian Fed- eration	3 years			2007	QCEA
Sierra Leone	2 years	Not of breastfeeding age	Children are allowed to stay while of breast- feeding age, which has been determined to be from birth up to the age of two	2008	Case study Sierra Leone
Spain	3 years			2006	EUROCHIPS
Sweden	1 year			2007	QCEA
Switzerland	3 years			2000	Council of Europe
Venezuela	3 years			2008	Case study Venezuela

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## Appendix 2: Research questionnaire

### *List of issues*

Below is the complete list of issues that the Quaker UN Office is interested in finding out about. However, researchers may not be able to answer all of these, and some may not be relevant to all countries. Those **in bold** should be prioritised. If there are other relevant issues of which you are, or become, aware, please include these as well.

Although the term ‘prison’ is used throughout, this includes other forms of detention within the criminal justice system – such as pre-trial detention, in police cells, and so on.

- In what circumstances do children go to live in prison with their mother?
- **Are there any restrictions on which children live with their mother in prison (for example, only up to a certain age, only children living with the mother before imprisonment, or only children of residents/nationals of the country of imprisonment)? Who makes sure these rules are carried out? How do they carry them out?**
- Have the rules been amended recently? If so, how and why have they changed?
- Is information provided in a language the mother can understand?
- **Who decides whether children should go to live in prison?**
- **Are children (especially older children) involved in the decision about sending them to prison? Are they told about what it might be like and prepared for living in prison?**
- **When sentencing or deciding to hold in pre-trial detention, do judges consider the effect on any children? If a child would go to live with a mother in prison, does this change the sentence handed down?**
- **When children go to live with a mother in prison, do they go as soon as the mother goes to prison or do they join her later?**
- Who is responsible for delivering the children to prison?
- **What can the children take with them to prison, if anything? Clothes? Toys? Books? If the child is too young to take things themselves, who organises this? Can their possessions be brought to them later?**
- If a child is already in education before going into prison, what provisions (if any) are made for them to continue their education?
- If a woman in prison takes on caring responsibilities for children during her sentence (for example by becoming guardian of another person’s children after death) what happens?
- What happens about siblings being separated (for example if one of them is too old to live in prison according to law)?
- If a mother leaves prison temporarily (for example due to being hospitalised), what happens to children living in prison?
- **What are the rules about when a child should stop living in prison? Who is responsible for enforcing them? Are they flexible, and if so in what way?**
- Are children told about and prepared for living outside prison? Are there any differences

for children who were born in prison or do not remember living outside, compared to older children who remember life before prison?

- **Is there a difference in how a child is told about and prepared for living outside prison if the child leaves prison before the mother, rather than with the mother at the end of her sentence?**
- Do the children get to spend time living outside before they leave prison permanently? What are the restrictions on this?
- **Who is meant to look after the child after they leave prison? Are they supported in any way? Are children consulted about arrangements for them?**
- **How is contact maintained between children in prison and other family members, including another parent or sibling?**
- How does leaving prison affect children who were born in prison compared to those who have already lived on the outside before living in prison?
- **What measures (if any) are taken to ensure that children and their mothers can stay in contact after the children leave prison? What form does this take? How long does it go on for?**
- If a mother dies in prison, what happens to children living with her?
- How are any benefits, welfare payments or other support affected by children going to live in prison or children leaving prison? For example, if a carer living outside gets financial support for looking after children, is this affected when a child goes to live in prison?

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## Children Imprisoned by Circumstance

Around the world, there are children living in prison with their mothers. There because of the damage that separation from their mothers would cause them or because there is nowhere else for them to go, these children must live in conditions often designed for imprisoned adults rather than developing infants. Drawing on new research carried out specifically for this study, this paper examines the situations and policies which permit children to live in prison and the practices that exist before, during and after imprisonment. It considers variations in policy across the globe and presents recommendations to ensure that the needs and best interests of the children are considered at every step.

If you are interested in learning more about the Women in Prison project or would like to work with us on this issue please contact us.

