

Laws on Children Residing with Parents in Prison

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Laws on Children Residing with Parents in Prison

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I. Introduction

This report provides information on select international and regional measures (Part II) and the laws of ninety-seven jurisdictions from around the world (Part III) that relate to allowing children to reside in prison with an incarcerated parent. The report also provides information on the number of children residing in prison with a parent in various countries, where such information was available. The final section of the report includes a bibliography with additional sources (Part IV).

Over the last decade, efforts have escalated at the international level to create policies specifically geared towards addressing the situation of the young children of incarcerated parents. Some measures seek to ameliorate the treatment of pregnant women, nursing mothers, and mothers with children; others seek to encourage the provision of better conditions, such as nurseries and kindergartens and specially trained staff, for the children; still others try to promote better hygiene and a better environment in general. There have also been trends urging the incarceration of mothers only as a last resort and that fathers' needs to be with their young children be taken into account. The discussion in Part II below highlights key international measures that address the issues surrounding children residing in prison with an incarcerated parent. The list of international documents reviewed is not exhaustive, and includes major United Nations and European acts addressing mainly the well-being of children and women in prison.

Most of the countries surveyed in Part III impose specific age limits for a child's admission into and length of stay in prison. However, some use different or additional markers (such as a breastfeeding period or an assessment of the best interests of the child) for making such determinations. In addition, many of the countries surveyed permit children to actually live with the parent in jail, whether or not in special facilities, whereas a few put eligible children in prison child care facilities with the parent having regular access to the child. Finally, some surveyed countries, in addition to admitting children to prison to live with an incarcerated parent, utilize alternatives to custodial sentences, including deferment of a custodial sentence and home confinement, when dealing with a person who has a young child.

Most of jurisdictions surveyed require that prisons that admit children meet certain standards. These range from making available basic necessities including additional food, special diets, and access to medical care, to having child care services and special residential units available for incarcerated mothers with children. However, some jurisdictions do not provide extensive services for children residing in prison.

II. Regional and International Policy

A. United Nations

1. *General Principles on Treatment of Women and Children*

According to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979, States Parties are to “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”¹

In the late 1980s, the UN issued a resolution on principles governing persons under detention or imprisonment emphasizing that measures “to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles,” among certain other groups, will not be deemed discriminatory, even though such measures would be subject to judicial or other official review.²

2. *Convention on the Rights of the Child*

The UN Convention on the Rights of the Child (CRC) quotes in its Preamble the Declaration of the Rights of the Child, which stated, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”³ The Preamble further recognizes “that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration.”⁴

The Convention also puts forward the principle that a child must not be separated from his or her parents except under certain particular circumstances and that a child has a right to contact with both parents,⁵ and espouses a number of precepts aimed at protecting the rights of children, among them “the notion that a child has the right not to be discriminated against based on the parents’ status or activities”;⁶ “the necessity to respect the child’s best interests as a primary

¹ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, effective Sept. 3, 1981, art. 12(2), <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

² Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, G.A. Res. 43/173, Principle 5(2), U.N. Doc. A/RES/43/173 (Dec. 9, 1988), <http://www.un.org/documents/ga/res/43/a43r173.htm>.

³ Convention on the Rights of the Child, Preamble, Nov. 20, 1989, in force on Sept. 2, 1990, G.A. Res. 44/25, U.N. Doc. A/RES/44/25, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (quoting the Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (Dec. 10, 1959), <http://www.un.org/cyberschoolbus/humanrights/resources/child.asp>).

⁴ Convention on the Rights of the Child, *supra* note 3, Preamble.

⁵ *Id.* art. 9.

⁶ *Id.* art. 2(2).

consideration”;⁷ and “the state’s obligation to ensure the child the care and protection ‘as is necessary for his or her well-being.’ ”⁸

While none of these provisions specifically address the situation of incarcerated mothers and their children, the principles enunciated in the CRC are frequently cited as the basis for a specific country’s treatment of children residing in prison with incarcerated parents.⁹

3. *UN Standard Minimum Rules for the Treatment of Prisoners*

The UN Standard Minimum Rules for the Treatment of Prisoners¹⁰ “set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions,”¹¹ Rule 23 provides that special accommodation will be made in women’s institutions “for all necessary pre-natal and post-natal care and treatment” and that “[a]rrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.”¹² Rule 23 further calls for “a nursery staffed by qualified persons” to be provided in cases “where nursing infants are allowed to remain in the institution with their mothers,” and that when the infants are not in their mothers’ care they will be placed in the nursery.¹³

4. *The Salvador Declaration and the Bangkok Rules*

At the Twelfth Congress on the Prevention of Crime and the Treatment of Offenders, held in April 2010, the UN Member States underscored the importance of addressing the needs of the children of prisoners, stressing in the Salvador Declaration that

such responses should take into account the human rights and best interests of children and youth, as called for in the Convention on the Rights of the Child and the Optional Protocols thereto, . . . where applicable, and in other relevant United Nations standards and norms in juvenile justice, . . . where appropriate.”¹⁴

⁷ *Id.* art. 3(1).

⁸ *Id.* art. 3(2).

⁹ *See generally* Part III, *infra*, Country Surveys.

¹⁰ Standard Minimum Rules for the Treatment of Prisoners (adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1955; approved by the Economic and Social Council by Resolutions 663 C (XXIV) (July 31, 1957) and 2076 (LXII) (May 13, 1977)), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>.

¹¹ *Id.* art. 1.

¹² *Id.* art. 23(1).

¹³ *Id.* art. 23(2).

¹⁴ Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Salvador, Brazil, point 26 (Apr. 12–19, 2010), http://www.unodc.org/documents/crime-congress/12th-Crime-Congress/Documents/Salvador_Declaration/Salvador_Declaration_E.pdf.

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, known as the Bangkok Rules, were adopted by a resolution of the UN Economic and Social Council in July 2010, pursuant to Resolution 18/1 of the UN Commission on Crime Prevention and Criminal Justice.¹⁵ The Bangkok Rules supplement rather than replace prior UN Rules.

According to the Bangkok Rules, the principle of the best interests of the child is to be used as the basis for decisions to allow children to stay with their incarcerated mothers, and “[c]hildren in prison with their mothers shall never be treated as prisoners.”¹⁶ Women prisoners who have their children with them in prison are to be given “the maximum possible opportunities to spend time with their children,”¹⁷ and the environment for the children’s upbringing is to “be as close as possible to that of a child outside prison.”¹⁸

Rule 5 of the Bangkok Rules, on personal hygiene, supplements Rules 15 and 16 of the Standard Minimum Rules by making the specific provision that women prisoners will “have facilities and materials required to meet women’s specific hygiene needs, including . . . a regular supply of water to be made available for the personal care of children and women, in particular women . . . who are pregnant, breastfeeding or menstruating.”¹⁹ Women prisoners are to receive a health screening on entering the prison²⁰ and children who accompany a woman prisoner will also undergo a health screening, “preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided.”²¹

Several of the Bangkok Rules specifically supplement Rule 23 of the Standard Minimum Rules on special accommodation for all necessary pre-natal and post-natal care and treatment and on nurseries. Women prisoners are also to receive advice on their health and diet and “[a]dequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.”²² Breastfeeding is not to be discouraged without specific health-related reasons.²³

¹⁵ United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), Resolution 2010/16 (July 22, 2010), <http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>; *Crime-Related Resolutions and Decisions from 2000 to 2009*, UNODC, https://www.unodc.org/unodc/en/commissions/CCPCJ/Resolutions_Decisions/Resolutions_2000-2009.html (scroll down page and click on Resolution 18/1, issued on April 24, 2009).

¹⁶ *Id.* rule 49.

¹⁷ *Id.* rule 50.

¹⁸ *Id.* rule 51(2).

¹⁹ *Id.* rule 5.

²⁰ *Id.* rule 6, supplementing rule 24 of the Standard Minimum Rules.

²¹ *Id.* rule 9.

²² *Id.* rule 48(1). Rule 48 supplements rule 23 of the Standard Minimum Rules.

²³ *Id.* rule 48(2).

In regard to searches of children who are in prison with their mothers and those who are visiting prisoners, the Bangkok Rules provide that prison staff must “demonstrate competence, professionalism and sensitivity” and also “preserve respect and dignity.”²⁴ Incarcerated pregnant women, women with infants, and breastfeeding mothers are not to be punished by close confinement or disciplinary segregation,²⁵ and “disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.”²⁶ Prison staff are to have training on child development and basic child health care, so that they can respond appropriately when needed if children are permitted to stay with their incarcerated mothers.²⁷

One rule stresses the need to facilitate women prisoners’ participation in prison activities, by offering a prison regime to respond to the needs of pregnant women, nursing mothers and women with children, e.g., by providing child care facilities or arrangements so that women prisoners may participate in prison activities and “appropriate programs” for these women.²⁸

The Bangkok Rules incorporate the principle that noncustodial sentences “shall be preferred where possible and appropriate” for pregnant women and women with dependent children.²⁹

5. *Future Steps*

One of two workshops to be held at the April 2015 Thirteenth Congress on the Prevention of Crime and the Treatment of Offenders will be “on experiences and lessons learned in meeting the unique needs of women and children, in particular the treatment and social reintegration of offenders.”³⁰ One of the proposed discussion questions is “what successful measures have been taken with regard to pregnant women, women with babies and children in prison, and custody and care of children of imprisoned mothers (outside prison).”³¹

B. Council of Europe

The 2000 Parliamentary Assembly Recommendation of the Council of Europe takes note of “the adverse effects of imprisonment of mothers on babies” and makes eight recommendations to counter them, among them that member states only use custody for pregnant women and mothers of young children “as a last resort.”³² In addition, a section on infants in the European Prison

²⁴ *Id.* rule 21.

²⁵ *Id.* rule 22.

²⁶ *Id.* rule 23. Rule 23 supplements rules 27–32 of the Standard Minimum Rules.

²⁷ *Id.* rule 33(3).

²⁸ *Id.* rule 42(2) & (3).

²⁹ *Id.* rule 64.

³⁰ Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, Doha, April 12–19, 2015, *Discussion Guide* at 29, U.N. Doc. A/CONF.222/PM.1 (July 19, 2013), http://www.unodc.org/documents/crime-congress/13th_crime_congress/RPM/Discussion%20Guide/ACONF222_PM1_e_V13853671.pdf.

³¹ *Id.* at 34, ¶ 83(k).

³² Council of Europe, Parliamentary Assembly, Recommendation 1469 (2000), *Mothers and Babies in Prison* (adopted on June 30, 2000), recommendation 5(i)–(viii), <http://assembly.coe.int/Main.asp?>

Rules sets forth the Council of Europe's Committee of Ministers 2006 Recommendation, stating as follows:

36.1 Infants may stay in prison with a parent only when it is in the best interest of the infants concerned. They shall not be treated as prisoners.

36.2 Where such infants are allowed to stay in prison with a parent special provision shall be made for a nursery, staffed by qualified persons, where the infants shall be placed when the parent is involved in activities where the infant cannot be present.

36.3 Special accommodation shall be set aside to protect the welfare of such infants.³³

Nevertheless, a Quaker UN Office report notes that despite the trend in Europe towards establishing child-centered facilities in order to facilitate child-parent contact, a 2002 European Court of Human Rights ruling "held that States were not under any obligation to provide facilities for a child to reside in the prison with their parent," and European policy-makers may be reluctant to encourage children's placement in prisons.³⁴

C. European Union

At the European Union level, the question of whether or not infants and children up to a certain age should live with their mothers in prison is a matter of national law.³⁵ General visitation and correspondence rights of parents with their children and vice versa are provided for in national legislation of the Members States,³⁶ as well as in a number of binding and nonbinding international legal instruments.³⁷

[link=/Documents/AdoptedText/ta00/EREC1469.htm](#). See also U.N. OFFICE ON DRUGS & CRIME, HANDBOOK FOR PRISON MANAGERS AND POLICYMAKERS ON WOMEN AND IMPRISONMENT, Criminal Justice Handbook Series, U.N. Sales No. E.08.IV.4 (2008), at 67, available at <http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf>.

³³ Council of Europe, Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules (Jan. 11, 2006), <https://wcd.coe.int/ViewDoc.jsp?id=955747>.

³⁴ JEAN TOMKIN, QUAKER UNITED NATIONS OFFICE, ORPHANS OF JUSTICE, IN SEARCH OF THE BEST INTERESTS OF THE CHILD WHEN A PARENT IS IMPRISONED: A LEGAL ANALYSIS 35 (AUG. 2009), http://www.quno.org/sites/default/files/resources/ENGLISH_Orphans%20of%20Justice.pdf (citing European Court of Human Rights decision in Kleuver v, Norway, App. No. 45837/99 (Apr. 30, 2002), <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-22377>).

³⁵ In 2011, the Committee on the Rights of the Child held a Day of General Discussion on "Children of Incarcerated Parents" during which it discussed the issue of establishing a minimum or a maximum age limit for a child to live with parent(s) in prison. There was consensus that imposition of a limit would not be a viable solution and could potentially result in lowering the standard in some countries. COMMITTEE ON THE RIGHTS OF THE CHILD, REPORT AND RECOMMENDATION OF THE DAY OF GENERAL DISCUSSION ON "CHILDREN OF INCARCERATED PARENTS" § 15 (Sept. 30, 2011), <http://www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCDGDRreport.pdf>.

³⁶ See Part III, *infra*, Country Surveys.

³⁷ For a discussion of these international instruments, see Part II(A), *supra*, United Nations.

Statistics in the EU Member States indicate that the number of children whose parents are incarcerated is close to 800,000 daily on any given day.³⁸ In the last few years, this issue has received wider recognition in the EU following the publication of an EU-funded report, *Coping with a Parent in Prison: An Agenda for Policy Reform*, on a three-year study of prisoner's children.³⁹

Two EU instruments have a bearing on this issue: the Charter of Fundamental Rights,⁴⁰ which is binding on all EU Members and has a general provision on the rights of the child, and a 2008 resolution of the European Parliament.

1. Charter of Fundamental Rights

Article 24 of the Charter of Fundamental Rights states that (1) children's views must be taken into account on issues of concern to them in accordance with their age and maturity; (2) when public authorities or private institutions take measures that affect children, they must consider the best interests of the child; and (3) every child must have the right to maintain, on a regular basis, a personal relationship and direct contact with both of his/her parents, provided this is in the child's best interest.⁴¹

2. European Parliament

In 2008, the Committee on Women's Rights and Gender Equality of the European Parliament adopted the *Report on the Situation of Women in Prison and the Impact of the Imprisonment of Parents on Social and Family Life*. This report led to the adoption of a European Parliament Resolution that encouraged EU Member States to implement the Report's findings and recommended that the European Commission pass decisions aimed at promoting gender-specific policies.⁴² The Report reiterated that the principle of the best interests of the child must be taken into account in decisions affecting contact with their parents in prison. It also stated that, prior to issuing a decision to remand a defendant to custody and when issuing a sentence, the national judicial authorities should verify whether children are involved and should take measures to

³⁸ *Supporting Children with Parents in Prison*, EUROPEAN UNION, EUROPEAN PLATFORM FOR INVESTING IN CHILDREN (Feb. 7, 2014), http://europa.eu/epic/news/2014/20140207-children-prison_en.htm. See also ELIZABETH AYRE ET AL., CHILDREN OF IMPRISONED PARENTS: EUROPEAN PERSPECTIVES ON GOOD PRACTICE (2d ed. 2014), available at http://www.academia.edu/7444964/Children_of_Imprioned_Parents_Ed_.

³⁹ COPING WITH A PARENT IN PRISON, AN AGENDA FOR POLICY REFORM 8 (Pan-European Conference, Brussels, Nov. 6, 2012).

⁴⁰ Charter of Fundamental Rights of the European Union, 2012 O.J. (C 326) 391, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>.

⁴¹ *Id.* art. 24.

⁴² European Parliament, Committee on Women's Rights and Gender Equality, *Report on the Situation of Women in Prison and the Impact of the Imprisonment of Parents on Social and Family Life* (2008) (hereinafter European Parliament Report), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2008-0033+0+DOC+PDF+V0//EN>; see also European Parliament Resolution 2007/2116(INI) of March 13, 2008, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0102+0+DOC+XML+V0//EN>.

ensure that children's rights are respected.⁴³ It recommended that alternative penalties to imprisonment, such as community-based sentences, should be preferred where possible, especially for mothers, provided that the underlying sentence is short and there is a low risk to public safety.⁴⁴ It urged the EU Member States to facilitate contact between imprisoned parents and their children, provided that this is in the best interests of the child. It also urged them to establish appropriate accommodations for children in prison, separate from the prison environment where possible, and to create local nurseries or schools for them.⁴⁵

III. Country Surveys

Algeria

Algerian Law No. 04-05 of 2005, which deals with prison organization and the social reintegration of prisoners, contains provisions related to prisoners who have minor children.⁴⁶ Paragraph 6 of article 16 allows for the postponement of carrying out a prison term against a convicted person for the benefit of a minor child if the other spouse is also in prison. Paragraph 7 of the same article allows for postponement of a prison term of a pregnant woman or a mother with a minor child less than twenty-four months old. In accordance with article 17, the postponement shall last until two months after delivery if the child was stillborn or until the child is twenty-four months old if he is alive. Where a woman does give birth during her imprisonment, article 51 of the Law requires that the prison administration coordinate with the appropriate social welfare agency to arrange for placement of the newborn. If no placement is available, the imprisoned mother can keep the child with her until it is three years old. Information on the number of children living with their mothers in prison could not be located.

Argentina

Argentinian Law 24660 on the Execution of Penitentiary Penalties⁴⁷ provides that an imprisoned mother may keep her children younger than four years of age with her in prison. The prison is to provide child care services and facilities with specially trained staff.⁴⁸ As of 2011 only one prison for women had a child care facility, however.⁴⁹ As of 2008, eighty-six children were

⁴³ European Parliament Report, *supra* note 42, recital 18.

⁴⁴ *Id.* recital 16.

⁴⁵ *Id.* recital 22.

⁴⁶ Law No. 04-05 of 2005 on the Organization of Prisons and Social Reintegration of Prisoners, available on the website of the Algerian President, at <http://www.joradp.dz/TRV/FPeni.pdf> (in French).

⁴⁷ Ley No. 24660 de Ejecución de la Pena Privativa de la Libertad [Law No. 24660 on Execution of Penitentiary Penalties], June 19, 1996.

⁴⁸ *Id.* art. 195.

⁴⁹ Ileana Arduino, Leticia Lorenzo & Raúl Salinas, *Mujeres y cárceles: aproximación a la situación penitenciaria en Argentina desde unaperspectiva de Género*, REVISTA PENASAMIENTO PENAL (July 2011), http://new.pensamiento penal.com.ar/sites/default/files/2011/07/genero03_0.pdf.

living with their mothers in prison, according to a United Nations International Children's Emergency Fund (UNICEF) report.⁵⁰

Australia

Each of Australia's six states and two mainland territories apply their own legislative frameworks in relation to the correctional facilities that they manage. Provision is made in the policies or legislation of all of these states and territories for the accommodation of children with their mother in prison.⁵¹ The Standard Guidelines for Corrections in Australia state that if provision is made for children and infants to reside with their primary caregiver in prison, "comprehensive and well structured policies and programmes should be developed where the interests of the children are paramount."⁵² The other guidelines on this matter are as follows:

- Assessment processes for determining the placement of a child in a custodial environment should include appropriate input from the relevant external agencies.
- Children and infants should be allowed to reside with their primary care giver in prison only after the Administering Department is satisfied that it is in the best interest of the child/ren to do so and there is no mechanism for the primary care giver to complete her/his sentence in the community (for example via home detention).
- The accommodation for primary care givers and their children should, wherever possible be domestic rather than custodial.
- While prisoners are responsible for the care of their children living in the prison, the Administering Department should take reasonable steps to ensure a safe environment for children.⁵³

Information on the age limits and numbers of places available for children to reside with their mothers in prison in each state and territory is provided below.

1. Australian Capital Territory

The Australian Capital Territory (ACT) has detailed rules and procedures related to children residing with female detainees in a specified ACT prison.⁵⁴ Female detainees who are the

⁵⁰ MINISTERIO PÚBLICO DE LA DEFENSA, UNICEF, MUJERES PRESAS 4 (Oct. 2008), http://www.unicef.org/argentina/spanish/Libro_Mujeres_Presas.pdf.

⁵¹ For information on the history of some of the policies and the related facilities for inmate mothers and children see *Women Prisoners*, UNSW COMPARATIVE YOUTH PENALTY PROJECT, <http://cypp.unsw.edu.au/women-prisoners> (last updated June 8, 2011). Broader information on policies and practices related to women's prisons in Australia can be found in LORANA BARTELS & ANTONETTE GAFFNEY, GOOD PRACTICE IN WOMEN'S PRISONS: A LITERATURE REVIEW (Australian Institute of Criminology Technical and Background Paper 41, 2011), http://www.aic.gov.au/documents/4/E/5/%7B4E5E4435-E70A-44DB-8449-3154E6BD81EB%7Dtbp041_002.pdf. For more detailed information on some of the facilities for women and children in different parts of Australia, see SARAH PADDICK, WOMEN AND CHILDREN IN PRISONS: ACCOMMODATION STUDY (2011), https://www.sa.gov.au/data/assets/pdf_file/0015/7422/MothersAndBabiesInPrisonAccommodationStudy2010-2011WebVersion.pdf.

⁵² STANDARD GUIDELINES FOR CORRECTIONS IN AUSTRALIA 29 (rev. 2012), available at http://www.correctional.services.nt.gov.au/Documents/useful_links/aust-stand_2012.pdf.

⁵³ *Id.*

caregivers of children up to the age of four years or who are pregnant may participate in the Women and Children Program.⁵⁵ Following approval, children are placed with their caregiver in a women's cottage at the prison. The cottage "consists of two five bedroom units with a shared living room, dining room, kitchen, laundry and courtyard."⁵⁶

2. *New South Wales*

The New South Wales Mothers and Children's Program⁵⁷ has three components: a full-time residency program, occasional residency program, and release of the mother to serve her sentence in an approved environment away from a correctional center.⁵⁸ In order for a child to reside full-time with his or her mother, he or she must be aged under six years and not attending school.⁵⁹ The two residency options are available in two correctional centers in the state. In one facility there are eight cottages that provide full-time accommodation for up to a total of forty women and sixteen children, and in the other there are full-time places for five women with preschool aged children.⁶⁰

3. *Northern Territory*

The Northern Territory Prisons (Correctional Services) Act 1980 (NT) provides for a female prisoner who gives birth to a child or who has children under five years of age to obtain permission to have that child or those children accommodated with her in a prison.⁶¹ In 2012, it was reported that "a new 24-bed cottage to meet the needs of women with children in custody has been constructed at the Alice Springs Correctional Centre."⁶²

⁵⁴ Corrections Management (Women and Children Program) Policy 2010 (ACT), <http://www.legislation.act.gov.au/ni/2010-449/default.asp>.

⁵⁵ *Id.* at 6.

⁵⁶ *Id.* at 7.

⁵⁷ For background on the program see MADELEINE LOY, A STUDY OF THE MOTHERS AND CHILDREN'S PROGRAM IN THE NSW DEPARTMENT OF CORRECTIVE SERVICES (2000), http://www.aic.gov.au/media_library/conferences/womencorrections/loy.pdf.

⁵⁸ Corrective Services NSW, The Mothers and Children's Program (2011), http://www.correctiveservices.nsw.gov.au/data/assets/pdf_file/0005/441959/Mothers-and-Childrens-Policy-brochure-2011.pdf.

⁵⁹ *Id.*

⁶⁰ *Women in Prison NSW 1970-2010*, UNSW COMPARATIVE YOUTH PENALTY PROJECT, <http://cyp.unsw.edu.au/node/120> (last updated June 8, 2011).

⁶¹ Prisons (Correctional Services) Act 1980 (NT) s 53(1), <http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/868ea4656e14859569257b9b000c0fc5?OpenDocument>.

⁶² NORTHERN TERRITORY DEPARTMENT OF CHILDREN AND FAMILIES, BUILDING ON OUR STRENGTHS: A FRAMEWORK FOR ACTION ON WOMEN IN THE NORTHERN TERRITORY, SECOND PROGRESS REPORT 2010-2012, at 28 (2012), http://www.childrenandfamilies.nt.gov.au/library/scripts/objectifyMedia.aspx?file=pdf%2F56%2F99.pdf&siteID=5&str_title=Building+on+Our+Strengths++A+Framework+for+Action+for+Women+in+the+Northern+Territory+First+Progress+Report+2008++2010.pdf.

4. Queensland

In Queensland, approval may be granted for a child who is not eligible to start primary (i.e., elementary) school to reside full time with his or her mother in a correctional facility.⁶³ Detailed procedures apply to the consideration of an application, and to the management of the mother and child who reside together in a facility.⁶⁴ Three Queensland women's prisons have residential units that accommodate women who have a baby or young child residing with them in prison.⁶⁵ One prison has units that accommodate a total of eight inmates and their children; another regularly has "up to six children, sometimes ten, placed with their mothers;"⁶⁶ the third has a specialist unit that can accommodate up to eight mothers and babies, plus another eight places for mothers and babies in a double unit.⁶⁷

5. South Australia

The South Australia Department of Correctional Services issued an instruction in 1993 stating that provision may be made for a child to live with a parent in prison.⁶⁸ According to the Department's 2002–03 Annual Report, the Adelaide Women's Prison has facilities to accommodate nine women with children under three years of age.⁶⁹ The 2012–13 Annual Report stated that a goal for the following year was to establish a mothers and babies program at the prison.⁷⁰

6. Tasmania

In Tasmania, a prisoner may request approval for a child to live with the prisoner in the prison.⁷¹ The women's prison in Tasmania has a seven-bed mother and baby unit.⁷²

⁶³ Corrective Services Act 2006 (Qld) s 30, <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CorServA06.pdf>.

⁶⁴ *Custodial Operations Standard Operating Procedure – Management of Women and Children*, QUEENSLAND CORRECTIVE SERVICES, http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmpromanwomenchild.shtml (last updated May 7, 2013).

⁶⁵ ANTI DISCRIMINATION COMMISSION QUEENSLAND, *WOMEN IN PRISON* ch 5 (Mar. 2006), <http://www.adcq.qld.gov.au/human-rights/women-in-prison-report/women-in-prison-contents/women-qld>.

⁶⁶ *Id.*

⁶⁷ *Townsville Correctional Centres*, QUEENSLAND CORRECTIVE SERVICES, http://www.correctiveservices.qld.gov.au/About_Us/The_Department/Custodial_Corrections/Townsville_Correctional_Centre/index.shtml (last updated Nov. 1, 2010).

⁶⁸ *Women in Prison South Australia 1970–2010*, UNSW COMPARATIVE YOUTH PENALTY PROJECT, <http://cyp.unsw.edu.au/women-prison-south-australia-1970-2010> (last updated June 8, 2011).

⁶⁹ SOUTH AUSTRALIA DEPARTMENT FOR CORRECTIONAL SERVICES, 2002–2003 ANNUAL REPORT 18 (2003), http://www.corrections.sa.gov.au/annual_report/2002-2003/content/print/Annual_Report_2002_2003.pdf.

⁷⁰ SOUTH AUSTRALIA DEPARTMENT FOR CORRECTIONAL SERVICES, ANNUAL REPORT 2012–13, at 87 (2013), http://www.corrections.sa.gov.au/_files/f/2405/DCS%20Annual%20Report%20Final%202013.pdf.

⁷¹ Corrections Act 1997 (Tas) s 25(1), http://www.thelaw.tas.gov.au/tocview/index.w3p:cond=:doc_id=51%2B%2B1997%2BAT%40EN%2B2014073000000;histon=:prompt=:rec=:term.

7. *Victoria*

In Victoria, “[p]risoners who are pregnant or who are the primary carers of young children may apply for the Mothers and Children Program.”⁷³ A child must be under school age in order to live in the prison with his/her mother.⁷⁴ The program is available in the state’s two women’s prisons where mothers and their children are housed in dedicated facilities.⁷⁵ According to a February 2013 news report, at that time nine children, aged two months to four years, were living in prison with their mothers in the state.⁷⁶

8. *Western Australia*

In Western Australia, a detailed policy directive sets out the rules and procedures related to children residing in prisons with their mothers.⁷⁷ For the residential programs in some prisons, the age at which a child’s residency must cease is twelve months.⁷⁸ However, in purpose-built facilities, the age limit is generally four years.⁷⁹ According to one report, in one prison with special facilities for mothers and children there were nine children residing with their mothers in 2010–11, although the facilities were designed to accommodate six.⁸⁰

⁷² See *Prisons Infrastructure Redevelopment Program: Womens Prison*, TASMANIA DEPARTMENT OF JUSTICE, http://www.justice.tas.gov.au/pirp/the_new_prisons/womens_prison (last updated Apr. 23, 2014); *Women in Prison Tasmania 1970–2010*, UNSW COMPARATIVE YOUTH PENALTY PROJECT, <http://cypp.unsw.edu.au/women-prison-tasmania-1970-2010> (last updated June 8, 2011).

⁷³ *Corrections, Prisons & Parole: Pregnancy and Childcare*, VICTORIA DEPARTMENT OF JUSTICE, <http://www.corrections.vic.gov.au/home/prison/going+to+prison/pregnancy+and+childcare/> (last updated Feb. 2, 2014).

⁷⁴ Corrections Act 1986 (Vic) s 31, [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt8.nsf/DDE300B846EED9C7CA257616000A3571/625E3A10D4DA518BCA257D0E00045EAF/\\$FILE/86-117aa108%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt8.nsf/DDE300B846EED9C7CA257616000A3571/625E3A10D4DA518BCA257D0E00045EAF/$FILE/86-117aa108%20authorised.pdf). Further rules are set out in the Corrections Regulations 2009 (Vic) pt 3 div 13, [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt8.nsf/DDE300B846EED9C7CA257616000A3571/9CA1FA0E931E57A4CA257D0B00179E37/\\$FILE/09-40sra006%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt8.nsf/DDE300B846EED9C7CA257616000A3571/9CA1FA0E931E57A4CA257D0B00179E37/$FILE/09-40sra006%20authorised.pdf).

⁷⁵ *Child Protection Practice Manual: Placement of Children with Mothers in Prison*, VICTORIA DEPARTMENT OF HUMAN SERVICES, <http://www.dhs.vic.gov.au/cpmanual/protection-order/case-planning-in-protection-order-phase/1256-placement-of-children-with-mothers-in-prison> (last updated Nov. 4, 2012).

⁷⁶ Christopher Gillet, *Push to Allow Dads to Have Their Kids in Prison With Them*, NEWS.COM.AU (Feb. 16, 2013), <http://www.news.com.au/national/victoria/push-to-allow-dads-to-have-their-kids-in-prison-with-them/story-fndo4cq1-1226579442504>.

⁷⁷ Western Australia Department of Corrective Services, Policy Directive 10: Prisoner Mothers/Primary Carers and their Children (Apr. 2007), <http://www.correctiveservices.wa.gov.au/files/prisons/adult-custodial-rules/policy-directives/pd-10.pdf>.

⁷⁸ See, e.g., *Bandyup Women’s Prison*, WESTERN AUSTRALIA DEPARTMENT OF CORRECTIVE SERVICES, <https://www.correctiveservices.wa.gov.au/prisons/prison-locations/bandyup.aspx> (last updated Oct. 31, 2013).

⁷⁹ Western Australia Department of Corrective Services, Policy Directive 10: Prisoner Mothers/Primary Carers and their Children, *supra* note 27, at 4.

⁸⁰ PADDICK, *supra* note 51, at 19.

Belgium

Belgian law allows inmates (*détenus*) to have their child live with them in prison until the child is three years old.⁸¹ The law provides for special facilities specifically designed to accommodate mothers with children.⁸²

According to the Coordination des ONG pour les Droits de l'Enfant (NGO Coordination for Children's Rights), a nongovernmental organization that focuses on children's rights, there were five places for mothers with children in the French-speaking regions of Belgium (Wallonia and Brussels).⁸³ The same report notes, however, that there are often more than five mothers with children owing to prison overpopulation.⁸⁴ The children's length of stay ranged from a few weeks to the legal limit of three years.⁸⁵ As of November 2012, there appeared to be thirteen children living with their mothers behind bars in Belgium (including the Flemish-speaking region).⁸⁶

Benin

Beninese law appears to allow mothers to keep their young children with them in prison, although no special accommodation seems to be provided for such situations.⁸⁷ It has been reported that there are approximately a hundred children under the age of five living with their mothers in Beninese prisons.⁸⁸

Bolivia

The Code of Criminal Procedure (Código de Ejecución Penal)⁸⁹ provides that children aged six or younger may live with their incarcerated parent if that parent has custody.⁹⁰ When both

⁸¹ Loi de principes concernant l'administration pénitentiaire ainsi que le statut juridique des détenus [Law of Principles Concerning the Penitentiary Administration and the Legal Status of Inmates] art. 15 § 2(3), Jan. 12, 2005, http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005011239&table_name=loi.

⁸² *Id.*

⁸³ COORDINATION DES ONG POUR LES DROITS DE L'ENFANT, UNE MATERNITE DERRIERE LES BARREAUX [A MATERNITY BEHIND BARS] 8 (Sept. 2012), http://www.lacode.be/IMG/pdf/analyse_CODE_une_maternite_derriere_les_barreaux.pdf.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Treize bébés "condamnés" à grandir derrière les barreaux en Belgique* [Thirteen Babies "Condemned" to Grow Up Behind Bars in Belgium], LE VIF (Nov. 14, 2012), <http://www.levif.be/info/actualite/belgique/treize-bebes-condamnes-a-grandir-derriere-les-barreaux-en-belgique/article-4000207655007.htm>.

⁸⁷ Jean-Claude D. Dossa, *Univers carcéral au Bénin: Enfants de détenues, destin de prisonnier* [Penitentiary World in Benin: Children of Inmates, a Prisoner's Destiny], L'EVENEMENT PRECIS (Sept. 20, 2013), <http://levenementprecis.com/?p=21806>.

⁸⁸ *Id.*

⁸⁹ CÓDIGO DE EJECUCIÓN PENAL art. 26, Dec. 20, 2001, available at http://www.oas.org/juridico/spanish/gapecasp_docs_bol2.pdf.

⁹⁰ *Id.*

parents have custody, the child remains with the parent who is free except when the child is breastfeeding, during which time he/she stays with the mother in prison.⁹¹ Children living in prison with their parents stay in child care facilities set up for them.⁹²

For older children, the Code of the Boy, Girl and Adolescent⁹³ provides that when both parents are in prison and it has been determined that their children do not have extended family, or that the extended family cannot possibly assume responsibility for the children's care, those children will be assigned to a foster home or institution located close to their parents' prison, except for children younger than six years old, who remain with their mother in prison.⁹⁴ The authorities are required to provide children separated from their parents the opportunity to stay connected with their parents in prison.⁹⁵

According to official sources there are approximately two thousand children living in Bolivian prisons with their parents.⁹⁶ Most of these children are younger than six years of age but there are many prisons where children older than six, mostly adolescents, are still living in prison with their parents.⁹⁷ The lack of enforcement of the maximum age established by law has caused a high number of human rights violations and crimes against these children, which the government is trying to reverse and correct.⁹⁸

Botswana

Botswana law provides that a breastfeeding child of a female prisoner may live with the mother until the child has been weaned. During the child's stay in prison, the child may be provided with "clothing and necessities at the public expense."⁹⁹ According to a 2013 US Department of State report, Botswana prison authorities allow female prisoners to bring breastfeeding children under the age of two to prison; however, some prison do not have maternity facilities.¹⁰⁰ After the child has been weaned, the Prison Service is required to place the child with a relative or

⁹¹ *Id.* art. 26, 2d para.

⁹² *Id.* art. 26, 3d para.

⁹³ CÓDIGO DEL NIÑO, NIÑA Y ADOLESCENTE [CODE OF THE BOY, GIRL AND ADOLESCENT], Oct. 27, 1999, available at http://www.unicef.org/bolivia/bo_legislation_codigotexto.pdf.

⁹⁴ *Id.* art. 30, 1st para.

⁹⁵ *Id.* art. 30, 3d para.

⁹⁶ *Bolivia: Niños, Condenados a Vivir con sus Madres . . . en la Cárcel*, RT ACTUALIDAD (Oct. 23, 2013), <http://actualidad.rt.com/sociedad/view/109333-bolivia-ninos-vivir-madres-carcel>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Prisons Act of 1980, § 66(7), 3 LAWS OF BOTSWANA, Cap. 21:03 (rev. ed. 2012), available on the International Labor Organization portal, Natlex, at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84992/94903/F727035739/BWA84992.pdf>.

¹⁰⁰ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: BOTSWANA 2 (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/2013/af/220084.htm>.

family friend who is able and willing to provide support or, in the event that such a person is not available, with a government-approved child care provider.¹⁰¹

A previous US Department of State report noted that, in 2012, there were 4,241 prisoners in Botswana, 141 of whom were female.¹⁰² No statistical information concerning the number of children living in prison with their mothers was located.

Brazil

Article 83(§2) of Law No. 7,210 of July 11, 1984, determines that Brazilian prisons for women must have a nursery where convicted women can care for their children, including nursing them until they reach at least six months of age.¹⁰³

For the purpose of assisting the child whose guardian is in prison, a women's penitentiary must have a section for pregnant women and women in labor, and a child care facility to house children older than six months and younger than seven years.¹⁰⁴ The nursery and the child care facility must be equipped with qualified personnel in accordance with the guidelines adopted by educational legislation, and have opening hours that guarantee the best care for the children and their guardian.¹⁰⁵

On July 15, 2009, the National Council of Criminal and Prison Policy (Conselho Nacional de Política Criminal e Penitenciária) issued Resolution No. 4, which details the steps to be taken for the gradual separation of the convicted mother from her child, once the child reaches the age of one year and six months.¹⁰⁶

According to the National Penitentiary Department (Departamento Penitenciário Nacional), in December 2012 there were 14,119 convicted women incarcerated in a "closed regime" (*regime fechado*) in the country.¹⁰⁷ However, no information was provided regarding how many children were being raised in prison.

¹⁰¹ Prisons Act of 1980, § 66(8).

¹⁰² U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012: BOTSWANA 2 (Apr. 19, 2013), <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204091.htm>.

¹⁰³ Lei No. 7.210, de 11 de Julho de 1984, as amended by Lei No. 11.942, de 29 de Maio de 2009, art. 83(§2), http://www.planalto.gov.br/ccivil_03/LEIS/L7210compilado.htm.

¹⁰⁴ *Id.* art. 89.

¹⁰⁵ *Id.*

¹⁰⁶ Conselho Nacional de Política Criminal e Penitenciária, Resolução No. 4, de 15 de Julho de 2009, <http://portal.mj.gov.br/depen/main.asp?View={B0287B7C-BA8B-45BD-B627-DC67B0AE176A}> (click on the drop-down menu and select *Resoluções*).

¹⁰⁷ *Infopen – Estatística: População Carcerária*, MINISTÉRIO DA JUSTIÇA, DEPARTAMENTO PENITENCIÁRIO NACIONAL, <http://portal.mj.gov.br/main.asp?View={D574E9CE-3C7D-437A-A5B6-22166AD2E896}&Team=¶ms=itemID={2627128E-D69E-45C6-8198-CAE6815E88D0};&UIPartUID={2868BA3C-1C72-4347-BE11-A26F70F4CB26}> (last visited Aug. 1, 2014).

Burma

According to a 2011 report submitted to the United Nations Committee on the Rights of the Child (CRC) by the Child Rights Forum of Burma, there are infants and young children living in prison with their mothers in Burma.¹⁰⁸ The report states that babies born in prison and children who accompany their mother during the mother's incarceration do not receive adequate health care and nutritious food, and their mothers are often denied assistance during childbirth. Moreover, the absence of everyday stimuli and educational material in Burma's prisons hampers children's social and emotional development.¹⁰⁹ No Burmese law regarding children in prison was located.

Burundi

Burundian law appears to allow imprisoned mothers to have their children live with them. There were eighty-five babies and children living with an incarcerated parent (*parent*) in Burundian prisons as of 2009, out of a total penitentiary population of 11,084 inmates.¹¹⁰ No special accommodation is provided for these children and their incarcerated parent, and only nine of them had access to special health services and clothing provided by a charity organization.¹¹¹

Cambodia

According to an October 2013 report of the Cambodian League for the Promotion and Defense of Human Rights (Ligue cambodgienne pour la promotion et la défense des droits de l'homme, LICADHO), there were fifty-one children aged between one month and eight years living with their incarcerated mothers in the prisons monitored by LICADHO in July 2013. The report states that the Cambodian Prison Law of December 2011 lowered the maximum age limit of children allowed to stay in prison from the age of six to the age of three, but this age limit has not been fully observed. The report also said that the Cambodian prison system is incapable of providing for most of a child's basic needs, including education, family life, proper nutrition, and medical care.¹¹²

¹⁰⁸ CHILD RIGHTS FORUM OF BURMA, CRC SHADOW REPORT BURMA: THE PLIGHT OF CHILDREN UNDER MILITARY RULE IN BURMA 9–10 (Apr. 29, 2011), http://www2.ohchr.org/english/bodies/crc/docs/ngos/Myanmar_CRFB_CRC.pdf.

¹⁰⁹ *Id.*

¹¹⁰ ADELAÏDE NIYAKIRE, RAPPORT DE RECHERCHE SUR LES MINEURS EN DANGER AU BURUNDI [RESEARCH REPORT ON ENDANGERED MINORS IN BURUNDI] 14 (Centre de Recherche et de Formation pour la Paix [Center for Research and Education for Peace], 2010), <http://justice.gov.bi/IMG/pdf/CERFOPAX- Rapport Mineurs en danger.pdf>.

¹¹¹ *Id.*

¹¹² LICADHO, CHILDHOOD BEHIND BARS: GROWING UP IN A CAMBODIAN PRISON – SOKUN'S STORY (Oct. 2013), <http://www.licadho-cambodia.org/reports/files/182LICADHOREportChildrenBehindBars2013-English.pdf>. The text of the Prison Law of December 2011 was not located.

Cameroon

Cameroonian prisons appear to house young children who were born there to incarcerated mothers. As of July 2012, there were allegedly five infants in the central prison of Yaoundé, the capital.¹¹³ No special accommodation seems to exist for these children and their mothers, and the Yaoundé central prison is extremely overpopulated: originally built for eight hundred inmates, it housed 3,922 inmates in 2012, including 114 women and 211 juveniles.¹¹⁴ No information on how many children live with incarcerated mothers in other Cameroonian prisons was located.

Canada

In Canada, offenders who have been sentenced to imprisonment for two or more years are kept in federal corrections facilities, while those with a lower sentence remain in provincial correctional centers.¹¹⁵ Certain measures are in place to help incarcerated parents maintain parental relations with their children, including escorted temporary absence,¹¹⁶ unescorted temporary absence,¹¹⁷ and family visits without a physical barrier to personal contact.¹¹⁸ For younger children, the Correctional Service of Canada established guidelines in 1995 to provide for a Mother-Child Program (MCP),¹¹⁹ which is subject to the institutional head (or warden's) discretion and an institution's space availability.¹²⁰

The MCP provides a full-time cohabitation program for female offenders with children under four years old and a part-time program for children aged six and under. The program was fully implemented in 2001 and was modified in 2008 by Public Safety Canada, after the media covered the *Whitford* case,¹²¹ in which a mother accused of shooting her partner was allowed to temporarily keep her newborn child in prison.¹²² As a result of the *Whitford* decision the eligibility criteria were modified by ministerial directive to exclude offenders convicted of

¹¹³ Léger Ntiga, *Pénitencier de Yaoundé: Cinq enfants en détention de fait [Yaoundé Penitentiary: Five Children De Facto Incarcerated]*, CAMEROON WEB NEWS (Aug. 2, 2012), <http://cameroonwebnews.com/2012/08/02/penitencier-de-yaounde-cinq-enfants-en-detention-de-fait/>.

¹¹⁴ *Id.*

¹¹⁵ Corrections and Conditional Release Act, S.C. 1992, c. 20, § 16(1).

¹¹⁶ *Id.* § 17(1)(b); Corrections and Conditional Release Regulations, SOR/92-620, § 9(e).

¹¹⁷ Corrections and Conditional Release Act § 116 & 117 loi; Corrections and Conditional Release Regulations § 155(e).

¹¹⁸ Corrections and Conditional Release Regulations § 90.

¹¹⁹ CORRECTIONAL SERVICE CANADA, GUIDELINES FOR PARENTING SKILLS PROGRAMS FOR FEDERALLY SENTENCED WOMEN (Jan. 1995), http://www.csc-scc.gc.ca/publications/fsw/parenting/guidelines_e.pdf.

¹²⁰ *Women's Correction: Mother-Child Program*, CORRECTIONAL SERVICE OF CANADA, <http://www.csc-scc.gc.ca/text/prgrm/fsw/pro02-5-eng.shtml> (last visited July 25, 2014).

¹²¹ *R. v. Whitford*, [2008] B.C.S.C. 1378 (Can., B.C.).

¹²² Benjamin Shingle, *Canada Expanding Rarely Used Program that Lets Mothers Live with Children in Minimum Security Prisons*, NATIONAL POST (May 19, 2014), <http://news.nationalpost.com/2014/05/19/canada-expanding-rarely-used-program-that-lets-mothers-live-with-children-in-minimum-security-prisons/>.

serious crimes and to restrict the part-time program.¹²³ In practice, the rate of participation for the MCP is very low, which is attributed to “correctional overcrowding,” a “more punitive institutional culture,” and a number of changes to “program’s eligibility criteria.”¹²⁴ Since 2008, only fourteen children have participated at the federal level, eight of them on a full-time basis.¹²⁵ There were three MCP participants among 261 federal female offenders in April 2003, four participants for 460 offenders in April 2007, and zero participants for 603 offenders in April 2012.¹²⁶ These numbers illustrate that the rate of MCP participation has decreased even while the number of female prisoners has increased. The Correctional Service of Canada recently announced the expansion of “special rooms” to facilitate the MCP but it has not been confirmed whether more women would actually participate, according to news reports.¹²⁷

At the provincial level, most of the provinces, including Québec, Ontario and Alberta, do not provide a specific program allowing the cohabitation of children with their offender parents and programs that are in place are limited to familial visits, with the distinction that Alberta has implemented videoconference visits to allow for more visits, as well as longer visiting hours.¹²⁸ British Columbia began to provide an MCP at provincial institutions in 1973 to permit “women who gave birth while serving sentences of provincial incarceration” to “keep their babies with them in their respective institutions.”¹²⁹ In 2008, a mother-baby program was cancelled in a provincial correctional center but the Supreme Court of British Columbia reversed the decision by declaring it an unconstitutional violation of the principles of fundamental justice and the right to equality under sections 7 and 15 of the Canadian Charter of Rights and Freedoms.¹³⁰

Chile

The Regulation of Prisons¹³¹ requires Chile’s prisons for women to provide adequate spaces and conditions for the pre- and postnatal care and treatment of mothers and their breastfeeding children.¹³² In regular prisons that are not dedicated only to women, the penitentiary authorities must provide the necessary measures and programs for women who bring their breastfeeding children with them.¹³³

¹²³ Sarah Brennan, *Canada’s Mother-Child Program: Examining Its Emergence, Usage and Current State*, 3(1) CAN. GRAD. J. SOC. & CRIM. 18 (Spring 2014).

¹²⁴ *Id.* at 1.

¹²⁵ Shingle, *supra* note 122.

¹²⁶ Brennan, *supra* note 123, at 24.

¹²⁷ Shingle, *supra* note 122.

¹²⁸ *Visiting Inmates*, ALBERTA JUSTICE AND SOLICITOR GENERAL, http://www.solgps.alberta.ca/programs_and_services/correctional_services/adult_centre_operations/nerc/Pages/VisitingInmates.aspx (last visited July 25, 2014).

¹²⁹ *Inglis v. British Columbia (Minister of Public Safety)*, [2013] B.C.S.C. 2309 (Can., B.C.), ¶ 18.

¹³⁰ *Id.* ¶ 10.

¹³¹ Decreto 518/1998 sobre el Reglamento de Establecimientos Carcelarios [Decree 518/1998 on the Regulation of Prisons] art. 19, May 22, 1998, available at Biblioteca del Congreso website, <http://bcn.cl/1m04j>, as amended by Decreto 1248 art. 6, Apr. 3, 2006, available at <http://bcn.cl/1mb85>.

¹³² *Id.* art. 19, 1st para.

¹³³ *Id.* art. 19, 3d para.

As of 2012, 307 mothers had children of breastfeeding age living with them in the prison for women located in Santiago.¹³⁴

China

Chinese law does not appear to allow children to live in prisons with their prisoner mothers. Instead, the Criminal Procedure Law provides that a woman sentenced to imprisonment or criminal detention may be permitted to temporarily serve her sentence outside of prison when she is pregnant or breast-feeding her own baby.¹³⁵

Colombia

The Penitentiary and Prisons Code of Colombia¹³⁶ provides that children aged three and younger may live with their mothers in prison unless a judge decides otherwise.¹³⁷ The Instituto Colombiano de Bienestar Familiar (Colombian Institute of Family Welfare), in coordination with penitentiary authorities, provides special care to minor children residing in prison with their mothers, including educational and recreational programs for them.¹³⁸

As of July 2013, there were 237 children living with their mothers in Colombia's prisons.¹³⁹

Côte d'Ivoire

Ivorian law appears to allow incarcerated mothers to keep their young children with them in prison. As of July 2014, there were 144 pregnant women and mothers of children under three years of age at the MACA, the main prison in Côte d'Ivoire.¹⁴⁰ These inmates and their children are housed in regular prison cells, as there are no special accommodations for them.¹⁴¹

¹³⁴ PONTIFICIA UNIVERSIDAD CATÓLICA DE CHILE, CENTRO DE POLÍTICAS PÚBLICAS, EL IMPACTO SOCIAL DE LA PRISIÓN FEMENINA: RECOMENDACIONES PARA UNA POLÍTICA PÚBLICA EN LA MATERIA 11 (2012), <http://www.minjusticia.gob.cl/media/2013/04/presentacion-impacto-social.pdf>.

¹³⁵ Xingshi Susong Fa [Criminal Procedure Law] (adopted by the National People's Congress, July 1, 1979, last amended Mar. 14, 2012, effective Jan. 1, 2013), art. 254, 1996, LAWS OF CHINA 63–88, amendment and English translation available at Westlawchina.com (by subscription).

¹³⁶ Ley 65/1993, Código Penitenciario y Carcelario [Law 65/1993, Penitentiary and Prisons Code], Aug. 19, 1993, <http://www.secretariassenado.gov.co/index.php/leyes-y-antecedentes/vigencia-expresa-y-sentencias-de-constitucionalidad> (click on *Códigos y Estatutos Nacionales*, then select specific code).

¹³⁷ *Id.* art. 153, 1st para.

¹³⁸ *Id.* art. 153, 2d para.

¹³⁹ *Los niños que Crecen tras las Rejas*, EL TIEMPO (July 26, 2013), <http://www.eltiempo.com/archivo/documento/CMS-12951122>.

¹⁴⁰ Armand Tanoh, *Plaidoyer pour un projet de loi pour les enfants en milieu carcéral en Côte d'Ivoire* [A Plea for a Bill for Children in Prison in Côte d'Ivoire], LA DIPLOMATIQUE D'ABIDJAN (July 17, 2014), <http://ladiplomatique.dabidjan.com/index.php/societe/item/1722-plaidoyer-pour-un-projet-de-loi-pour-les-enfants-en-milieu-carceral-en-cote-d-ivoire>.

¹⁴¹ *Id.*

Cuba

According to a Quaker United Nations Office report, as of 2010, the age limit for children living in prison with their incarcerated mothers in Cuba was generally one year.¹⁴² No relevant statistical information on the number of children incarcerated with their mothers could be located.

Denmark

Danish law provides that “an inmate has the right to have [his/her] child under the age of one accompany [him/her] to prison, provided that he or she is capable of looking after the child.”¹⁴³ Thus, the Danish provision does not limit the right to care for a child to only the mother but all inmates are given the same right, provided they can care for the child. Also, inmates in Denmark are allowed to cohabit with a fellow incarcerated inmate if the couple had a relationship before being sentenced, and with nonsentenced spouses at the more relaxed family houses of open prisons or halfway houses (i.e., houses where prisoners who are soon to be released are housed).¹⁴⁴

High-security prisons are uncommon in Denmark; instead most inmates serve their sentences in so-called open prisons, as these are the presumed sentencing facilities for all crimes resulting in less than five years in prison.¹⁴⁵ The articulated goal is to have all inmates serve in an open prison.¹⁴⁶

Denmark does not have special female prisons but has recently discussed the creation of the same.¹⁴⁷ The reason for the current lack of special female prisons is the relatively few female inmates (totaling seventy-five in 2014)¹⁴⁸ and the principle of being incarcerated close to family

¹⁴² OLIVER ROBERTSON, QUAKER UNITED NATIONS OFFICE, COLLATERAL CONVICTS: CHILDREN OF INCARCERATED PARENT: RECOMMENDATIONS AND GOOD PRACTICE FROM THE UN COMMITTEE ON THE RIGHTS OF THE CHILD 74 (Mar. 2012), http://www.quano.org/sites/default/files/resources/ENGLISH_Collateral%20Convicts_Recommendations%20and%20good%20practice.pdf.

¹⁴³ 54 § STRAFFULDBYRDELSLOVEN [SENTENCE EXECUTION ACT] (Lovbekendtgørelse [LBK] nr 435 af 15/05/2012 [Act Promulgation No. 435 of May 15, 2012]), <https://www.retsinformation.dk/Forms/R0710.aspx?id=141683>; see also PADDICK, *supra* note 51, at 113–32 (summary of Danish accommodation of children in prisons).

¹⁴⁴ PADDICK, *supra* note 51, at 114 & 128.

¹⁴⁵ 22 § STRAFFULDBYRDELSLOVEN. For an example of an open prison see *Statsfængslet på Søbysøgaard*, SØBYSØGÅRD, <http://www.soebysogaard.dk/> (last visited Aug. 12, 2014), which caters to inmates with short sentences or inmates near the end of their term and focuses on resocialization.

¹⁴⁶ *The Danish Prison and Probation Service in Brief*, KRIMINALFORSORGEN (Oct. 2010), <http://www.kriminalforsorgen.dk/General-information-684.aspx>.

¹⁴⁷ *Justitsministeren ser positivt på kvindefængsel*, JUSTITSMINISTERIET (June 18, 2014), <http://justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2014/justitsministeren-ser-positivt-p%C3%A5-kvindef%C3%A6ngsel>.

¹⁴⁸ *Id.*

members.¹⁴⁹ The few mothers in prison can also be explained by the fact that Danish legislation specifically includes a mission statement that the purpose of a prison sentence is to serve as punishment” but also to help the individual transition into a crime-free life.¹⁵⁰

Inmates are given the same rights to health care as the population at large and also perform work the same as ordinary citizens.¹⁵¹ Prison mothers who work in prison are entitled to a year of maternity leave, i.e., they have to remain in prison but do not have to work or study during this time, which allows them to focus on taking care of their children.¹⁵² Working inmates are also entitled to paid sick leave.¹⁵³

Another accommodation that benefits mothers is Denmark’s relatively short prison sentences and its willingness to assign alternative sentences, such as electronic surveillance. Electronic surveillance is used for prison sentences of up to five months.¹⁵⁴ Other alternatives include serving out the sentence in an institution.¹⁵⁵

There has been one report of a child that was conceived in a high security prison, born while her mother and father served a sentence for murder, who was reared in prison until her third birthday and then moved out to be better accommodated.¹⁵⁶ Another report estimated that approximately ten children live with their parents in prison each year in Denmark.¹⁵⁷

Ecuador

Ecuador’s Code of Childhood and Adolescence¹⁵⁸ provides that children whose parents are in prison are to receive protection and assistance from the state outside of the rehabilitation institution to ensure their right to family and community interaction, and are to be provided with direct and regular contact with their parents.¹⁵⁹

¹⁴⁹ *Id.*; Ch. 7:23 § STRAFFULDBYRDELSESLOVEN.

¹⁵⁰ Ch. 2:3 § STRAFFULDBYRDELSESLOVEN.

¹⁵¹ 2:7 SUNDHEDSLOVEN (LBK nr 913 af 13/07/2010) [HEALTH ACT (No. 913 of July 13, 2010)], <https://www.retsinformation.dk/Forms/R0710.aspx?id=130455>.

¹⁵² 2:2 BARSELLOVEN (LBK nr 872 af 28/06/2013) [MATERNITY ACT (No. 872 of June 28, 2013)], <https://www.retsinformation.dk/Forms/R0710.aspx?id=152510>.

¹⁵³ KRIMINALFORSORGEN, *supra* note 146.

¹⁵⁴ Ch. 13a:78a § STRAFFULDBYRDELSESLOVEN.

¹⁵⁵ *Id.* Ch. 7:20 §, Ch. 13:78 §.

¹⁵⁶ PADDICK, *supra* note 51, at 114 & 128.

¹⁵⁷ *Bare fordi mor og far er kriminelle, behøver de ikke at være dårlige forældre*, INFORMATION.DK (Aug. 3, 2007), <http://www.information.dk/143743>.

¹⁵⁸ CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA [CODE OF CHILDHOOD AND ADOLESCENCE], Jan. 3, 2003, *available at* http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador_Code.htm.

¹⁵⁹ *Id.* art. 56.

In 2007, the government started a program called Ecuador Sin Niños en las Cárceles (Ecuador with No Children in Prisons) to remove children older than three years of age from the prisons where they were living with their mothers. As of 2012, only 203 children remained with their mothers in prison, reduced from 1,400 in 2007.¹⁶⁰

Egypt

Article 20 of Law No. 396 of 1956 on the Organization of Prisons, as amended by Law No. 20 of 1973, provides that a newborn in Egypt can remain with his/her imprisoned mother until the child reaches the age of two. If the mother is not willing to have the child stay with her or when the child has reached two years of age, the child must live with his/her father or any relative selected by the mother. If the child does not have a father or any other relatives, the prison director must notify the governor to place the child in an outside orphanage. The director will notify the imprisoned mother of the location of the orphanage so that she can visit the child in accordance with regulations.¹⁶¹

Article 31-bis of Law No. 12 of 1996 Promulgating the Child Law, as amended by Law No. 126 of 2008, states that

[a] nursery shall be established in every prison for women, according to the specifications for nurseries, where children of female prisoners may be placed until they reach the age of four on condition that the mother stays with her child during the first year of his life.

A decree shall be issued by the Minister of Interior to regulate the communication between the imprisoned mother and her child. The mother shall not take the child to her prison cell and she shall not be deprived from seeing her child or taking care of him as a punitive action for any wrongdoing.¹⁶²

According to a report issued by a women's rights organization in 2013, there were thirty-five imprisoned mothers living with their children in the largest women's prison, located in Cairo.¹⁶³ Information on the total number of children living with their mothers in prison in the country could not be located.

¹⁶⁰ *En Cinco Años de la Población Infantil que Vivía en las Cárceles se Redujo en un 85%*, ANDES (AGENCIA PÚBLICA DE NOTICIAS DEL ECUADOR Y SURAMÉRICA) (Jan. 6, 2012), <http://www.andes.info.ec/es/d%C3%AD-del-ni%C3%B1o/2867.html>.

¹⁶¹ Law No. 396 of 1956 on the Organization of Prisons art. 20, *as amended by* Law No. 20 of 1973, *al-Jarīdah al-Rasmīyah*, 13 May 1973, vol. 20, available at <http://old.qadaya.net/node/203> (in Arabic).

¹⁶² Law No. 12 of 1996 Promulgating the Child Law, *al-Jarīdah al-Rasmīyah*, 28 March 1996, Vol. 39, No. 13 (supp.), pp. 2–47, *as amended by* Law No. 126 of 2008, *al-Jarīdah al-Rasmīyah*, 15 June 2008, No. 24Bis, pp. 2–27, both available at <http://www.egypt.gov.eg/english/laws/> (in Arabic), English translation of Law No. 12 as amended available at http://www.nccm-egypt.org/e7/e2498/e2691/infoboxContent2692/ChildLawno126english_eng.pdf.

¹⁶³ *See The Delegation of the National Council for Childhood Releases Its Statement from the Women Prison in Qanatir*, EGYWOMENNEWS.COM (Dec. 14, 2013), <http://www.egywomennews.com/print.php?option=browse&id=93138#.U-E5fRCwXq9> (in Arabic).

El Salvador

Salvadoran law provides that children under five years of age can stay with their incarcerated mothers in prison. To this end, the law requires that a place for child care must be established in women's prisons¹⁶⁴ and that those prisons must provide pediatric care for children.¹⁶⁵

An article published online in May 2013 indicated that the prison of Ilopango—an overcrowded prison just outside of San Salvador, the capital—contained 1,700 women prisoners, 300 of whom were mothers struggling to provide their children with a family-like environment.¹⁶⁶

England and Wales

England and Wales have specialized mother and baby units that are separate from the general population within women's prisons to allow babies to stay with their mothers if a number of factors are met.¹⁶⁷ Admission into the unit is not automatic; it is decided by an admissions board chaired by a social worker. The capacity of these centers is very limited, with only seventy-seven places across the nation,¹⁶⁸ while around 120 females in custody give birth each year.¹⁶⁹ The decision to admit the mother and baby takes into account a number of factors, including

- a) Whether it is in the best interests of the child
- b) The necessity to maintain good order and discipline within the MBU
- c) The health and safety of other babies and mothers within the unit[.]¹⁷⁰

In the majority of cases, the child leaves the unit by the time the child is eighteen months, or earlier if it is in the best interests of the child to do so. There are exceptional cases where the child may be allowed to stay longer, but the general expectation is that the child will leave the unit by the age of eighteen months or earlier. The separation plan is agreed upon by a team as soon as the mother enters the unit, and the mother is involved in the process.

¹⁶⁴ Decreto No. 1027, Ley de Penitenciaria [Prison Law] art. 70, DIARIO OFICIAL, May 13, 1997, <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-penitenciaria> (click on *Descargar*).

¹⁶⁵ *Id.* art. 118.

¹⁶⁶ *Galería: Así se Nace y se Crece en las Cárceles de El Salvador*, ZÓCALO SALTILLO (May 14, 2013), <http://www.zocalo.com.mx/seccion/articulo/galeria-asi-se-nace-y-se-crece-en-las-carceles-de-el-salvador-1368551757>.

¹⁶⁷ The operation of prisons in England and Wales is regulated by the Prison Rules, which are set out in the Prison Service Instructions. These instructions regulate the operation of the Mother and Baby Units. Prison Service Order: Women Prisoners, 2008, PSO 4800, at 51, https://www.justice.gov.uk/downloads/offenders/psipso/psipso/PSO_4800_women_prisoners.doc.

¹⁶⁸ *Women Prisoners*, MINISTRY OF JUSTICE, <https://www.justice.gov.uk/offenders/types-of-offender/women> (last updated Sept. 4, 2012).

¹⁶⁹ Prison Service Order, *supra* note 167.

¹⁷⁰ Mother and Baby Units, 2011, PSI 16/2011, ¶ 1.4, <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi-54-2011.doc>.

Ethiopia

Ethiopian federal law provides that an infant under the age of eighteen months whose mother is in federal custody and who needs close maternal care may be allowed to stay with the mother.¹⁷¹ In this situation, the Federal Prison Administration (the Administration) is required to provide the infant with “the necessary food, vaccination, medical care as well as other necessary items.”¹⁷² In addition, on the recommendation of a medical officer, the Administration is required to provide extra food to female inmates who are pregnant or caring for an infant child.¹⁷³

The law further provides that if staying with the mother is likely to “have an adverse physical or psychological impact” on the infant, the child must be placed with a close relative.¹⁷⁴ In the absence of a close relative, the Administration is required to “facilitate the possibilities” of finding another suitable placement for the child.¹⁷⁵ For instance, some prisons in Ethiopia have placed in orphanages children for whom prisons were deemed unsuitable and no relation was available to assume custody.¹⁷⁶

A secondary source consulted for this report indicated that regional prisoner treatment regulations and directives follow the same standards.¹⁷⁷

In a 2012 study of 114 of the 119 detention centers (housing both convicts and people awaiting court decisions on their cases) in the country’s nine regional states and two Federal City Administrations, the Ethiopian Human Rights Commission (EHRC) found that there were 88,610 detainees, of whom 2,700 (3.1%) were female.¹⁷⁸ The EHRC also found that 496 children were staying with their mothers in detention centers around the country.¹⁷⁹

¹⁷¹ Federal Prisons Commission Establishment Proclamation No. 365 of 2003, art. 28, FEDERAL NEGARIT GAZETA OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA (Sept. 9, 2003), available on the Ethiopian Legal Brief website, at <http://chilot.files.wordpress.com/2012/10/proc-no-365-2003-federal-prisons-commission-establishment.pdf>.

¹⁷² Treatment of Federal Prisoners Council of Ministers Regulations No. 138 of 2007, art. 12, FEDERAL NEGARIT GAZETA OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA (June 1, 2007), <http://chilot.files.wordpress.com/2011/01/reg-no-138-treatment-of-federal-prisoners.pdf>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ THE ETHIOPIAN HUMAN RIGHTS COMMISSION, HUMAN RIGHTS PROTECTION MONITORING IN ETHIOPIAN PRISONS: PRIMARY REPORT 159 (July 2012), <http://www.ehrc.org.et/LinkClick.aspx?fileticket=1uE7TO6QzbQ%3D&tabid=117>.

¹⁷⁷ *Id.* 159.

¹⁷⁸ *Id.* at IX, XII & 8.

¹⁷⁹ *Id.* at 158.

Fiji

The Fiji Corrections Service Act 2006 provides for regulations to be made in relation to “arrangements for female prisoners and their children consistent with the rights and obligations of CEDAW [Convention to Eliminate All Forms of Discrimination Against Women] and CRC [Convention on the Rights of the Child], and in particular the rights of mothers to feed and care for their infant children whilst in prison.”¹⁸⁰ The Corrections Service Regulations 2011 also provide for Commissioners Orders to be made related to “arrangements for female prisoners and infant children.”¹⁸¹ The Officer in Charge of a prison must ensure compliance with the Regulations and Orders, including those relating to all aspects of the role of Visiting Medical Officers, “including matters associated with . . . the rights of female prisoners and their young children.”¹⁸² The relevant Orders could not be located.

According to media reports, in 2009 the first ever arrangements were made for an infant to reside with his mother in the Fiji women’s prison, with the International Women’s Association providing assistance to renovate an empty room to turn it into a nursery and donating clothing, bedding, and furniture. The prison service was also said to be providing for the special needs of the mother and child, including dietary needs.¹⁸³ It was also reported that, as part of new arrangements under the 2006 legislation, children up to six years of age would be able to reside in prison with their mothers.¹⁸⁴ Later in 2009, the prison service reported that a second baby had been born to an inmate and that the women’s prison “has special accommodation for all necessary pre-natal and post-natal care and treatment.”¹⁸⁵ An August 2013 media report indicated that there were forty-five inmates in the women’s prison and that one child aged three years resided in the prison.¹⁸⁶ Funding for a new women’s prison was allocated in the government’s budget for 2014.¹⁸⁷

¹⁸⁰ Prisons and Corrections Act 2006, s 54(1)(o), http://www.paclii.org/fj/legis/num_act/paca2006268/. As a result of the Prisons and Corrections (Amendment) Decree 2011, s 2, http://www.paclii.org/fj/promu/promu_dec/pacd2011361/, this legislation is now known as the “Corrections Service Act 2006.” See also Office of the Solicitor General, Laws of Fiji: 2012 General Index – Written Laws 55 (rev. Jan. 27, 2012), <http://www.paclii.org/fj/indices/legis/2012-Laws-of-Fiji-General-Index.pdf>.

¹⁸¹ Corrections Service Regulations 2011, reg 25(h), FIJI ISLANDS GOVERNMENT GAZETTE SUPPLEMENT No. 8, 25 March 2011.

¹⁸² *Id.* reg. 4(1)(l)(v).

¹⁸³ Samuela Loanakadavu, *Baby in Jail*, THE FIJI TIMES ONLINE (Feb. 25, 2009), <http://www.fjtimes.com/story.aspx?id=115226>.

¹⁸⁴ *Kids up to Six Years Can Live Behind Bars*, THE FIJI TIMES ONLINE (Feb. 25, 2009), <http://www.fjtimes.com/story.aspx?id=115227>.

¹⁸⁵ Press Release, Fiji Prisons and Correctional Service, *Girl Child Born in Prison* (Aug. 10, 2009), <http://www.corrections.org.fj/pages.cfm/news/archives.html?year=2009&newsid=girl-child-born-prison-1>.

¹⁸⁶ *Nothing Glamorous About Prison Life*, FIJI SUN (Aug. 20, 2013), <http://www.fjtimes.com.fj/2013/08/20/nothing-glamorous-about-prison-life/>.

¹⁸⁷ Speech, PM Bainimarama, 2014 National Budget Announcement (Aug. 11, 2013), <http://www.fiji.gov.fj/Media-Center/Speeches/2014-NATIONAL-BUDGET-ANNOUNCEMENT.aspx>.

Finland

In Finland, the Prison Act specifies that placing a child in custody together with its parents is governed by the Children's Protections Act.¹⁸⁸ A small child can be placed in a family unit in the prison while the parent is serving his/her sentence.¹⁸⁹ The upper age limit is generally two years, but can be extended to three years if the welfare of the child so demands it.¹⁹⁰ The wording of the legislation is gender neutral on its face, allowing both men and women to be accompanied by their small children. A social worker assigned to the child decides whether or not to send a child with the parent, after first having heard the Criminal Sanctions Agency's recommendation.¹⁹¹

According to the Prison Act, men and women must live in separate units (wards) of a prison but may live in the same prison.¹⁹² There are in total twenty-six different prisons in Finland, none of which is an all-female prison.¹⁹³ In one "open prison" there is a family unit in which parents can live with their small children.¹⁹⁴ Inmates are assigned to the prison with the appropriate security level that is closest to their home.¹⁹⁵

Finland restricts prison sentences to only the most extreme cases.¹⁹⁶ A number of other alternative and conditional sentences can be imposed. These include conditional imprisonment, suspended sentences, and electronic monitoring.¹⁹⁷

All prisoners have the right to health care outside of the prison if health care cannot be adequately provided within the prison.¹⁹⁸ All necessary health care is paid by the state.¹⁹⁹ A

¹⁸⁸ As specified in chapter 4:10 § 23.9.2005/767 FÄNGELSELAG [PRISON ACT No. 767 of Sept. 23, 2005], [http://www.finlex.fi/sv/laki/ajantasa/2005/20050767?search\[type\]=pika&search\[pika\]=f%C3%A4ngelse](http://www.finlex.fi/sv/laki/ajantasa/2005/20050767?search[type]=pika&search[pika]=f%C3%A4ngelse).

¹⁸⁹ 13a § 12.2.2010/88 BARNSKYDDSLAG [CHILDREN'S PROTECTIONS ACT No. 88 of Feb. 12, 2010], <HTTP://WWW.FINLEX.FI/SV/LAKI/AJANTASA/2007/20070417>; see also Rosi Enroos, *Vankila lapsuudessa– lapset vankilassa* [Children in Prison], RIKOSSEURAAMUSVIRASTON, Issue No. 1 (2008), http://rikosseuraamus.fi/material/attachments/rise/julkaisut-risenjulkaisusarja/6BztFTf5K/1_2008_Vankila_lapsuudessa_lapset_vankilassa.pdf (Finnish study on children in prison, in Finnish; summary available in Swedish at 7–9).

¹⁹⁰ See 37 § para. 3 BARNSKYDDSLAGEN.

¹⁹¹ *Id.* 13 §.

¹⁹² Ch. 5:1 para. 3 FÄNGELSELAGEN.

¹⁹³ *Fängelser* [Prisons], RISE BROTTSPÅFÖLJDSMYNDIGHETEN (Nov. 28, 2013), http://www.rikosseuraamus.fi/sv/index/verksamhetsstallen_0/fangelser0.html.

¹⁹⁴ *Id.*

¹⁹⁵ *Placering och överföring*, RISE BROTTSPÅFÖLJDSMYNDIGHETEN (Oct. 1, 2013), <http://www.rikosseuraamus.fi/sv/index/verkstallighet/vankeusrangaistukseentuomittujensijoittelujasiirtaminen.html>.

¹⁹⁶ A summary of Finnish Prison Policy is available in RIKOSSEURAAMUS, STRATEGY OF THE CRIMINAL SANCTIONS AGENCY FOR 2011–2020 (Aug. 11, 2014), <http://www.rikosseuraamus.fi/en/index/criminalsanctionsagency/goals/valuesandprinciples.html>.

¹⁹⁷ See Ch. 6:1 § STRAFFLAG [CRIMINAL CODE] 19.12.1889/39, <http://www.finlex.fi/sv/laki/ajantasa/1889/18890039001?search%5Btype%5D=pika&search%5Bpika%5D=strafflag>. For electronic monitoring provisions, see LAG OM ÖVERVAKNINGSTRAFF [ACT ON ELECTRONIC MONITORING SENTENCES], <http://www.finlex.fi/sv/laki/ajantasa/2011/20110330?search%5Btype%5D=pika&search%5Bpika%5D=straff>.

special provision is added for the delivery of a child, which states that “a prisoner who is pregnant shall, sufficiently in advance, under appropriate supervision, be sent to a hospital for delivery or to any other health care facility that is located outside the hospital.”²⁰⁰ The sentence is not extended by any time spent in delivery or a health facility; instead, the clock runs while participating in these activities.²⁰¹ Moreover, the start of a pregnant woman’s term in prison can be postponed until the mother has sufficiently recovered from the birth.²⁰²

During 2013 there were 242 women in Finnish prisons, which accounted for approximately eight percent of the prison population.²⁰³ Fifty percent of the sentenced women were serving time for violent crimes.²⁰⁴ A study and survey of female prisoners was conducted in 2008, which found that little accommodation had been made for women.²⁰⁵

According to one report, approximately one hundred children were housed in Finnish prisons with their mother between 2000 and 2006.²⁰⁶ No systematic statistics are kept of the number of small children in prison.²⁰⁷

France

French law allows incarcerated mothers to keep their child with them until the child reaches eighteen months of age.²⁰⁸ The interregional director of penitentiary services may allow a mother to keep her child beyond the first eighteen months, upon her request and after consulting a special commission.²⁰⁹ This commission includes, among others, a psychiatrist, a pediatrician, a psychologist, and a probation officer.²¹⁰

¹⁹⁸ Ch. 10:2 § FÄNGELSELAGEN.

¹⁹⁹ *Id.* ch. 10:7 §.

²⁰⁰ *Id.* ch. 10:4 §, para. 1.

²⁰¹ *Id.* ch. 10:4 §, para. 2.

²⁰² *Id.* ch. 2:3 §, para. 3.

²⁰³ RISE BROTTSPÅFÖLJDSMYNDIGHETEN, BROTTSPÅFÖLJDSMYNDIGHETENS STATISTISKA ÅRSBOK 2013 [THE CRIMINAL SANCTIONS AGENCY’S ANNUAL STATISTICAL YEARBOOK 2013] at 17, http://www.rikosseuraamus.fi/material/attachments/rise/julkaisut-tilastollinenvuosikirja/pe47jUHpn/Brottspafoljdsmyndighetens_statistiska_arsbok_2013_.pdf.

²⁰⁴ *Id.*

²⁰⁵ English summary of *Women in Sight*, 3/2008, RISE CRIMINAL SANCTIONS AGENCY (Oct. 15, 2013), <http://www.rikosseuraamus.fi/en/index/news/publications/rise-publications/32008womenprisoners.html>.

²⁰⁶ Enroos, *supra* note 189, at 7–9.

²⁰⁷ *Id.*

²⁰⁸ CODE DE PROCEDURE PENALE (CODE OF CRIMINAL PROCEDURE) art. D401, http://www.legifrance.gouv.fr/affich/Code.do;jsessionid=2E1B6505838B6256B5CE6E1FD4ED4991.tpdjo17v_1?cidTexte=LEGITEXT000006071154&dateTexte=&categorieLien=cid.

²⁰⁹ *Id.* art. D401-1.

²¹⁰ *Id.* art. D401-2.

It is unclear exactly how many mothers live with their children in French jails and prisons, but it appears to be a very small number. A 2013 report by the Comptroller General in charge of the French prison system stated that, out of 1,794 places for women in the French penitentiary system, sixteen (4.3%) were reserved for women keeping a child.²¹¹ He added that there did not appear to be any general problems in finding places for mothers keeping a child, which would indicate that, in contrast with the overcrowding that currently exists in the French prison system generally,²¹² the number of places is sufficient to meet this specific demand.²¹³

Greece

The 1999 Disciplinary Code, Law No. 2776/1999, which governs life in prison for inmates, has an explicit provision for children of incarcerated parents.²¹⁴ Pursuant to article 13, imprisoned mothers have the right to have their children with them until they are three years old. The Code requires the placement of incarcerated mothers with children in special facilities suitable for the needs of the mothers and the children.²¹⁵ Children who are older than three and who lack other family support can be placed in special institutions for children, after the parents are informed and in accordance with the opinion of a judicial official. Such institutions operate under the supervision of the Ministry of Health, Welfare and Employment.²¹⁶

Older children have the right to visit their parents in specially designated areas within the prison.²¹⁷ They also have the right to communicate with their parents through telephone and correspondence.²¹⁸

The Disciplinary Code was amended in 2014, by Law 4274/2014.²¹⁹ The provisions cited above remained unchanged, however.

²¹¹ Controleur général des Lieux de Privation de Liberté, Avis du 8 août 2013 du Controleur général des lieux de privation de liberté relatif aux jeunes enfants en prison et à leurs mères détenues [Opinion of August 8, 2013, of the Comptroller General of Places of Deprivation of Liberty Regarding Young Children in Prison and Their Detained Mothers] 4 (Aug. 8, 2013), http://www.cglpl.fr/wp-content/uploads/2013/08/Avis-m%C3%A8res-enfants_20130903-def.pdf.

²¹² As of December 2013, the French prison system had an operational capacity of 58,466 but held a total of 67,738 inmates (2,196 women and 65,542 men), which translated to a density of 117.9%. DIRECTION DE L'ADMINISTRATION PÉNITENTIAIRE [PENITENTIARY ADMINISTRATION DIRECTORATE], STATISTIQUE MENSUELLE DE LA POPULATION ÉCROUÉE ET DÉTENUE EN FRANCE [MONTHLY STATISTICS OF COMMITTED AND DETAINED POPULATION IN FRANCE] 12, 18 (Dec. 1, 2013), http://www.justice.gouv.fr/art_pix/mensuelle_decembre_2013.pdf.

²¹³ Controleur général des Lieux de Privation de Liberté, *supra* note 211.

²¹⁴ SOFRONISTIKOS KODIKAS [DISCIPLINARY CODE], Law No. 2776/1999, EPHEMERIS TES KYVERNESEOS TES HELLNIKES DEMOKRATIAS [E.K.E.D.] [GAZETTE OF THE HELLENIC REPUBLIC] 1999, A:291, <http://www.et.gr/index.php/2013-01-28-14-06-23/search-laws>.

²¹⁵ *Id.* art. 13, para. 3.

²¹⁶ *Id.*

²¹⁷ *Id.* art. 52, para. 3.

²¹⁸ *Id.* art. 53.

²¹⁹ Law 4274/2014, E.K.E.D., 2014, A:147.

Guatemala

Guatemalan law provides that detention centers for women must have units or sections for pregnant inmates. Moreover, these centers must have conditions that enable women inmates to live with their children who are under four years of age and must provide suitable places for child care staffed with skilled personnel.²²⁰

The law mandates that the Secretariat of Social Work of the First Lady (Secretaría de Obras Sociales de la Esposa del Presidente) create shelters outside the prison and see to the education of children older than four years whose mothers are incarcerated and whose close relatives cannot take care of them in conditions that guarantee their development and comprehensive education.²²¹

A 2013 US Department of State report stated that children under three years of age could live in prison with their mothers.²²² This statement conflicts with Guatemalan law, which allows children under four to live with their mothers in prison. The report also indicates that the penitentiary system provided inadequate food for young children and many suffered from illness. According to the report, there were 1,412 women prisoners,²²³ but statistics regarding the number of children living in prison were not located.

Haiti

It appears that children born in prison are allowed to stay with their mothers until they are weaned.²²⁴ No information could be found concerning the prevalence of this type of situation.

Honduras

Honduran law provides that children of women prisoners have the right to be cared for by their mothers during their first two years of life in the least limiting conditions possible in the prison. To this end, the law mandates that child care centers be installed in modules nearby the mothers and food assistance and needed medication be provided.²²⁵

²²⁰ Decreto No. 33-2006, Ley del Régimen Penitenciario [Prisons Act] art. 52, DIARIO DE CENTRO AMÉRICA, Oct. 6, 2006, <http://old.congreso.gob.gt/archivos/decretos/2006/gtdcx33-2006.pdf>.

²²¹ *Id.*

²²² U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: GUATEMALA (updated Mar. 18, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=220447&year=2013#wrapper>.

²²³ *Id.*

²²⁴ WIZA LOUIS, ME. SAINT-PIERRE BEAUBRUN & NADEGE ISIDOR, DIAGNOSTIC DES SYSTEMES D'ENREGISTREMENT A L'ETAT CIVIL ET D'IDENTIFICATION NATIONALE EN HAÏTI [DIAGNOSTIC OF CIVIL STATUS RECORDING AND NATIONAL IDENTIFICATION SYSTEMS IN HAITI] 35 (Groupe d'Appui aux Rapatriés et Réfugiés [Support Group for Repatriates and Refugees], Droits et Démocratie [Rights and Democracy] (Nov. 2007), http://old.garr-haiti.org/IMG/doc/Etude_sur_Etat_Civil_Haitien.doc.

²²⁵ Decreto No. 64-2012, Ley del Sistema Penitenciario Nacional [National Penitentiary System Act] art. 44, LA GACETA, Dec. 3, 2012, available at <http://melarayasociados.com/legislacion/nuevo-pagina/nuevo-pagina-12/> (click

The age that incarcerated mothers can care for their children may be extended by a court resolution for up to two years when it is in the best interests of the child to do so, after which the court will decide on the custody of the child in accordance with the law.²²⁶

A 2013 US Department of State report indicated that there were 521 women in prison and that children up to the age of three could stay with their mother in prison,²²⁷ but statistics regarding the number of children living in prison were not located.

Hong Kong

In the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong, or HKSAR), female prisoners are allowed to keep their babies with them in prison until the children reach nine months old, with the additional possibility to keep them until age three.

According to the HKSAR's Prison Rules, the child of a female prisoner may be received into prison with its mother and kept during the normal period of lactation. Any child so admitted must not be taken from its mother until the medical officer certifies that it is in a fit condition to be removed.²²⁸ When the child reaches the age of nine months, the Commissioner of Correctional Services may place the child under the care of a relative to whom such care can properly be entrusted, or if such a relative is not available, another person or institution as approved by the Chief Executive of the HKSAR.²²⁹

With the Commissioner's permission, a child may remain in the prison until the mother has completed her sentence or such child has attained the age of three, whichever is earlier.²³⁰ The Rules also specify that children living in prison may be supplied with clothing at public expense.²³¹

A nongovernmental organization's report on the prison conditions of Hong Kong described the condition of children residing with their mothers at a Hong Kong prison in 1997 as follows:

[E]ight women inmates had infants with them. Mothers with babies stay in special nursery area. In addition, the facility has a very pleasant play room, full of toys, for

on "Descargar"). It is possible that amendments to this statute and additional legislation relating to this subject that are not available to the Law Library of Congress have been promulgated.

²²⁶ *Id.*

²²⁷ U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: HONDURAS (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrights/report/index.htm?dliid=220453&year=2013#wrapper>.

²²⁸ Prison Rules, (1997) Cap. 234A, § 21(1).

²²⁹ *Id.* § 21(2).

²³⁰ *Id.* § 21(3).

²³¹ *Id.* § 21(4).

children up to age six who are visiting their incarcerated mothers. At the mothers' request, the children are allowed half-day contact visits with them up to once a week.²³²

Iceland

The Icelandic Execution of Sentences Act provides that, “[i]f a woman has an infant child when she begins serving her sentence, or if she gives birth to a child during her term of imprisonment, she may be permitted, in consultation with a Child Welfare Committee, to have the child with her in prison.”²³³ The accompanying Enforcement of Sentences Regulation further prescribes that the upper age limit for a child in prison is eighteen months, as a stay thereafter is considered harmful to the child.²³⁴ Children younger than eighteen months undergo an evaluation by the Child Welfare Committee to determine if a stay in the prison is in their best interest.²³⁵

In addition to regular prison sentences it is also possible to serve a sentence in an institution outside the prison or to conduct community service.²³⁶ Icelandic law also allows for the deferment of sentencing for three months under special circumstances, which could apply to sentenced individuals who are pregnant or new mothers.²³⁷

Inmates enjoy the same health care benefits as the public at large.²³⁸ This includes access to prenatal and postnatal care.²³⁹

There are very few female inmates in Iceland. According to International Centre for Prison Studies (ICPS) statistics, during 2013 women only accounted for 3.2% of the 152-inmate prison population, thus totaling five female individuals.²⁴⁰ All females are housed in a separate prison, Kópavogsbraut, but because they are currently so few in number, men are also housed there.²⁴¹ Efforts have been taken to send men who have committed white-collar crimes to Kópavogsbraut

²³² Ch. VII, HUMAN RIGHTS WATCH & ASIA HONG KONG HUMAN RIGHTS MONITOR, HONG KONG, PRISON CONDITIONS IN 1997 (June 1997), <http://www.hrw.org/reports/1997/hngkng/Hongkong-07.htm>.

²³³ Execution of Sentences Act No. 49 of 17 May 2005, art. 23, <http://eng.innanrikisraduneyti.is/laws-and-regulations/english/penal-code-and-punishment/nr/1351>.

²³⁴ Provision 6, Regulation of Enforcement of Sentences, No. 961/2005, <http://www.reglugerd.is/interpro/dkm/WebGuard.nsf/aa0d47377abc977400256a090053ff91/bbe1d2b5ba83f517002570b5004bc533?OpenDocument>.

²³⁵ *Id.*

²³⁶ Execution of Sentences Act arts. 25, 27.

²³⁷ *Id.* art. 11.

²³⁸ Execution of Sentences Act art. 22; *Ýmis þjónusta*, FANGELSI.IS, <http://www.fangelsi.is/fangavist/ymis-thjonusta/> (last visited Aug. 6, 2014).

²³⁹ See generally Health Service Act No. 40/2007, as amended, http://eng.velferdarraduneyti.is/media/acrobat-enskar_sidur/Health_Service_Act-No_40_2007_as_amended.pdf; Act on Health Insurance No. 112/2008 (with amendments according to Act No. 173/2008 and Act No. 55/2009), <http://www.ilo.org/dyn/travail/docs/1578/Act%20on%20Health%20Insurance%20No%20112.pdf>.

²⁴⁰ *Iceland*, ICPS, <http://www.prisonstudies.org/country/iceland> (last visited Aug. 6, 2014).

²⁴¹ *Fangelsið Kópavogsbraut 17*, FANGELSI.IS, http://www.fangelsi.is/fangelsi-rikisins/fangelsid-kopavogsbraut_17/ (last visited Aug. 6, 2014).

and to keep them separated from the women.²⁴² There are both so-called “open” and “closed” (high-security) prisons in Iceland.²⁴³

Children have been housed at the Kópavogsbraut prison several times and it has reportedly worked well.²⁴⁴ The prison provides children with all the equipment needed for their care, including toys.²⁴⁵

India

According to the Constitution of India,²⁴⁶ prisons are under the jurisdiction of states. Prisons are managed and administered by state governments, subject to federally enacted laws such as the Prisons Act (1894).²⁴⁷ State governments have also enacted and issued state-level prison laws, rules, and manuals.

A large portion of the prison population is dominated by first-time offenders (around 90%) and they are mostly male (nearly 96%).²⁴⁸ According to the National Crime Records Bureau’s *Prison Statistics India Snapshots – 2012*, 1,394 existing prisons housed 385,135 inmates in the country. There were a total of 344 women convicts with their 382 children and 1,226 women awaiting trial with their 1,397 children lodged in various prisons in the country.²⁴⁹

In 2006, the Supreme Court of India “laid down guidelines . . . to ensure prison authorities follow[ed] minimum standards while lodging women with children.”²⁵⁰ According to a summary of the Asian Human Rights Commission the Court ordered that children up to the age of six can remain with their incarcerated mother and then should be placed with a surrogate, if the mother so wishes, or an institution maintained by the Social Welfare Department; children living with their mother in a prison should not be treated as detainees or convicts; they “should be provided with food, clothing, separate utensils, adequate sleeping facilities, and other necessary facilities” necessary for the “healthy development of a child;” they are also “entitled to

²⁴² *Id.*

²⁴³ *Fangelsi ríkisins*, FANGELSI.IS, <http://www.fangelsi.is/fangelsi-rikisins/> (last visited Aug. 6, 2014).

²⁴⁴ *Fangelsið Kópavogsbraut 17*, FANGELSI.IS, http://www.fangelsi.is/fangelsi-rikisins/fangelsid-kopavogsbraut_17/ (last visited Aug. 6, 2014).

²⁴⁵ See Jóhanna Bryndís Þórisdóttir, *Aðstaða kvenna í fangelsum á Íslandi*, Jan. 2012, at 14, http://skemman.is/stream/get/1946/10531/26231/1/BA-ritger%C3%B0_J%C3%B3hanna_1%C3%A6st.pdf (in Icelandic; Háskóli Íslands University Graduate Paper).

²⁴⁶ INDIA CONST., 7th sched., art. 246.

²⁴⁷ Prisons Act, No. 9 of 1894, INDIA CODE (1894).

²⁴⁸ *Id.* at 5.

²⁴⁹ NATIONAL CRIME RECORDS BUREAU, PRISON STATISTICS INDIA – 2012: SNAPSHOTS, <http://ncrb.gov.in/PSI-2012/Snapshots-2012.pdf>.

²⁵⁰ *INDIA: Innocent Children Forced to Live in Prison with Convict*, ASIAN HUMAN RIGHTS COMMISSION (Jan. 8, 2014), <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-006-2014> (citing *R. D. Upadhyay v. State of Andhra Pradesh*, A.I.R. 2006 S.C. 1946).

medical care and vaccinations;” and they must be “provided with adequate educational and recreational facilities.”²⁵¹

Following the Supreme Court ruling, Indian prisons must also “provide crèches for children under three and nurseries for children aged three to six.”²⁵² Moreover, various jurisdictions also provide financial support for the children of incarcerated parents.²⁵³ The State of Kerala “pays a monthly stipend to children of prisoners serving at least a two-year sentence,”²⁵⁴ and the State of West Bengal has a law providing “that if a detained person has dependent children studying in school or college, the state government will help to pay for the child to continue attending school.”²⁵⁵ In addition, “some schools in India have lowered their tuition fees for children who are staying in prisons.”²⁵⁶

Indonesia

According to secondary sources from 1990, 2000, and 2010, Indonesia permits mothers to keep their children with them in prison until those children reach the age of two.²⁵⁷ That age limit was also noted in 2008 by Heather Roy, a Member of Parliament in New Zealand, in a parliamentary discussion of legislation in that country on the topic of children remaining with incarcerated mothers.²⁵⁸ No information could be found on the number of such children currently residing in Indonesian prisons. As of 2013, of a total detained population of about one hundred fifty-four thousand inmates, 5.1% were women.²⁵⁹

Iraq

Article 31 of Law No. 104 of 1981 states that a newborn in Iraq can remain with his/her imprisoned mother until he/she reaches the age of three. When the child reaches the age of three, the child must live with his/her father or any other relative.²⁶⁰ According to a 2012 report, there

²⁵¹ *Id.*

²⁵² OLIVER ROBERTSON, QUAKER UNITED NATIONS OFFICE, CHILDREN IMPRISONED BY CIRCUMSTANCE 11 (Apr. 2008), http://www.crin.org/docs/web_version_children%5B1%5D.pdf.

²⁵³ ROBERTSON, *supra* note 142, at 25, 49 & 51.

²⁵⁴ *Id.* at 49.

²⁵⁵ *Id.* at 51.

²⁵⁶ *Id.* at 25.

²⁵⁷ ROBERTSON, *supra* note 142, at 74 app. 2 (citing data from 2000); ASIA WATCH, PRISON CONDITIONS IN INDONESIA 27 (Aug. 1990), <http://www.usp.com.au/fpss/docs/indonesi908.pdf>; *A Prison Baby For Schapelle, WOMAN'S DAY* (June 14, 2010), available through Lexis/Nexis online subscription database.

²⁵⁸ Corrections (Mothers with Babies) Amendment Bill – Third Reading, (10 Sept. 2008) 650 NZPD 18792, http://www.parliament.nz/en-nz/pb/debates/debates/48HansD_20080912_00000246/corrections-mothers-with-babies-amendment-bill-%E2%80%94-third.

²⁵⁹ *World Prison Brief: Indonesia*, INTERNATIONAL CENTRE FOR PRISON STUDIES, <http://www.prisonstudies.org/country/indonesia> (last visited Aug. 6, 2014).

²⁶⁰ Law No. 104 of 1981 art. 31, *al-Jarīdah al-Rasmīyah*, 5 Oct. 1981, vol. 28523, p. 7, available at <http://www.iraqlid.com/LoadLawBook.aspx?SP=LAWA&SC=021220055159963&PageNum=2> (in Arabic).

were at that time twenty-one children living with their imprisoned mothers in the women's prisons in the Iraqi capital of Baghdad.²⁶¹ In early 2014, Human Rights Watch reported that, as of June 2013, it was estimated that there were more than 1,100 women in Iraqi prisons and detention centers.²⁶² It also stated that there were “no facilities for child care for children who are frequently incarcerated with their mothers” and “women reported that there have been instances of children remaining in prison until they are 7-years-old.”²⁶³ Information on the total number of children living with their mothers in prison could not be located.

Ireland

In Ireland, the prison capacity for women is very limited, with only 133 spaces across the country. The average female prison population is around 152.²⁶⁴ The Irish Prison Rules, 2007, provide that mothers may keep their babies with them in prison for up to one year. This applies regardless of whether the mother was pregnant when she entered into custody. The Prison Rules specifically provide the following:

Child of female prisoner

17. (1) A child, of less than twelve months of age, of a female prisoner may be admitted to a prison and remain with the mother to facilitate breast feeding until the child has reached twelve months of age.

(2) In the case of a prisoner who gives birth to a child during the term of her imprisonment, the child may be admitted to a prison and remain with the mother in prison, until the child has reached twelve months of age.²⁶⁵

Israel

In accordance with the Prisons Ordinance (New Version), 5732-1971, “[n]o person shall be admitted into a prison unless accompanied by a warrant of imprisonment or warrant of arrest; Provided that the child of a female prisoner may be admitted into a prison with its mother if it is at the breast and less than two years old.”²⁶⁶ Under the Prison Authority directives, pregnant inmates and infants under the age of two who are in prison enjoy medical supervision and

²⁶¹ *A Human Rights Organization: Children in the Prisons of Iraq Are Time Bombs*, FACE IRAQ (Oct. 21, 2012), <http://www.faceiraq.com/inews.php?id=1039483> (in Arabic).

²⁶² HUMAN RIGHTS WATCH, *NO ONE IS SAFE: ABUSES OF WOMEN IN IRAQ'S CRIMINAL JUSTICE SYSTEM 1* (Feb. 2014), <http://www.hrw.org/sites/default/files/reports/iraq0214webwcover.pdf>.

²⁶³ *Id.* at 5.

²⁶⁴ IRISH PRISON SERVICE, *AN EFFECTIVE RESPONSE TO WOMEN WHO OFFEND 2014–2016*, at 4 (2014), http://www.irishprisons.ie/images/pdf/female_strategy.pdf.

²⁶⁵ Prison Rules 2007, para. 17(1)–(2) (SI 2007/252, *as amended*), <http://www.justice.ie/en/JELR/prison%20rules%202007.pdf/Files/prison%20rules%202007.pdf>.

²⁶⁶ Prisons Ordinance (New Version), 5732-1971, § 2, LAWS OF THE STATE OF ISRAEL 237 (1972).

treatment, including prenatal care for expecting mothers and appropriate nutrition and immunizations for both mothers and children.²⁶⁷

Neve Tirtsa is the only prison in Israel designated for female inmates. The prison operates a day care with a caregiver “to enable mothers to work or study.”²⁶⁸ The prison also has a petting zoo.²⁶⁹ The total number of female inmates in Neve Tirtsa in 2013 was 200.²⁷⁰ Information on the number of infants who are staying with their mothers in Neve Tirtsa, however, could not be located. A new women’s prison is expected to open in Beer Sheva in 2016 and will replace Neve Tirtsa.

The new prison’s objective is to serve as a place for treatment and rehabilitation of female inmates, “centering on the offender and not on the offence” committed by her.²⁷¹ According to information published on the website of the Ministry of Public Security, the new prison’s plan recognizes the different needs of female inmates as compared with those of their male counterparts. According to the plan, the prison will have a center for educational and vocational activities, a petting zoo, and a communication center.

Two special wings will be built in the new prison for mothers; one in the area designated for convicted inmates and the other for those who are temporarily detained. The annexes will have private rooms for each inmate who is a mother and her baby. Public areas with a living room, a kitchen and a play area, will also be included in the mothers’ annexes to foster “a feeling of a ‘home’ ” in prison.²⁷²

Italy

Law 40 of March 8, 2011,²⁷³ amended the Code of Criminal Procedure allowing imprisoned mothers with children aged three or younger to benefit from alternatives to incarceration.²⁷⁴ Law 40 also provides that convicted mothers with children aged ten or younger may be allowed to serve their sentences in their own residence, in another private residence, or in a place of care or

²⁶⁷ Prison Authority, Medical Treatment – Pregnant Inmates and Babies, Directive No. 02-2020 (Jan. 1, 1999; latest update July 22, 2010), <http://ips.gov.il/Uploads/Commands/PDF/266.pdf> (in Hebrew).

²⁶⁸ *Neve Tirtsa – Women Prison*, MINISTRY OF PUBLIC SECURITY, <http://mops.gov.il/DetentionAndRehabilitation/UniquePrisons/Pages/WomenPrison.aspx> (in Hebrew; last visited July 30, 2014).

²⁶⁹ “*I Can Talk with the Animals, and They Talk with Me*,” MINISTRY OF PUBLIC SECURITY, <http://mops.gov.il/Documents/Publications/InformationCenter/Innovation%20Exchange/Innovation%20Exchange%2015/Animals.pdf> (last visited July 31, 2014).

²⁷⁰ *Data Regarding Inmates*, PRISON AUTHORITY, <http://www.shabas.gov.il/Web/He/Research/Statistics/Prisoners/Default.aspx> (in Hebrew; last visited July 30, 2014) (click on “Special Populations”).

²⁷¹ Anat Bashan, *Cherchez La Femme*, 5 PUBLIC SECURITY BULLETIN 14, 19 (Jan. 2014), <http://mops.gov.il/Documents/Publications/MopsNewsletter/MNL5Jan2014/MNL5Jan2014.pdf> (in Hebrew).

²⁷² *Id.*

²⁷³ Law 40 of March 8, 2011, *Misure alternative alla detenzione a tutela del rapporto tra detenute e figli minori* [Alternative Measures to Detention for the Protection of the Relationship Between Prisoners and Their Minor Children], <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2001-03-08:40>.

²⁷⁴ *Id.* art. 1(2).

assistance, in order to provide care or assistance to their children, if there is no specific danger of recidivism and the possibility of restoring cohabitation with their children exists.²⁷⁵ This latter benefit accrues to mothers who have served one-third of their sentence, or at least fifteen years in the case of a life sentence.²⁷⁶ Under Law 40, special home detention may also be granted to an incarcerated father when the mother is dead or incapacitated and there is no possibility of entrusting the children to persons other than the father.²⁷⁷

The benefits established in Law 40 do not apply to persons deprived of their children's custody in accordance with the Civil Code.²⁷⁸ Law 40 does not address the situation of imprisoned foreigners who, because they lack an established residence, are not able to benefit from the special home-detention regime.²⁷⁹

Law 62 of April 21, 2011,²⁸⁰ extended the benefits established by Law 40 to incarcerated fathers and introduced a series of amendments aimed at protecting the relationship between incarcerated mothers and their minor children. In particular, Law 62 states that when the criminal defendant is a pregnant woman or the mother of children six years of age or younger (or the children's father when the mother is deceased or absolutely incapable of caring for the children), she/he may not be subject to preventative imprisonment unless exceptional precautionary measures are needed.²⁸¹ Additionally, the judge may order the mother or father's custody in a minimum-security institution, if exceptional circumstances allow it.²⁸² Also, the Law allows an imprisoned parent to request judicial authorization to accompany his/her children under ten years of age to medical visits under certain circumstances, even if the children do not reside together with the incarcerated parent.²⁸³

Establishment of "protected family homes" as alternative institutions for women serving sentences with children was foreseen by Law 62. A 2012 decision by the Court of Cassation²⁸⁴

²⁷⁵ *Id.* art. 3(1).

²⁷⁶ *Id.*

²⁷⁷ *Id.* art. 3(7).

²⁷⁸ *Id.* art. 6.

²⁷⁹ *Firmata la Carta per i 100mila bambini che, in Italia, ogni anno, entrano in carcere* [Signed the Charter for 100 Thousand Children Who Enter a Prison Every Year in Italy], ASSOCIAZIONE BAMBINI SENZA SBARRE [ASSOCIATION FOR CHILDREN WITHOUT BARS], <http://www.bambinisenzasbarre.org> (Mar. 21, 2014) (referring to the "Charter of Children of Detained Persons" signed between the Italian government and the Associazione Bambini senza sbarre, available at https://www.giustizia.it/giustizia/it/mg_6_9.wp.jsessionid=80E7348C7B24E91FFBAE6FB7C58557CE.ajpAL01?previousPage=homepage&contentId=NOL996155).

²⁸⁰ Law 62 of April 21, 2011, Modifiche al codice di procedura penale e alla legge 26 luglio 1975, n. 354, e altre disposizioni a tutela del rapporto tra detenute madri e figli minori [Amendments to the Code of Criminal Procedure and to Law 354 of July 26, 1975, as well to Other Provisions to Protect the Relationship Between Incarcerated Mothers and Minor Children], <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2011:62>.

²⁸¹ *Id.* art. 1(1)(a).

²⁸² *Id.* art. 1(3).

²⁸³ *Id.* art. 2(2).

²⁸⁴ Misure cautelari, custodia cautelare, carcere, presunzioni, applicabilità, Cassazione penale, sez. II, sentenza 28.03.2012 n. 11714, available at <http://www.altalex.com/index.php?qs=11714&idstr=0> (by subscription).

recognized ICAM–Istituto a custodia attenuata madri (the Attenuated Custody Institute for Mothers) in Milan as the only existing protected family home in Italy at that time.²⁸⁵ According to more recent news reports, there are now other protected family homes throughout the country as well.²⁸⁶

According to news reports, about sixty children under three years of age enter Italian prisons every year with their convicted mothers.²⁸⁷ Also, about one hundred thousand children visit their incarcerated parents in prison facilities every year.²⁸⁸

Jamaica

According to a 2013 report of the Acting Overseer of the Jamaican Department of Correctional Services, “[f]emale inmates are allowed to keep the babies with them for a period of three months or longer, based on the circumstances, after which a suitable family member can be granted temporary custody of the child. This is done to allow the mother some time to bond with her baby, a critical element in the child’s development.”²⁸⁹ At the termination of the initial three-month period, “[i]f there is no elected guardian then the child would be placed in the care of the state, so those are the two options.”²⁹⁰

Fort Augusta Adult Correctional Centre, formerly Fort Augusta Prison, has served as Jamaica’s only prison for women. It was built to accommodate 250 female inmates but has reportedly accommodated over 280 at times.²⁹¹ The number of infants who are currently staying with their mothers in the prison could not be located.

Japan

In Japan a mother who has been incarcerated may raise her infant in prison up to the infant’s first birthday if the mother wishes. The term can be extended by up to six months if the incarcerated

²⁸⁵ *Oggi i Bambini in Carcere Fino a 6 Anni – Terre Des Hommes: La Soluzione Sono le Case Famiglia Protette* [Today Children Up to 6 Years Are in Prison – Terre Des Hommes: Protected Family Homes Are the Solution], TERRE DES HOMMES, <http://terredeshommes.it/comunicati/oggi-i-bambini-in-carcere-fino-a-6-anni-terre-des-hommes-la-soluzione-sono-le-case-famiglia-protette/> (last visited Aug. 4, 2014).

²⁸⁶ *Progetto “Bambini e carcere”* [Children and Prisons Project], TELEFONO AZZURRO, <http://www.azzurro.it/it/cosa-facciamo/sul-territorio/progetto-bambini-e-carcere> (last visited Aug. 4, 2014).

²⁸⁷ *Diritti Umani*, REPUBBLICA.IT (Nov. 8, 2013), http://www.repubblica.it/solidarieta/diritti-umani/2013/11/08/news/bambini_in_carcere-70542416/.

²⁸⁸ ASSOCIAZIONE BAMBINI SENZA SBARRE, *supra* note 279.

²⁸⁹ Joycelyn Roach-Spencer, *Treatment of Female Offenders in Jamaica*, in UNITED NATIONS ASIA AND FAR EAST INSTITUTE FOR THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS (UNAFEI), ANNUAL REPORT FOR 2012 AND RESOURCE MATERIAL SERIES NO. 90 at 128 (Aug. 2013), http://www.unafei.or.jp/english/pdf/RS_No90/No90_16PA_Roach-Spencer.pdf.

²⁹⁰ See Statement by Jamaica’s Commissioner of Corrections, Major Richard Reece, *quoted in Review of Policy Surrounding Children Born in Prison*, RJR NEWS (Oct 2, 2008), <http://rjrnewsonline.com/local/review-of-policy-surrounding-children-born-in-prison>.

²⁹¹ Roach-Spencer, *supra* note 289.

mother wishes and the head of the prison decides that this is necessary for the health and/or welfare of the mother and/or infant. These infants are entitled to medical care provided by the prison.²⁹² The number of infants who are staying with their mothers in Japanese prisons could not be located.

Jordan

Pursuant to article 15 of Jordanian Law No. 9 of 2004, concerning reform and rehabilitation centers, a pregnant inmate shall be treated appropriately as directed by a physician and in accordance with instructions issued by the Minister of Interior.²⁹³ The mother may keep her child with her in prison until he is three years old, whether he was born while she was incarcerated or before. Information on the number of children living with their mothers in prison could not be located.

Kazakhstan

Even though the correctional legislation of Kazakhstan is undergoing transformation and the currently effective 1997 Correctional Code of Kazakhstan²⁹⁴ will be repealed as of January 1, 2015, and replaced by a new Correctional Code of 2014, provisions concerning the rights of pregnant women, nursing mothers, and women having children will remain approximately the same.²⁹⁵ Both laws state that child care facilities for children under three years of age can be established in penitentiary institutions where women are serving prison sentences. Incarcerated mothers may spend their free time with children without restrictions and may live together with their children if such an opportunity is provided by a correctional institution. These child care facilities must be staffed by prison employees, and bed linens and clothing must be provided by the prison administration.²⁹⁶ Upon written consent of a mother, children born in prison can be given to the mother's spouse or relatives; otherwise they must be transferred to orphanages after reaching three years of age.²⁹⁷

In addition, the Criminal Code of Kazakhstan provides for the deferral of criminal punishment for up to one year for pregnant women and up to five years for women having children under fourteen years of age if the punishment prescribed for the crime committed is no more than five years of imprisonment.²⁹⁸

²⁹² Act on Penal Detention Facilities and Treatment of Inmates and Detainees, Act No. 50 of 2005, *amended by* Act No. 44 of 2013, art. 66.

²⁹³ Law No. 9 of 2004 art. 15, *available at* <http://www.lob.gov.jo/AR/Pages/AdvancedSearch.aspx> (in Arabic).

²⁹⁴ Law of the Republic of Kazakhstan No. 209-1, art. 96, http://online.zakon.kz/Document/?doc_id=1008443#sub_id=960000.

²⁹⁵ Law of the Republic of Kazakhstan No. 234-5, art. 116, http://online.zakon.kz/Document/?doc_id=31577723#sub_id=1160000.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ CRIMINAL CODE OF KAZAKHSTAN art. 72, http://online.zakon.kz/Document/?doc_id=1008032.

According to a Radio Free Europe Radio Liberty report, in 2010 (latest data available) child care facilities were built in one Kazakhstani prison where all pregnant women and women who gave birth to children in other Kazakhstani prisons were transferred. According to the report, there were sixty-three children under the age of three living in this prison. The child care center had no pediatrician on staff and no medicines were available for children. The children were not vaccinated and the prison administration stated that the purchase of special food for children was prohibited.²⁹⁹

Kenya

Kenyan law allows infant children of female prisoners to stay with their mothers in certain circumstances. The law specifically states that

the infant child of a female prisoner may be received into prison with its mother and may be supplied with clothing and necessities at public expense:

Provided that such child shall only be permitted to remain in prison until it attains the age of four years or until arrangements for its proper care outside prison are concluded, whichever shall be the earlier.³⁰⁰

The facilities available for the women and their children may take different forms. For instance, in 2013 the Langata maximum security female prison in Nairobi, where close to seven hundred women prisoners and forty-five children under the age of four are housed, opened a day-care center for the children of prisoners.³⁰¹

A study published in 2013 indicated that Kenya has an average of three hundred children aged zero to fifty-nine months living with their mothers in the thirty-five women's prisons around the country.³⁰² A 2013 US State Department report indicated that 117 of the 4,314 prisoners nationwide in 2012 were women.³⁰³

²⁹⁹ Aliia Akhmedieva, *Women Stay Healthy in Prison Because of Exercise*, RADIO AZATTYQ (Sept. 9, 2010), http://rus.azattyq.org/content/kazakh_prison_women_health/2132860.html (in Russian).

³⁰⁰ Prisons Act of 1963, § 30, 16 LAWS OF KENYA, Cap. 90 (rev. ed. 2012), available on the Kenya Law website, at <http://www.kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/P/Prisons%20Act%20Cap.%2090%20-%20No.%2049%20of%201962/docs/PrisonsAct49of1962.pdf>.

³⁰¹ Jill Craig, *Day Care Center Opens for Kenya's Female Prisoners*, VOICE OF AMERICA (Jan. 24, 2013), <http://www.voanews.com/content/day-care-center-opens-for-kenyas-female-prisoners/1589985.html>.

³⁰² MANAU MARY NDANU, FEEDING PRACTICES AND NUTRITIONAL STATUS OF CHILDREN AGED 0–59 MONTHS ACCOMPANYING INCARCERATED MOTHERS IN SELECTED WOMEN'S PRISONS IN KENYA 4 (June 2013), available on the Kenyatta University Institutional Repository website, at <http://ir-library.ku.ac.ke/bitstream/handle/123456789/7485/Ndanu,%20Mary%20Makau.pdf?sequence=3>.

³⁰³ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: NAMIBIA 2 (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=220142&year=2013#wrapper>.

Kiribati

In Kiribati, the Prisons Ordinance provides that an infant child of a female prisoner may be received into prison with its mother and “may be supplied with clothing and necessaries at the public expense.”³⁰⁴ When the child has been weaned, the officer in charge must send the child to relatives or friends, provided there are such relatives or friends capable and willing to support the child.³⁰⁵ According to a 2013 US Department of State report, there were four female detainees in prison in Kiribati as of September of that year.³⁰⁶ No information was located on whether any children resided in prison with the women.

Kuwait

Article 34 of Law No. 26 of 1962 states that a newborn in Kuwait can remain with his/her imprisoned mother until the child reaches the age of two. If the mother is not willing to have the child stay with her or when the child has reached two years of age, the child must live with his/her father or any relative selected by the mother. If the child does not have a father or any other relatives, the prison authorities place the child in an outside orphanage. The imprisoned mother will be notified of the location of the orphanage so that she can visit the child in accordance with regulations.³⁰⁷ No information was located on the number of children residing in prison with their mothers.

Libya

Pursuant to the Law on Reform and Rehabilitation Institutions, a pregnant woman inmate shall be treated during the pregnancy and until forty days after delivery in accordance with what the physician in charge decides.³⁰⁸ The same treatment may be accorded to the breast-feeding inmate if so decided by the physician. The woman inmate is allowed to keep her child with her until he is two years old.³⁰⁹ Information on the number of children living with their mothers in prison could not be located.

³⁰⁴ Prisons Ordinance (Cap 76, rev. ed. 1977), s 34(2), http://www.paclii.org/ki/legis/consol_act/po177/.

³⁰⁵ *Id.*

³⁰⁶ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 2013: KIRIBATI, <http://www.state.gov/documents/organization/220411.pdf>.

³⁰⁷ Law No. 26 of 1962, art. 34, available on the website of the Gulf Cooperation Council Legal Network, at <http://www.gcc-legal.org/mojportalpublic/DisplayLegislations.aspx?LawTreeSectionID=2225&country=1> (in Arabic).

³⁰⁸ Law No. 5 on Reform and Rehabilitation Institutions art. 26, <http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=81> (in Arabic).

³⁰⁹ *Id.* at 27.

Luxembourg

Children who are too young be separated from their mother are allowed to stay with their mother in prison.³¹⁰

Malawi

Malawian law provides that a breastfeeding child of a female prisoner may be permitted to live with the mother until the child has been weaned. During the child's stay with the mother, the child may be provided with "clothing and necessities at the public expense."³¹¹ Once the child has been weaned, the Prison Service is required to place the child with a relative or family friend able and willing to support the child and, in the absence of such a person, with a government-approved child care provider.³¹²

A 2013 US Department of State report indicated that there were a total of 12,505 inmates in the country's prisons, 107 of whom were women.³¹³ No statistical information regarding the number of children currently living in prison with their mothers was located.

Malaysia

Under the Malaysian Prison Act 1995, regulations may be issued for various matters, including "the treatment and wellbeing of a child born to a prisoner while in custody and a child of a female prisoner admitted with his mother."³¹⁴ The Prisons Regulations 2000 provide that a child under the age of three years may be admitted with his or her mother.³¹⁵ Such a child "must be provided with basic necessities for the child's maintenance and care by the Director General."³¹⁶ Furthermore, the Medical Officer must, where possible, "see every child accompanying [a] female prisoner as often as necessary."³¹⁷ The regulations also specify the daily diet for each child.³¹⁸

³¹⁰ Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires [Grand-Ducal Regulation of March 24, 1989, Regarding the Administration and the Internal Regulations of Penitentiary Establishments] art. 142, Mar. 24, 1989, <http://www.legilux.public.lu/leg/a/archives/1989/0017/a017.pdf>.

³¹¹ Prisons Act of 1956, § 60, 2 LAWS OF MALAWI, Cap. 9:02 (rev. ed. 2010).

³¹² *Id.*

³¹³ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: MALAWI 3 (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=220132&year=2013#wrapper>.

³¹⁴ Prison Act 1995 (Act 537), s 67(1)(ea), <http://www.agc.gov.my/Akta/Vol.%2011/Act%20537.pdf>.

³¹⁵ Prison Regulations 2000 (P.U.(A) 325/2000), reg. 13(1), http://www.prison.gov.my/portal/page/portal/english/undang2_en.

³¹⁶ *Id.* reg. 13(2).

³¹⁷ *Id.* reg. 231(f).

³¹⁸ *Id.* sched. 1(IV).

When a child reaches the age of three years, a Medical Officer must report on whether the child should be retained in the prison for a longer period.³¹⁹ However, except by special authority of the Director General, no child may be kept in prison after he or she reaches the age of four years.³²⁰ Special instructions from the Director General must be sought if a child reaches the age of three or four years and there are no known relations willing or in a position to receive the child.³²¹ No information on the number of children residing in prisons with their mothers could be located.

Mali

Malian law appears to allow mothers to keep their young children with them in prison. According to Association Asmae Soeur Emmanuelle, a nongovernmental organization that focuses on child poverty, sixty-nine babies or young children lived with their mothers in Malian prisons in 2009.³²²

Mexico

Mexico's Law Establishing the Minimal Standards on the Rehabilitation of Incarcerated Individuals provides that children may live with their incarcerated mothers until they reach six years of age, provided that qualified specialists approve such a stay as being in the best interests of the children.³²³ It is estimated that approximately two thousand children currently live with their incarcerated mothers in Mexico.³²⁴

³¹⁹ *Id.* reg. 13(3).

³²⁰ *Id.* reg. 13(4).

³²¹ *Id.* reg. 13(5).

³²² *Mali: Développer le lien mère-enfant en prison [Mali: Developing the Mother-Child Connection in Prison]*, LETTRE D'INFORMATION BIMESTRIELLE N. 8 [BIMONTHLY NEWSLETTER NO. 8] (Asmae – Association Soeur Emmanuelle, Sept. 2010), <http://www.asmae.fr/files/u1666/NewsletterSeptembre2010.pdf>.

³²³ Ley que Establece las Normas Mínimas sobre Readaptación Social de Sentenciados [Law Establishing the Minimal Standards on the Rehabilitation of Incarcerated Individuals], *as amended through* June 2014, arts. 3, 11, DIARIO OFICIAL DE LA FEDERACIÓN, May 19, 1971, available on the website of Mexico's House of Representatives, at http://www.diputados.gob.mx/LeyesBiblio/pdf/201_130614.pdf.

³²⁴ Proposición con Punto de Acuerdo que presenta el C. Senador René Juárez Cisneros, del grupo parlamentario del PRI, que contiene punto de Acuerdo por el que se exhorta a la Secretaría de Gobernación a que, dentro de sus atribuciones para organizar el sistema penitenciario en la República Mexicana, elabore un reglamento donde se establezcan los lineamientos generales para determinar las condiciones que aseguren el desarrollo integral de los niños y niñas que viven con madres reclusas en los centros penitenciarios [Proposal of Senator René Juárez Cisneros to Request Mexico's Department of Governance to Issue a Regulation Establishing General Guidelines Ensuring the Development of Children Living in Prisons with Their Incarcerated Mothers], Apr. 8, 2014, available on the website of Mexico's Senate, at <http://www.senado.gob.mx/?ver=sp&mn=2&sm=2&id=46743>.

Morocco

Pursuant to article 139 of Law No. 23.98 of 1999, children may stay with their mothers in prison until they are three years old.³²⁵ However, this may be extended to five years old if the mother submits a request to this effect and obtains the approval of the Minister of Justice. Information on the number of children living with their mothers in prison could not be located.

Namibia

Namibian law permits a female prisoner to temporarily bring her infant child to reside with her in a correctional facility where she is housed.³²⁶ The law mandates that the state provide such a child “clothing and other necessaries” for as long as the child remains in the correctional facility.³²⁷ Once the child is two years of age, the Namibian Correctional Service is required to place the child with a relative or family friend able and willing to support the child or with an appropriate child welfare authority.³²⁸

A 2012 US Department of State report noted that there were a total of 4,314 inmates in Namibian prisons, 117 of whom were women.³²⁹ No statistical information regarding the number of children living in prisons with their mothers was located.

Nepal

According to Nepal’s Prisons Act, 1963, if any imprisoned woman gives birth to a child in prison or has a minor child under the age of two, she can keep the child with her even if there is a person outside who could look after the child. However, after the child reaches the age of two, the custody of the child must be given to another person outside of prison “except in the event of necessity.”³³⁰ If there is no one outside prison to look after the child then “all the care, education, maintenance and subsistence of such a child shall be carried out at the expense of The Government of Nepal as prescribed until [sic] that Detainee or Prisoner remains detained or imprisoned.”³³¹ However, according to a statement made by a Kathmandu based organization, Early Childhood Development Center (ECDC), to the UN Committee on the Rights of the Child,

this law is often disregarded in practice. If no local guardian is able or willing to care for the children other than their incarcerated parents, children are often forced to live inside

³²⁵ Law No. 23.98 of 1999 on the Organization and Operation of Penal Institutions art. 139, available on the website of the General Delegation for Prison Administration and Reintegration, at <http://www.dgapr.gov.ma/index.php?page=loi&idMenu=3> (in Arabic).

³²⁶ Correctional Service Act No. 9 of 2012, § 62, GOVERNMENT GAZETTE OF THE REPUBLIC OF NAMIBIA, No. 5008 (Aug. 7, 2012), <http://www.lac.org.na/laws/2012/5008.pdf>.

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: NAMIBIA 2 (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=220142&year=2013#wrapper>.

³³⁰ Prisons Act 2019 (1963) § 8(1), <http://www.icla.up.ac.za/images/un/use-of-force/asia-pacific/Nepal/Prisons%20Act%20Nepal%201963.pdf>.

³³¹ *Id.* § 8(2).

prisons with their mothers. The law clearly states that the government is liable to bear the cost of raising and caring for these children until their parents complete their jail sentences. In reality, no system of services exists to accomplish this task.³³²

According to a news report from 2012, Nepal's Department of Prison Management "estimates 80 children live in the nation's prisons."³³³ However, a 2011 statement by the ECDC states as follows:

Currently 208 women live inside the Central Prison in Sundhara, Kathmandu, Nepal. Roughly 10 children under two years of age currently reside with their mothers inside this prison. In other prisons across the nation, between 50 and 100 children are believed to still reside with their incarcerated parents in jail, though accurate numbers are impossible to gather with the corruption and misinformation that infiltrates the record-keeping system.³³⁴

New Zealand

A 2008 law change in New Zealand increased the age at which a child may remain in prison with his or her mother from six months to twenty-four months.³³⁵ The amendments came into force in 2011. The mother must be the child's primary caregiver, must not have a conviction involving sexual or violent offending against children, and must undergo screening to identify any mental health or substance abuse issues.³³⁶ A woman's request to have the child reside with her in prison may only be approved if such placement is in the best interests of the child and not inconsistent with a court order relating to the child.³³⁷ The mother must enter into a parenting agreement in relation to the child's placement that imposes certain obligations on both the mother and the Department of Corrections, and there must be appropriate facilities to accommodate the child.³³⁸

Following the law change, special Mothers with Babies Units were built or refurbished in two women's prisons to accommodate women and their children aged up to twenty-four months. A third prison can only accommodate children aged up to nine months.³³⁹ An independent

³³² EARLY CHILDHOOD DEVELOPMENT CENTER OF KATHMANDU, NEPAL: AN INTRODUCTION TO IMPRISONED CHILDREN IN NEPAL AND THE MISSION OF THE EARLY CHILDHOOD DEVELOPMENT CENTER TO PROVIDE A SAFE, NURTURING ENVIRONMENT FOR CHILDREN OF INCARCERATED PARENTS 1 (2011), <https://www.crin.org/en/library/un-regional-documentation/introduction-imprisoned-children-nepal-and-mission-provide-safe>.

³³³ Kathleen Toner, *Pulling Children Out of Nepal's Prisons*, CNN (Mar. 16, 2012), <http://www.cnn.com/2012/03/15/world/cnnheroes-basnet-nepal-prisons/>.

³³⁴ EARLY CHILDHOOD DEVELOPMENT CENTER OF KATHMANDU, *supra* note 332, at 3.

³³⁵ Corrections (Mothers with Babies) Amendment Act 2008, <http://www.legislation.govt.nz/act/public/2008/0088/latest/whole.html>, amending Corrections Act 2004, <http://www.legislation.govt.nz/act/public/2004/0050/latest/DLM294849.html>.

³³⁶ Corrections Act 2004, s 81A(1).

³³⁷ *Id.* s 81A(2)(b).

³³⁸ *Id.* s 81A(c) & (d).

³³⁹ *See Women in Prison*, DEPARTMENT OF CORRECTIONS, http://www.corrections.govt.nz/working_with_offenders/prison_sentences/being_in_prison/women_in_prison.html (last visited July 31, 2014); Department of

evaluation of these units completed in 2013 concluded that, overall, “the units have continued to develop, that positive advancements have been made, and an underlying ‘best interests of the child’ approach to decision-making was evident.”³⁴⁰ At the time of the review, there were a total of thirteen mothers and their children housed in the units across the three prisons.³⁴¹

Nicaragua

Nicaraguan law provides that prisons must seek to have special units to provide women prisoners with pre- and postnatal care. Efforts must be made for the birth to take place outside the prison, in a health center. In cases where the child is born in prison, this circumstance must not be mentioned in the child’s birth certificate.³⁴²

In cases where the jail has no special facility for pre- and postnatal care, incarcerated mothers should be placed under a “family-life regimen” (*convivencia familiar*) conducive to breastfeeding until the child is six months old. This provision is applicable to women in prison where criminal law does not provide for a bail benefit. In the other cases, the family-life regimen is granted until the child reaches two years of age.

A 2013 US Department of State report indicated that the “National Women’s Prison reportedly held approximately 253 women in 2012.”³⁴³ Statistics regarding the number of children living in prison were not located.

Nigeria

Nigerian federal law provides that a child of a female prisoner may be allowed to reside with the mother if the child is breastfeeding and less than eighteen months old.³⁴⁴

According to the Nigerian Prisons Service, as of April 31, 2014, there were 55,935 people in 239 prisons across the country, 1,089 (2%) of whom were women prisoners.³⁴⁵ A US Department of

Corrections, *New Beginnings: Mothers with Babies Unit* (undated), http://www.corrections.govt.nz/data/assets/pdf_file/0005/757040/New_Beginnings_-_Mothers_with_Babies_Unit.pdf (last visited July 31, 2014); *Prison Operations Manual: M.03.04 Self-care Units for Women* (May 31, 2013), <http://www.corrections.govt.nz/resources/prison-operations-manual/Movement/M.03-Specified-gender-and-age-movements/M.04.html>.

³⁴⁰ *Formative Evaluation of the Mothers with Babies Units*, DEPARTMENT OF CORRECTIONS (Nov. 5, 2013), http://www.corrections.govt.nz/resources/evaluation_of_the_mthers_with_babies_units.html.

³⁴¹ ANDREA ELLIOT-HOHEPA & RUTH HUNGERFORD, REPORT ON PHASE THREE OF THE FORMATIVE EVALUATION OF THE MOTHERS WITH BABIES UNITS 2 (June 30, 2013), http://www.corrections.govt.nz/data/assets/pdf_file/0014/700313/Evaluation_of_the_implementation_of_the_Mothers_with_Babies_Policy_final_.pdf.

³⁴² Ley No. 473, Ley del Régimen Penitenciario y Ejecución de la Pena [Law on the Prison System and Execution of Sentences] art. 33, LA GACETA, Nov. 21, 2003, [http://legislacion.asamblea.gob.ni/Normaweb.nsf/\(\\$All\)/FFB1C3E4901C9A4306257242005D25B1?OpenDocument](http://legislacion.asamblea.gob.ni/Normaweb.nsf/($All)/FFB1C3E4901C9A4306257242005D25B1?OpenDocument).

³⁴³ U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: NICARAGUA (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=220458&year=2013#wrapper>.

³⁴⁴ Prisons Regulations (2006) Cap. (P29), § 2, 14 LAWS OF THE FEDERATION OF NIGERIA, available on the Policy and Legal Advocacy Centre website, at <http://www.placng.org/lawsofnigeria/files/P29.pdf>.

State report noted that there were 69 children living with their mothers in the country's prisons in 2013.³⁴⁶

Norway

Norway does not allow children to stay with their parents in prison. Instead, a new mother is housed outside of the penitentiary in a *mødre hjem* (home for mothers) until her child is old enough to be separated from her,³⁴⁷ generally around nine months of age. Mothers with young children and short sentences may serve their entire sentence at the home for mothers.³⁴⁸ However, mothers who are in custody awaiting trial do not necessarily have this opportunity because prosecutors may fear that they could influence the investigation if allowed outside the holding cell.³⁴⁹ Children who cannot be raised with their mothers in prison may be placed in foster care.³⁵⁰

Being pregnant or having a small child less than nine months old can be a reason to postpone the start of a prison sentence.³⁵¹ Pregnant women are still jailed, however.³⁵² Prisoners who are pregnant have the same right to health care and prenatal care as the ordinary population.³⁵³ They

³⁴⁵ *Statistical Information*, NIGERIAN PRISONERS SERVICE, <http://www.prisons.gov.ng/about/statistical-info.php> (last visited Aug. 5, 2014).

³⁴⁶ U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: NIGERIA 8 (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=220146&year=2013#wrapper>.

³⁴⁷ Ch. 3:12 § STRAFFEGJENNOMFØRINGSLOVEN [ACT ON EXECUTION OF SENTENCES] (Lov 2001-05-18 No. 21), <http://lovdata.no/dokument/NL/lov/2001-05-18-21?q=STRAFFEGJENNOMF%C3%98RINGSLOVEN>; Retningslinjer til lov om gjennomføring av straff mv (straffegjennomføringsloven) og til forskrift til loven [Guidelines for Act on Execution of Sentences and the Accompanying Regulation], May 16, 2002, http://www.regjeringen.no/nb/dep/jd/dok/lover_regler/reglement/2002/retningslinjer-til-straffegjennomforing.html?id=107080; *St.meld. nr. 37 (2007–2008), Straff som virker – mindre kriminalitet – tryggere samfunn, 11.5.2 Kvinner med små barn* [Government Proclamation No. 37 (2007–2008) Sentences That Work – Less Crime – A Safer Society], <http://www.regjeringen.no/nb/dep/jd/dok/regpubl/stmeld/2007-2008/stmeld-nr-37-2007-2008-11/5/2.html?id=527793>.

³⁴⁸ *St.meld. nr. 37 (2007–2008)*, *supra* note 347.

³⁴⁹ *See, e.g., Var 7 uker på vei da hun ble arrestert- frifunnet etter 11 måneder*, NRK (Jan. 9, 2013), <http://www.nrk.no/ostfold/blankt-frifunnet-etter-11-maneder-1.10866551> (reporting on the case of a non-Norwegian citizen who was held for eleven months, four following the birth of her child).

³⁵⁰ 4-12 § LOV OM BARNEVERN TJENESTER (BARNEVERNLOVEN) [CHILD PROTECTION ACT], <http://lovdata.no/dokument/NL/lov/1992-07-17-100>.

³⁵¹ Art. 6, para. 3, Forskrift om innkalling og utsettelse ved fullbyrding av straff [Regulation on Notice and Postponement of Execution of Sentences], <http://lovdata.no/dokument/SF/forskrift/2010-03-19-408>.

³⁵² *See, e.g., Gravid sigøynerkvinne fengslet*, BERGENSTIDENDE (Dec. 15, 2011), <http://www.bt.no/nyheter/lokalt/Gravid-sigoynerkvinne-fengslet-2625981.html>.

³⁵³ 3.4.4 *Svangerskaps- og barselomsorg*, HELSE DIREKTORATET, [http://helsedirektoratet.no/publikasjoner/veileder-for-helse-og-omsorgstjenester-til-innsatte-i-fengsel](http://helsedirektoratet.no/publikasjoner/veileder-for-helse-og-omsorgstjenester-til-innsatte-i-fengsel/Publikasjoner/Helse-og-omsorgstjenester-til-innsatte-i-fengsel.pdf) (“the municipal health care service is responsible for ensuring that the inmates who need it receive the necessary health care services during pregnancy and delivery, compare Health Care Service Act [helse- og omsorgstjenesteloven] § 3-2, according to which the municipality shall provide prenatal and birth services.”) (translation by author).

may even leave the prison to consult with a doctor. Pregnant women serve until approximately six months of their pregnancy and thereafter are given a break in their prison sentence (*soningsavbrudd*) until they can again serve, after it is justifiable to separate the mother and child.³⁵⁴

In general, the Norwegian prison policy reserves prison sentences for the most heinous crimes and attempts to avoid sentencing criminals to prison.³⁵⁵ Courts have also chosen to transform certain sentences from prison sentences to community service,³⁵⁶ generally in cases where mothers are convicted of drug offenses but have since been drug free and are caring for a small child.³⁵⁷

At the start of 2012, 255 women were incarcerated in Norway,³⁵⁸ of whom 187 were serving out the sentence in an alternative institution.³⁵⁹ It is unclear how many of them served out their sentence in a “home for mothers” institution where they could be joined by their children.³⁶⁰

Oman

Article 33 of Law No. 48 of 1998 provides that a newborn in Oman can remain with his/her imprisoned mother until the child reaches the age of two. If the mother is not willing to have the child stay with her or when the child has reached two years of age, the child must live with his/her father or any relative selected by the mother. If the child does not have a father or any other relatives, the prison authorities must place the child in an outside orphanage. The director of the prison will notify the imprisoned mother of the location of the orphanage so that she can visit the child in accordance with regulations.³⁶¹ No information was located on the number of children residing in prison with their mothers.

³⁵⁴ JUSSHJELPA I NORD-NORGE, SAMVÆR MED EGNA BARN UNDER SONING, http://gratisrettshjelp.no/?wpfb_dl=235 (last visited Aug. 6, 2014).

³⁵⁵ See Directorate of Norwegian Correctional Service, KRIMINALOMSORGEN, <http://www.kriminalomsorgen.no/english.293899.en.html> (last visited Aug. 6, 2014).

³⁵⁶ *Gravid kvinne slipper fengsel*, P4 (Dec. 6, 2012), <http://www.p4.no/story.aspx?id=497104>; *Gravid slipper fengsel*, ADRESSA (June 19, 2005), <http://www.adressa.no/nyheter/trondheim/article518193.ece?S%C3%B8k=Send+foresp%C3%B8rsel>.

³⁵⁷ P4, *supra* note 356.

³⁵⁸ *Imprisonments 2012*, STATISTISK SENTRALBYRÅ, <http://www.ssb.no/en/sosiale-forhold-og-kriminalitet/statistikker/fengsling>.

³⁵⁹ STATISTISK SENTRALBYRÅ, <https://www.ssb.no/statistikkbanken/selectvarval/saveselections.asp> (last visited Aug. 6, 2014) (select “Social Conditions, Welfare and Crime,” then “Crime and Justice,” then “Imprisonments” to generate relevant data).

³⁶⁰ Distinguishing statistics not available, *see id.*

³⁶¹ Law No. 48 of 1998, art. 33, *al-Jarīdah al-Rasmīyah*, 26 July 1998, vol. 628.

Pakistan

Under Pakistan's Prison Rules "women prisoners shall be allowed to keep their children with them in prison till [sic] they attain the age of three years."³⁶² The provinces of Punjab, Sindh, and Khyber Pakhtunkhwa are exempt from the general rule and women prisoners are "allowed to keep their children with them in prison till they attain the age of six years."³⁶³ However, according to a statement by a Pakistani children's rights organization, in practice

it is reported that there are some children who stay up to ten years. Cases in which women have killed their husbands or relatives of their husbands cannot find anyone outside to look after their children when their children reach six years, and the prison authorities tend to have a lenient view regarding the stay of children; therefore children even of 10 years are reported as staying with mothers in prisons.³⁶⁴

According to a 2012 news report, Pakistan's Ministry of Human Rights stated that "in five jails surveyed, there were 68 children confined with their mothers."³⁶⁵ According to a 2011 study, "[m]ore than 60% of women prisoners are mothers of little children. 3% of women's children are living in jail with them."³⁶⁶

Papua New Guinea

Under the Papua New Guinea Correctional Service Act 1995, an imprisoned mother may request permission for a child to live with her in the correctional institution. In order for permission to be granted, the Commanding Officer of the institution must be satisfied that: the child is under the age of three years; it is in the best interests of the child to live with his mother in the institution; the management, good order and security of the institution will not be threatened; and the child can be adequately cared for and maintained by the detainee in the institution.³⁶⁷ The legislation states that "the detainee is responsible for the safety and care of the child of the detainee while the child lives in the correctional institution."³⁶⁸ The relevant regulations include further provisions related to children living in prison, including a requirement that the Commanding Officer "ensure that where a child is permitted to reside in the correctional

³⁶² Pakistan Prison Rules, 1978, Rule 326.

³⁶³ *Id.*

³⁶⁴ Statement by Abdullah Khoso of the Society for the Protection of the Rights of the Child (SPARC), U.N. Office of the High Commissioner for Human Rights (OHCHR) (2011), http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2011/Submissions/AKHOSO_DGD2011.pdf.

³⁶⁵ Sharon Behn, *Pakistan Prisons' Mother-and-Infant Program Gets Mixed Reviews*, VOICE OF AMERICA (Sept. 20, 2012), <http://www.voanews.com/content/mothers-with-small-children-in-pakistani-prisons-make-best-of-a-bad-situation/1511635.html>.

³⁶⁶ Dr. Aliyah Ali & Dr. Nasreen Aslam Shah, *Women Prisoners In Pakistan: Changing Practices To Enforce Laws & Rights*, 1(4) ARABIAN J. BUS. & MGT. REV. (Kuwait Chapter) (Dec. 2011), <http://www.omicsonline.com/open-access/2224-8358/2224-8358-1-129.pdf?aid=18000>.

³⁶⁷ Correctional Service Act 1995, s 139(1), http://www.paclii.org/pg/legis/consol_act/csa1995216/.

³⁶⁸ *Id.* s 139(2).

institution that child is provided with food in accordance with this Regulation and the Standing Orders.”³⁶⁹

Other provisions in the regulations include requirements for a written report on the assessment of whether it is appropriate for a child to live in the institution;³⁷⁰ an annual review to “assess whether the continued placement of the child is in the child’s best interest and not detrimental to the security of the correctional institution;”³⁷¹ and the keeping of records of every child of detainees living in the institution and reporting any accident or injury to a child requiring medical attention.³⁷² In addition, a Commanding Officer may restrict the movements of a child in order to maintain good order and security.³⁷³ Where a mother is unable to provide adequate facilities for the care of her child, the case must be referred to the child welfare department or other welfare organizations for assistance.³⁷⁴

In 2012, a United Nations special rapporteur on violence against women in Papua New Guinea stated that, “(f)or women in prison who have their children living with them, there is only a one-bed cell which sometimes has to cater for 7 women and 9 children. Furthermore, the prison does not provide food or other necessities for babies and children, and this remains the responsibility of the mother.”³⁷⁵

Peru

According to the Peruvian Code of Criminal Execution,³⁷⁶ minor children may stay with their mothers in prison until they are three years old, with prior intervention of social services (*asistencia social*). The children must be taken care of in a child-care facility.³⁷⁷ However, children may remain temporarily in prison with their mothers even if there is no child-care facility available in the prison. In this case, the penitentiary authorities are responsible for assigning a separate space for the mother and child.³⁷⁸ Children older than three years will be

³⁶⁹ Correctional Service Regulation 1995, reg. 78, http://www.paclii.org/pg/legis/consol_act/csr1995307/.

³⁷⁰ *Id.* reg. 98.

³⁷¹ *Id.* reg. 99.

³⁷² *Id.* reg. 101.

³⁷³ *Id.* reg. 102.

³⁷⁴ *Id.* reg. 103.

³⁷⁵ Press Release, United Nations Office of the High Commissioner for Human Rights, Special Rapporteur on Violence Against Women Finalises Country Mission to Papua New Guinea (Mar. 26, 2012), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12013&LangID=E>. See also *Rep. of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Rashida Manjoo, Addendum: Mission to Papua New Guinea*, Human Rights Council, ¶ 43, U.N. Doc. A/HRC/23/49/Add.2 (Mar. 18, 2013), http://www.ohchr.org/Documents/Issues/Women/A-HRC-23-49-Add-2_en.pdf.

³⁷⁶ Decreto Legislativo No. 654, CÓDIGO DE EJECUCIÓN PENAL [Legislative Decree No. 654, CODE OF CRIMINAL EXECUTION] art. 103, available at Sistema Peruano de Información Jurídica (SPIJ), <http://spij.minjus.gob.pe/CLP/contenidos.dll?f=templates&fn=default-codejecucionpenal.htm&vid=Ciclope:CLPdmo>.

³⁷⁷ *Id.* art. 103.

³⁷⁸ Reglamento del Código de Ejecución Penal [Regulation of the Code of Criminal Execution] art. 216, Sept. 9, 2003, http://www.usmp.edu.pe/derecho/centro_derecho_penitenciario/legislacion_nacional/REGLAMENTO_CODIGO_DE_EJECUCION_PENAL.pdf.

assigned to live outside of the mother's prison as determined by the parent who has parental authority (*patria potestad*) or guardianship. In the case of children who are at moral risk, social services authorities coordinate a solution with the Judge on Minors.³⁷⁹

The Regulation of the Code of Penal Execution further provides that, in addition to having child-care facilities in prisons for women, inmate mothers of children aged three and younger are to have active and direct participation in their children's care, except in circumstances when such participation is not suitable.³⁸⁰

Philippines

In the Philippines a child born while the mother is incarcerated may stay with her for up to one year.³⁸¹ After this period the mother must place the child "in a home of her own."³⁸² Otherwise, Filipino authorities must arrange for the care of the child through a welfare agency.³⁸³ No relevant statistical information on the number of children incarcerated with their mothers could be located.

Portugal

During the execution of sentences and custodial measures in Portugal, an inmate is guaranteed the right to keep his or her child until the child reaches three years of age, or in exceptional circumstances five years of age, with the consent of the other holder of parental responsibility, and provided that it is in the minor's interest and the necessary conditions exist.³⁸⁴ For this purpose, medical care and appropriate educational and entertainment activities are ensured to the minor, according to his or her developmental needs.³⁸⁵

A 2013 report prepared by the General Directorate of Rehabilitation and Prison Services (Direção-Geral de Reinserção e Serviços Prisionais) stated that on December 31, 2013, there were 597 convicted women in prison.³⁸⁶ No information was provided in regard to how many children were being raised in prison.

³⁷⁹ CÓDIGO DE EJECUCIÓN PENAL art. 103, last para.

³⁸⁰ Reglamento del Código de Ejecución Penal art. 215.

³⁸¹ Celso S. Bravo, *Treatment of Female Inmates at Correctional Institutions for Women*, in UNITED NATIONS ASIA AND FAR EAST INSTITUTE FOR THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS (UNAFEI), ANNUAL REPORT FOR 2012 AND RESOURCE MATERIAL, Series No. 90, at 155, 157 (August 2013), http://www.unafei.or.jp/english/pdf/RS_No90/No90_00All.pdf.

³⁸² *Id.* at 157.

³⁸³ *Id.*

³⁸⁴ Lei No. 115/2009, de 12 de Outubro, art. 7(1)(g), http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1147&tabela=leis.

³⁸⁵ *Id.* art. 7(2).

³⁸⁶ *Estatísticas do ano 2013*, DIREÇÃO-GERAL DE REINserÇÃO E SERVIÇOS PRISIONAIS, http://www.dgsp.mj.pt/paginas/estatisticas/estatisticas_arq_mostra.php?id=2013 (click on *Reclusos existentes a 31 de dezembro de 2013, segundo a situação penal, por sexo e nacionalidade*).

Qatar

Article 42 of Law No. 3 of 2009 on the Organization of Penal and Correctional Institutions states that a newborn in Qatar can remain with his/her imprisoned mother until he/she reaches the age of two. If the mother is not willing to have the child stay with her or when the child has reached two years of age, the child must live with his/her father or any relative selected by the mother. If the child does not have a father or any other relatives, the prison authorities place the child in an outside orphanage. The imprisoned mother will be notified of the location of the orphanage so that she can visit the child in accordance with regulations.³⁸⁷ No information was located on the number of children residing in prison with their mothers.

Russia

Russian women cannot take their children to prison with them. Some analysts say that this is not prohibited by law but there is no judicial interpretation of the applicable provision.³⁸⁸ If a woman gives birth to a child after being arrested or while imprisoned, the child may stay with his/her mother for some amount of time or be separated and placed in a child care facility at the penitentiary. If a child is born during pretrial detention or the trial, it stays with the mother in her prison cell until she is transferred to the correctional facility where she will serve her sentence.

The Correctional Code of the Russian Federation states that child care facilities can be established in penitentiary institutions where women who have children serve sentences. Children up to three years of age can be placed in prison child care centers. The Code allows imprisoned mothers to visit their children after work, and provides for the possibility of children and incarcerated mothers living together.³⁸⁹ If a mother has less than one year of imprisonment to serve when the child reaches the age of three, the child may remain at the prison child care facility. In all other cases, a child is given to relatives designated as the child's guardians if there are relatives willing to accept this responsibility, or placed in an orphanage when relatives are unavailable.³⁹⁰

Presently, about sixty thousand women are serving sentences involving deprivation of freedom in Russia's penitentiary institutions. This constitutes about 5% of all incarcerated people in the country, or forty imprisoned women per 100,000 of the population.³⁹¹ Thirteen penitentiaries in Russia have child care facilities, which can host a total of nine hundred children. There are about two hundred places throughout the entire Russian prison system for mothers and children

³⁸⁷ Law No. 3 of 2009 on the Organization of Penal and Correctional Institutions art. 42, *al-Jarīdah al-Rasmīyah*, 26 Feb. 2009, vol. 3, available at <http://www.almeezan.qa/LawPage.aspx?id=2602&language=ar> (in Arabic).

³⁸⁸ Ekaterina Korobkova, *Prison-born Children*, LETIDOR (July 19, 2013), <http://letidor.ru/article/42397/?mode=reply> (in Russian).

³⁸⁹ CORRECTIONAL CODE OF THE RUSSIAN FEDERATION art. 100, Federal Law No. 1-FZ of January 8, 1997, ROSSIISKAIA GAZETA [ROS. GAZ.] No. 9, Jan. 16, 1997.

³⁹⁰ *Id.*

³⁹¹ *Information About a Problem*, PRISON AND FREEDOM – CENTER FOR CRIMINAL JUSTICE REFORM ASSISTANCE, <http://www.prison.org/penal/women/doc001.htm> (in Russian; last visited Aug. 5, 2014).

to live jointly. Nursing mothers are allowed to visit their children up to six times a day for feeding purposes. Non-nursing mothers can see their children for up to two hours daily after work.³⁹²

The Federal Law on Detention of Suspects and Accused Persons allows arrested women to have children under the age of three in their cells for the duration of the investigation and trial.³⁹³ The Law prohibits women who have children with them from being placed in isolation cells for punishment or having limits placed on their walk time. However, human rights organizations report that these rules are not fully implemented.³⁹⁴

Samoa

In Samoa, the new Prisons and Corrections Act 2013 states that regulations may be made related to “arrangements for female prisoners and their children consistent with the rights and obligations of CEDAW [Convention to Eliminate All Forms of Discrimination Against Women] and CRC [Convention on the Rights of the Child], and in particular the rights of mothers to feed and care for their infant children whilst in prison.”³⁹⁵ The relevant regulations, if they exist, could not be located. A US Department of State report records that, as of 2013, there were twenty-three women in prison in Samoa.³⁹⁶ No information was located on the number of children residing with their mothers in prison.

Saudi Arabia

Article 15 of the Law of 1977 on Prisons states that a newborn in Saudi Arabia can remain with his/her imprisoned mother until he/she reaches the age of two. When the child reaches the age of two, the child must live with his/her father or any other relative. If the child does not have a father or any relatives, the prison authorities place the child in an outside orphanage. The imprisoned mother will be notified of the location of the orphanage so that she can visit the child in accordance with regulations.³⁹⁷ According to a media report, between 2002 and 2012 there were 224 children admitted to an orphanage designated by the Saudi authorities to accommodate

³⁹² Korobkova, *supra* note 388.

³⁹³ Federal Law No. 103-FZ of July 15, 1995, art. 30, ROS. GAZ. No. 139, July 20, 1995.

³⁹⁴ *Conditions of Mothers with Young Children in Prison*, PRISON AND FREEDOM – CENTER FOR CRIMINAL JUSTICE REFORM ASSISTANCE, http://www.prison.org/penal/women/mother002_3.htm (in Russian; last visited Aug. 5, 2014).

³⁹⁵ Prisons and Corrections Act No. 11 of 2013, s 60(1)(p), http://www.parliament.gov.ws/images/ACTS/Acts_2013/Prisons_and_Corrections_Act_2013_Eng.pdf. This new provision, and the reforms more broadly, followed a report of the Samoa Law Reform Commission that was completed in 2011. SAMOA LAW REFORM COMMISSION, REVIEW OF PRISONS ACT 1967, at 32 (Report 04/11, June 2011), <http://www.samoalawreform.gov.ws/Portals/206/Publications/Final%20Reports/FINAL%20-%20PRISONS%20FINAL%20REPORT%201967%20%2820.06.11%29.pdf>.

³⁹⁶ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: SAMOA 2 (2013), <http://www.state.gov/documents/organization/220438.pdf>.

³⁹⁷ Law of 1977 on Prisons and Detention art. 15, 8 June 1977, published on the official website of the Ministry of Interior, <http://www.moi.gov.sa/wps/wcm/connect/a14bc98041ec4770b3a7b77e08398394/%D9%86%D8%B8%D8%A7%D9%85+%D8%A7%D9%84%D8%B3%D8%AC%D9%86+%D9%88%D8%A7%D9%84%D8%AA%D9%88%D9%82%D9%8A%D9%81.pdf?MOD=AJPERES> (in Arabic).

children of imprisoned mothers.³⁹⁸ No information was located on the number of children residing in prison with their mothers.

Sierra Leone

No primary source was located regarding children living with their mothers in prison while the mothers are serving custodial sentences. However, secondary sources located for this report indicated that Sierra Leone allows breastfeeding children whose mothers are in jail to live with their mothers until they are two years of old.³⁹⁹ Although they are supposed to be removed once they turn two, in practice, these children are allowed to remain in prison longer.⁴⁰⁰ Moreover, when the children are taken out of prisons, many end up in orphanages instead of with family members because family members tend to be unable or unwilling to look after such children.⁴⁰¹

It has been reported that the prison authorities do little to accommodate children living in prison. For instance, the children have no access to a special diet and most mothers “lack access to basic welfare items, such as toiletries or sanitary napkins, and medicines.”⁴⁰²

A US Department of State report indicated that there were a total of 2,413 prisoners in the country in 2013, eighty-eight of whom were female.⁴⁰³ No statistical information regarding the number of children currently living with their mothers in prison was located.

Singapore

According to Singapore’s Prisons Regulations, a child under three years of age may be admitted to prison with its mother. When any child has presumably attained the age of three, the medical officer must report whether it is desirable or necessary for the child to be retained longer. With special authority of the Minister for Home Affairs, a child may remain in prison with its mother after reaching the age of four. In addition, should he know of no relatives who can receive the child, the Superintendent must ask the Commissioner of Prisons for instructions.⁴⁰⁴

³⁹⁸ *An Orphanage for the Children of Imprisoned Women Until They Reach the Age of 2*, AL ARABIYA (Apr. 27, 2013), <http://www.alarabiya.net/ar/saudi-today/2013/04/27/يلغو-العامين-حتى-يبلغوا-السجنات-حتى-يبلغوا-العامين.html> (in Arabic).

³⁹⁹ ALISON THOMPSON & SABRINA MAHTANI, CHILDREN LIVING IN PRISON: INSIGHTS FROM SIERRA LEONE 11 (AdvocAid for the Quaker United Nations Office, Jan. 2008), <http://www.advocaidsl.com/wp-content/uploads/2011/03/Children-Living-in-Prison-Insights-from-Sierra-Leone-2008.pdf>.

⁴⁰⁰ *Id.* at 10 & 11; Sabrina Mahtani, *Women and the Criminalization of Poverty: Perspectives from Sierra Leone*, 39(1) J. WOMEN IN CULTURE & SOC’Y 243, 247 (Autumn 2013).

⁴⁰¹ Mahtani, *supra* note 400, at 247.

⁴⁰² *Id.* at 246.

⁴⁰³ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: SIERRA LEONE 2 (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=220156&year=2013#wrapper>.

⁴⁰⁴ Prisons Regulations, Rg 2, G.N. No. S 99/1939 (Jan. 13, 1939; revised ed. 2002, 31st January 2002), § 85, available by searching Singapore Statutes Online, at <http://statutes.agc.gov.sg>.

Solomon Islands

In the Solomon Islands, children under six months of age may be admitted to prison with the mother under the Correctional Services Act 2007.⁴⁰⁵ Children over six months but under two years of age may also be admitted with the mother if there are special circumstances, it is in the best interests of the child, and “the correctional center can, as far as practicable, ensure that the basic needs of the child are adequately met.”⁴⁰⁶ Furthermore, the legislation provides for regulations to be made on “arrangements for female prisoners and their children consistent with the rights and obligations of international conventions and recognised standards, including the rights of women to feed and care for their infant children whilst in a correctional centre.”⁴⁰⁷ However, no specific provisions related to children were located in the available regulations.⁴⁰⁸ A 2013 US Department of State report recorded that there were two female prisoners in the Solomon Islands during that year.⁴⁰⁹

South Africa

A woman inmate in South Africa can have her young child live with her “until such child is two years of age or until such time that the child can be appropriately placed taking into consideration the best interest of the child.”⁴¹⁰ When a mother is incarcerated, the Department of Correctional Services (the Department) is required to take the necessary steps to find a proper placement for her child in cooperation with the Department of Social Development.⁴¹¹

Whenever possible, the Department is required to ensure the availability of “a mother and child unit” to accommodate inmates with children.⁴¹² In addition, while the child is in its custody, the Department is responsible for the child’s food, clothing, health care, and other facilities necessary for the child’s “sound development.”⁴¹³

In 2013, the Department reported that there were 3,505 female inmates in the Department’s custody, 282 of whom were incarcerated with their babies.⁴¹⁴

⁴⁰⁵ Correctional Services Act 2007, s 33(7), http://www.paclii.org/sb/legis/num_act/csa20078o2007280/.

⁴⁰⁶ *Id.* s 33(8).

⁴⁰⁷ *Id.* s 75(2)(n).

⁴⁰⁸ Correctional Services Regulations 2008, http://www.paclii.org/sb/legis/sub_act/csa2007csr2008577/.

⁴⁰⁹ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: SOLOMON ISLANDS 2 (2013), <http://www.state.gov/documents/organization/220442.pdf>.

⁴¹⁰ Correctional Services Act No. 111 of 1998, § 20, available on the South African Department of Correctional Services website, at <http://www.dcs.gov.za/Publications/Legislation/DCS%20Act%20111%20of%202008.pdf>.

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ Press Release, South Africa Dep’t of Correctional Services, 3,505 Female Inmates in South Africa (Aug. 10, 2013), available on the allAfrica website, at <http://allafrica.com/stories/201308121321.html?viewall=1>.

South Korea

In South Korea a mother who has been incarcerated may apply for permission to rear her infant in prison. The warden of the correctional institution must grant permission for this until the infant reaches eighteen months of age, unless there are special health or other concerns. The warden must provide the necessary equipment and goods and take all necessary measures to enable the mother to care for her child.⁴¹⁵ The number of infants who are staying with their mothers in South Korean prisons could not be located.

South Sudan

South Sudan law provides that a child of a female prisoner may stay with the mother in prison until the child is two years of age.⁴¹⁶ Upon turning two, the child must be placed with a relative; in the absence of a relative, the child is to be placed in a childcare home.⁴¹⁷ However, if there is a “reasonable ground” for doing so, the prison authority may allow the child to continue to live with the mother after the child reaches the age of two.⁴¹⁸

A 2013 US Department of State report indicated that there were nearly 7,500 inmates in the country’s prisons, about four hundred of whom were women.⁴¹⁹ No statistical information regarding the number of children living in prison with their mothers was located.

Spain

Under Spanish Royal Decree 190/1996 on the Penitentiary Regulation,⁴²⁰ a child aged three or younger is allowed to live with his or her mother in prison, provided that the mother has proven the child’s filiation and the stay will not pose any risk to the child.⁴²¹

The penitentiary authorities provide special accommodations for mothers and their children in mothers’ pavilions with child care facilities that are physically separated from the rest of the units, to accommodate the special needs of minors.⁴²² After a child is admitted into the prison,

⁴¹⁵ Administration and Treatment of Correctional Institution Inmates Act, Act No. 8728, Dec. 21, 2007, *amended by* Act No. 11005, Aug. 4, 2011, art. 53.

⁴¹⁶ Prison Act of 2003, § 49, available on the Gurtong website, at <http://www.gurtong.net/LinkClick.aspx?fileticket=BdkghA6Ushs%3d&tabid=342>.

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

⁴¹⁹ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: SOUTH SUDAN 6 (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=220162&year=2013#wrapper>.

⁴²⁰ Real Decreto 190/1996, por el que se Aprueba el Reglamento Penitenciario [Royal Decree 1990/1996, Approving the Penitentiary Regulation], Feb. 9, 1996, BOLETÍN OFICIAL DEL ESTADO [B.O.E.], Feb. 15, 1996, <http://boe.es/buscar/act.php?id=BOE-A-1996-3307>.

⁴²¹ *Id.* art. 17.1.

⁴²² *Id.* art. 17.5.

he/she must be checked by the prison's physician. Once the physician has completed a report, the child lives with his/her mother in the room assigned to the mother in the mothers' pavilion.⁴²³

In the case of a conflict between the rights of the child and the mother derived from the prison stay, the rights of the child prevail.⁴²⁴

Cooperation agreements with public and private institutions involved in child development are entered into by prison authorities in order to improve and develop the mother-child relationship and child development.⁴²⁵

As of November 2006, there were 156 children living with their mothers in Spanish prisons.⁴²⁶

Sri Lanka

As of 2011, Sri Lanka allowed children up to the age of five to remain with their mothers in prison.⁴²⁷ However, one instance of an older child entering prison with her mother "because she had nowhere else to go" has been reported.⁴²⁸ According to a 2001 study (the most recent data available), during an eighteen-month period beginning in January 1999, 4,089 women were imprisoned in Sri Lanka. Of those,

- 88% had their cases remanded;
- 20% awaited trial for more than one year in prison;
- 2,416 were mothers;
- 1,411 of the women had at least one child under twelve years of age;
- 200 mothers interviewed had 262 children under twelve years of age at home;
- Of those children not with their mothers in prison, 69% were with a relative, 16% were with their father, 4% were with an older sibling, 2.7% were with a religious organization, and 1.3% were with a neighbor;
- None of the children had received social services support; and
- 70 children accompanied their mothers into prison.⁴²⁹

⁴²³ *Id.* art. 17.3.

⁴²⁴ *Id.* art. 17.4.

⁴²⁵ *Id.* art. 17.6.

⁴²⁶ *Los Ninos de la Cárcel*, EL MUNDO (Nov. 16, 2006), <http://www.elmundo.es/elmundo/2006/11/14/solidaridad/1163505079.html>.

⁴²⁷ ROBERTSON, *supra* note 142, at 76.

⁴²⁸ ROBERTSON, *supra* note 252, at 13.

⁴²⁹ M.P. Senanayake, J.K. Arachchi & V.P. Wickremasinghe, *Children of Imprisoned Mothers*, 46(2) CEYLON MED. J. 51–53 (June 2001), <http://www.ncbi.nlm.nih.gov/pubmed/11727576> (abstract only).

Sudan

Pursuant to the Prisons Law of 2010, pregnant women inmates shall be accorded the necessary medical care in accordance with the relevant regulation and may deliver in a hospital whenever it is feasible to do so.⁴³⁰ The inmate mother can keep the child with her until he is two years old. However, the prison director may decide to extend the stay of the child with his mother if this is in the child's interest.⁴³¹ Information on the number of children living with their mothers in prison could not be located.

Swaziland

Swaziland law provides that a breastfeeding child of a female prisoner may live with the mother until the child is weaned, during which time the child may be provided with "clothing and necessities" at the public expense.⁴³² Once the child is weaned, the Correctional Service is required to place the child with a relative or family friend able and willing to support the child or, in the absence of such a person, with other government-approved childcare providers.⁴³³

According to a 2013 US Department of State report, women inmates accounted for 2.6% of the 3,280 adults in the country's prisons.⁴³⁴ No statistical information regarding the number of children living with their incarcerated mothers was located.

Sweden

Under Swedish law "an inmate may be allowed to have [his/her] infant with [him/her], if it can be considered to be in the best interest of the child."⁴³⁵ However, an opinion from the local Social Services Committee is required.⁴³⁶ The legislative history of the provision explains when children should be allowed to reside with the parents as follows:

Such permission can for instance be compatible with the best interest of the child when the inmate's remaining time in the facility is short or where a deportation is imminent and there is no appropriate alternative placement of the child. An inmate who is granted the

⁴³⁰ Law Regulating Prisons and the Treatment of Inmates, 2010, art. 11, available on the website of the Sudan Ministry of Justice, at <http://www.moj.gov.sd/content/lawsv4/12b/15.htm> (in Arabic).

⁴³¹ *Id.* art. 12.

⁴³² Prisons Act of 1964, § 28, 6 STATUTES OF SWAZILAND (rev. ed. 1971).

⁴³³ *Id.*

⁴³⁴ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: SWAZILAND 3 (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=220167&year=2013#wrapper>.

⁴³⁵ Ch. 2:5 § FÄNGELSELAG [PRISON ACT] (Svensk Författningssamling [SFS] 2010:610), http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/sfs_sfs-2010-610/.

⁴³⁶ 11 § Fängelseförordning (Prison Ordinance) (SFS 2010:2010), http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Fangelseforordning-20102010_sfs-2010-2010/.

right to have [his/her] child with [him/her] in the facility must be granted access to equipment which is necessary to care for the child.⁴³⁷

The provision, which entered into force in 2011, has two new aspects compared to previous legislation: the legislation is gender neutral, giving both mothers and fathers the legal right to have their children with them in prison; and the provision requires that cohabitation between a child and his/her incarcerated parent be considered in the best interest of the child.⁴³⁸ The new wording of “infant” (*Spädbarn*) that now appears in the provision is also interpreted to mean the first few years of the child’s life, while it was previously limited to the first twelve months of a child’s life.⁴³⁹ This does not mean that Swedish legislation allows for a child to stay for several years in prison; rather, if a single parent is imprisoned for a few months his/her young child may accompany him/her to prison.⁴⁴⁰

Prior to the current legislation, special exceptions were made when young children above the age of one but under the age of three were so traumatized by being separated from their mothers that it was considered necessary for the welfare of the child for them to be reunited with the parent despite an explicit prohibition in the law.⁴⁴¹

Children who cannot be cared for by their incarcerated mothers or a relative are placed in foster care.⁴⁴²

Sweden frequently uses alternative sentences, called “noncustodial care.”⁴⁴³ This includes probation, electronic monitoring, etc.⁴⁴⁴ Approximately 14,000 individuals are currently serving some form of noncustodial sentence.⁴⁴⁵ Swedish law also allows for the postponement of a prison sentence when a female inmate is pregnant or nursing, the duration of which is determined on the basis of what can be considered reasonable.⁴⁴⁶

Pregnant women have the same right to health care and prenatal care in prison as that of an ordinary citizen.⁴⁴⁷ This includes prenatal, delivery, and postnatal care.⁴⁴⁸

⁴³⁷ Proposition [Prop.] [Government Bill] 2009/2010:135 at 127, http://www.riksdagen.se/sv/Dokument-Lagar/Forslag/Propositioner-och-skrivelser/prop-200910135-En-ny-fangels_GX03135/ (translation by author).

⁴³⁸ See actual text of the ch. 2:5 provision, FÄNGELSELAGEN and Prop. 2009/10:135 at 127.

⁴³⁹ Prop. 2009/2010:135 at 127.

⁴⁴⁰ *Id.*

⁴⁴¹ See Rebecka Holm, *Barn i fängelse – kan det vara en bra idé? En kvalitativ studie om barn som följer sin förälder i anstalt* at 4 (Göteborgs Universitet, Spring Semester 2009), <http://www.oru.se/pagefiles/34995/uppsatsholm.pdf>.

⁴⁴² Ch. 6:1 SOCIALTJÄNSTLAGEN (SFS 2001:453), <http://www.notisum.se/rnp/sls/lag/20010453.htm>.

⁴⁴³ *Non-custodial Care*, KRIMINALVÅRDEN, <https://www.kriminalvarden.se/en/Other-languages/Non-custodial-care-/> (last visited Aug. 6, 2014).

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.*

⁴⁴⁶ § 12 SFS 1974:202 BERÄKNING AV STRAFFTID [CALCULATION OF SENTENCE], http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-1974202-om-berakning-av_sfs-1974-202/.

⁴⁴⁷ 9:1 FÄNGELSELAGEN.

There were 234 females imprisoned in Sweden in October of 2013, totaling 5.1% of the total imprisoned population.⁴⁴⁹ Women are jailed at special, all-female prisons (*kvinnovårdsanstalter*). There are currently a total of six *kvinnovårdsanstalter* in Sweden.⁴⁵⁰

There are no official statistics on the number of infants cohabiting with their imprisoned parents in Sweden. One commentary states that there were twenty-six children in prison in 2010, compared to sixteen in 2009 and six on average during the years of 1999–2008.⁴⁵¹

Switzerland

The Swiss Penal Code provides for special forms of imprisonment for pregnant women giving birth and for the immediate time after giving birth.⁴⁵² Likewise, the Code provides for special forms of imprisonment for mothers and their small children as long as these forms are in the interest of the child.⁴⁵³ The federal law specifies neither the forms of imprisonment nor what constitutes the interest of the child. Two proposals to set a minimum age of four and five, respectively, before separating the child from its imprisoned mother have been rejected by the Swiss Parliament.⁴⁵⁴ In practice a child usually stays with its mother until the age of three. That is considered the time when a child needs a broader social environment for its development than a prison can provide.

The federal law entitles the cantons (states) to provide for the necessary forms of imprisonment of mothers with small children.⁴⁵⁵ The cantons have introduced special mother-child prison locations with special services—for example, staff with experience in childcare, suitable rooms, and external daycare facilities.⁴⁵⁶ Those services are available in all prisons for long term

⁴⁴⁸ *Id.* Although not specified in the text itself, the text encompasses all necessary treatment including hospital stays. Prop. 2009/2010:135 at 158 expressly states that all births must take place in a hospital but that this does not require a special provision, as it is commonly accepted that births take place in hospitals in Sweden.

⁴⁴⁹ *Kvinnor i fängelse*, KRIMINALVÅRDEN, <http://www.kriminalvarlden.se/sv/Fangelse/Kvinnor-i-fangelse/> (last visited Aug. 6, 2014). For a description of Hinseberg Female Prison, see PADDICK, *supra* note 51, at 110–11.

⁴⁵⁰ KRIMINALVÅRDEN, *supra* note 443.

⁴⁵¹ *Spädbarn i fängelse*, ALLMÄNNA BARNHUSET (Dec. 4, 2013), <http://www.allmannabarnhuset.se/2013/12/spadbarn-fangelse>.

⁴⁵² SCHWEIZERISCHES STRAFGESETZBUCH [SWISS PENAL CODE], Dec. 21, 1937, *as amended through July 1, 2014*, SYSTEMATISCHE SAMMLUNG DES BUNDESRECHTS, art. 80(1)(b), <http://www.admin.ch/opc/de/classified-compilation/19370083/index.html>.

⁴⁵³ *Id.* art. 80(1)(c).

⁴⁵⁴ Stefan Trechsel & Peter Aebersold, *Kommentar zu Art. 80 Strafgesetzbuch [Commentary on Art. 80 Swiss Penal Code]*, in SCHWEIZERISCHES STRAFGESETZBUCH: PRAXISKOMMENTAR 483, 484 (Stefan Trechsel & Mark Pieth eds., 2d ed. 2013).

⁴⁵⁵ Andrea Baechtold, *Kommentar zu Art. 80 Strafgesetzbuch [Commentary on Art. 80 Swiss Penal Code]*, in 1 STRAFRECHT 1542, 1546 (Marcel A. Niggli & Hans Wiprächtiger eds., 2d ed. 2007).

⁴⁵⁶ *See, e.g.*, STRAFVOLLZUGSKONKORDAT DER NORDWEST- UND INNERSCHWEIZ, STANDARDS FÜR DEN STRAF- UND MASSNAHMENVOLLZUG AN FRAUEN [CONCORDAT OF THE STATES OF NORTHERN AND CENTRAL SWITZERLAND ON THE FORMS OF IMPRISONMENT, STANDARDS FOR THE IMPRISONMENT AND SANCTIONING OF WOMEN] 15 (Dec. 2009), http://www.prison.ch/images/stories/pdf/konkordat_nw_ch/064_Standards_Vollzug_Frauen.pdf; *see also, e.g.*, AMT FÜR JUSTIZVOLLZUG UNTERSUCHUNGSGEFÄNGNISSE ZÜRICH [OFFICE OF CORRECTIONAL REMAND – ZÜRICH],

sentences and in some specialized prisons. However, critics call attention to the fact that smaller prisons in particular have difficulties allocating the necessary services for mothers taking care of their children.⁴⁵⁷

Taiwan

In Taiwan, female inmates may be permitted to bring their children under the age of three into the prison. After the child reaches the age of three, his/her stay may only be extended for six months if there is no proper recipient and the child cannot be entrusted to the care of someone else. Upon expiration of the six-month extension period, the child must be placed with a welfare institution.⁴⁵⁸ Children born in prison are also subject to these provisions.⁴⁵⁹

As of March 2006, there were reportedly fifteen female inmates in Taiwan's women's prisons who had their children with them in prison. Among the fifteen inmates, thirteen were imprisoned for drug offenses, one for larceny, and one for robbery. They were between twenty-four and thirty-six years of age. The ages of the children ranged from newborn to two years old. The fifteen children were kept together.⁴⁶⁰

Tanzania

Tanzania (mainland) law provides that an infant child of a female prisoner may be allowed to reside in prison with his/her mother.⁴⁶¹ Although no provision was located regarding age or other limits on children residing in prison, or the removal of children from prison and their placement with a guardian, a 2011 report by the Commission for Human Rights and Good Governance (CHRAGG), an independent government watchdog agency, indicated that children are permitted to live with their mother in prison until they are two years old.⁴⁶²

GEFÄNGNIS DIELSDORF [DIELSDORF PRISON] (undated), http://www.justizvollzug.zh.ch/internet/justiz_inneres/juv/de/ueber_uns/organisation/ugz/gefaengnisse/gfd/jcr_content/contentPar/morethemes/morethemesitems/portrait_gef_ngnis_d.spooler.download.1395999390576.pdf/Portr%C3%A4t+GFD.pdf (last visited Aug. 7, 2014).

⁴⁵⁷ Swiss Centre of Expertise in Human Rights (SCHR), *Die besonderen Bedürfnisse inhaftierter Frauen beachten: Einhaltung der UNO-Grundsätze für die Behandlung weiblicher Gefangener in der Schweiz* [Considering the Special Needs of Imprisoned Women: Swiss Compliance with the UN Principles of the Treatment of Female Prisoners] (Mar. 14, 2013), <http://www.skmr.ch/de/themenbereiche/justiz/artikel/bangkok-rules.html>.

⁴⁵⁸ Jianyu Xingxing Fa [Prison Act] (amended May 26, 2010), art. 10(1), available at LAWS AND REGULATIONS DATABASE OF THE REPUBLIC OF CHINA, <http://law.moj.gov.tw/Law/LawSearchResult.aspx?p=A&k1=%E7%9B%A3%E7%8D%84%E8%A1%8C%E5%88%91%E6%B3%95&t=E1F1A1&TPage=1>, and in English translation, at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=I0040001>.

⁴⁵⁹ *Id.* art. 10(2).

⁴⁶⁰ Xiao Yixuan, *Gaoqiang nei de Naifen yu Niaobu* [Milk Powder and Diapers in High Prison Walls], MINISTRY OF JUSTICE (Mar. 3, 2012), <https://www.moj.gov.tw/ct.asp?xItem=61010&ctNode=27465&mp=001>.

⁴⁶¹ Prisons Act, 1967, § 25, 2 LAWS OF TANZANIA, Cap. 58 (rev. ed. 2002), available on the Tanzania Parliament website, at <http://polis.parliament.go.tz/PAMS/docs/34-1967.pdf>.

⁴⁶² COMM'N FOR HUMAN RIGHTS AND GOOD GOVERNANCE (CHRAGG), INSPECTION REPORT FOR CHILDREN IN DETENTION FACILITIES IN TANZANIA xv (June 2011), available on the Interagency Panel on Juvenile Justice (IPJJ)

The law mandates that the Tanzania Prison Service provide the child “with all necessities.”⁴⁶³ However, the CHRAGG report noted that children staying in prisons with their mothers live in poor conditions with no special diet, and are thus forced to share food with their mothers.⁴⁶⁴

A 2013 US Department of State report indicated that there were approximately 1,206 female inmates in mainland prisons.⁴⁶⁵ According to the CHRAGG report, thirteen children lived with their mothers in prison in 2011.⁴⁶⁶

Tonga

In Tonga, the Prisons Act 2010 provides that where a female prisoner gives birth during her period of imprisonment or is breastfeeding her child, the child “may be accommodated with his mother in the prison if the prison has suitable accommodation for the child.”⁴⁶⁷ Furthermore, if the sentencing court is of the opinion that the child of a prisoner is too young to be separated from his mother, it “may make an order directing that the child be accommodated with his mother in prison.”⁴⁶⁸ On admission to the prison, “the prisoner shall be informed that she will have the responsibility for the child’s care and safety, including all costs associated with that care.”⁴⁶⁹ The officer in charge of a prison may remove a child being accommodated with a prisoner if there is a court order that the child live with another person; the prisoner herself requests it; the child starts school; the prisoner is transferred to another prison that cannot accommodate the child; or the presence of the child poses a risk to the security and good order of the prison.⁴⁷⁰ A female prisoner may apply for a review of a decision to remove the child.⁴⁷¹

Female prisoners are housed at the main prison in Tonga.⁴⁷² According to a 2013 US State Department report on Tonga, as of September of that year there were six female prison inmates.⁴⁷³ No information was located on whether any children resided in prison with the women.

website, at http://www.ipjj.org/fileadmin/data/documents/reports_monitoring_evaluation/CHRAGG_Inspection_ChildrenDetentionTanzania_2011_EN.pdf.

⁴⁶³ Prisons Act, 1967, § 65.

⁴⁶⁴ CHRAGG, *supra* note 462, at xv.

⁴⁶⁵ U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: TANZANIA 4 (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=220169&year=2013#wrapper>.

⁴⁶⁶ CHRAGG, *supra* note 462, at viii.

⁴⁶⁷ Prisons Act 2010, s 27(1), http://www.paclii.org/to/legis/num_act/pa2010124/.

⁴⁶⁸ *Id.* s 27(2). *See also* Prison Rules (Cap. 36A), rule 108, http://crownlaw.gov.to/cms/images/LEGISLATION/SUBORDINATE/1947/1947-0045/PrisonRules_1.pdf.

⁴⁶⁹ Prisons Act 2010, s 27(4).

⁴⁷⁰ *Id.* s 28.

⁴⁷¹ *Id.* s 29.

⁴⁷² *See TBU – Hu’atolitoli Prison*, TONGA PRISONS DEPARTMENT, <http://www.prisons.gov.to/index.php/about-us/district-prisons/tongatapu-hu-atolitoli-prison> (last visited July 31, 2014).

⁴⁷³ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: TONGA 2 (2013), <http://www.state.gov/documents/organization/220450.pdf>.

Trinidad and Tobago

According to Trinidad and Tobago's Ministry of Justice, construction of a nursery for the children of women who give birth while incarcerated was due to commence in fiscal year 2013. The Ministry recognizes that

[s]eparation between a mother and a child takes its toll emotionally on both. In providing a humane approach to addressing this situation, the Prison Service intends to construct a facility where incarcerated mothers can meet with their children and maintain that important relationship. The facility will comprise a visitors' waiting area, an area for incarcerated parents to visit with their children and a nursery for babies born to incarcerated mothers.⁴⁷⁴

Additional information regarding the age of infants that are allowed to stay with their mothers in prison, or the number of mothers and infants currently held in prison in Trinidad and Tobago, could not be located.

Tunisia

The Tunisian Law on the Prison System of 2001 provides for children of women inmates born before or during incarceration to be admitted to stay with their mothers until they are one year old. This may be extended for a period not to exceed one year if it is in the interest of the child. The family judge who has territorial jurisdiction decides on the extension pursuant to a request from the mother.⁴⁷⁵ Information on the number of children living with their mothers in prison could not be located.

Turkey

Turkey's Law on the Execution of Penalties and Security Measures provides that children up to the age of six who have no one besides their mothers to protect them may stay with their incarcerated mothers in prison.⁴⁷⁶ During the day these children will be in kindergartens or nursery schools run by either the Social Services and Child Protection Agency or other organizations and institutions.⁴⁷⁷ Children under three years of age stay with their mothers in their mothers' cells during the day.⁴⁷⁸ The incarcerated children are to be given food and drink

⁴⁷⁴ *Policy Initiatives: Rehabilitation and Offender Management*, GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO (2014), <http://www.justice.gov.tt/keep-informed/policy-initiatives/rehabilitation-reforms-2/>.

⁴⁷⁵ Law No. 52 of 2001 on the Prison System, *as amended* by Law No. 58 of 2008, art. 9, available on the website of the High Commission for Human Rights and Fundamental Freedoms, at http://www.droitsdelhomme.org.tn/?page_id=251 (in Arabic), and the website of the Tunisian Ministry of Justice, at http://www.e-justice.tn/fileadmin/fichiers_site_francais/ministere/L_2001_52_fr.pdf (in French).

⁴⁷⁶ Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun, Kanun No. 5275 [Law on the Execution of Penalties and Security Measures, Law No. 5275] art. 65(1), Dec. 13, 2004, available on the Grand National Assembly of Turkey website, at <http://www.tbmm.gov.tr/kanunlar/k5275.html>.

⁴⁷⁷ *Id.*

⁴⁷⁸ See ROBERTSON, *supra* note 142, at 76 app. 2. The relevant provision of law for this information was not found.

according to their age, condition, and needs,⁴⁷⁹ and lactating mothers are to be provided with food appropriate to their situation.⁴⁸⁰

In 2011 the Ministry of Justice and the Ministry of Education signed the Protocol of Cooperation in Supporting the Development of Children Remaining with Their Mothers in Prisons and Correctional Facilities.⁴⁸¹ The Protocol provides that children of prisoners and detainees who are three to five years old are to be placed in kindergartens and nurseries as a priority without a queue or a fee.⁴⁸² The Ministry of Education is to provide for the children's round-trip travel to and from the facilities.⁴⁸³ Minister of Education Omer Dincer emphasized the importance of the Protocol at its signing, noting that its provisions were aimed at minimizing the disadvantages to children aged three to five who are incarcerated with their mothers and at providing a better future for them, adding that "[w]e want all our children wherever they may be to live on equal terms with their peers."⁴⁸⁴

An amendment to the Law provides that women prisoners with children up to age six and with two years or less remaining on their sentence can be released conditionally on probation.⁴⁸⁵ However, there also appears to be a provision in the Law that makes it possible, based on a judge's decision and in accordance with certain procedures and criteria, for children who have reached three years of age to be placed in foster homes or orphanages.⁴⁸⁶

According to Minister of Justice Bekir Bozdağ in comments made in July 2014, there are 1,914 children convicts and detainees in Turkey, and 353 children staying with imprisoned or detained mothers. The average period of a child's detention, he stated, is 110 days.⁴⁸⁷

Tuvalu

In Tuvalu, subject to the directions of the prison superintendent, "an infant child of a female prisoner may be received into prison with its mother."⁴⁸⁸ When the child has been weaned, it

⁴⁷⁹ Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun, Kanun No. 5275, art. 65(2).

⁴⁸⁰ *Id.* art. 72(4).

⁴⁸¹ Türkiye Cumhuriyeti Adalet Bakanlığı ve Türkiye Cumhuriyeti Milli Eğitim Bakanlığı, Ceza İnfaz Kurulları ve tutukevlerinde Annesinin Yanında Kalan Çocukların Gelişimlerinin Desteklenmesi – İş Birliği Protokolü (Dec. 21, 2011), <http://tegm.meb.gov.tr/dosya/cezainfaz.pdf>.

⁴⁸² *Id.* art. 5(1)(a)–(b).

⁴⁸³ *Id.* art. 2(b).

⁴⁸⁴ Yüce Yöney, *Cezaevindeki Çocuğa Anaokulu Yolu*, BIANET (Dec. 23, 2011), <http://www.bianet.org/bianet/insan-haklari/134990-cezaevindeki-cocuga-anaokulu-yolu>.

⁴⁸⁵ Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun ile Denetimli Serbestlik ve Yardım Merkezleri ile Koruma Kurulları Kanununda Değişiklik Yapılmasına dair Kanun, Kanun No. 6291 [Basic Law on the Execution of Penalties and Security Measures, Probation and Help Centers Regarding Amendments to the Law on the Protection Boards Act, Law No. 6291], art. 105/A(3), Apr. 5, 2012, RESMÎ GAZETE [OFFICIAL GAZETTE], No. 28261, Apr. 11, 2012, <http://www.resmigazete.gov.tr/eskiler/2012/04/20120411-11.htm>.

⁴⁸⁶ Ceza ve Güvenlik Tedbirlerinin İnfazı Hakkında Kanun, Kanun No. 5275, art. 65(3).

⁴⁸⁷ *1,914 Children Officially in Prison in Turkey*, BIANET (July 9, 2014), <http://www.bianet.org/english/human-rights/157061-1-914-children-officially-in-prison-in-turkey>.

will be sent to relatives or friends who are capable and willing to support it.⁴⁸⁹ A 2013 US Department of State report records that there were no female detainees in the country.⁴⁹⁰

Uganda

Ugandan law permits children under the age of eighteen months to join their mothers in prison.⁴⁹¹ When an infant reaches the age of eighteen months, the law requires that the infant be placed with a relative or family friend willing and able to provide support.⁴⁹² When this option is not available, the infant is to be placed under the care of a child welfare institution.⁴⁹³

The law permits the provision of “special facilities needed for their condition.”⁴⁹⁴ In addition, it mandates that the state provide clothing and other “necessities of life” to infants living with their mothers in prison until they reach the age when they are to be removed from the prison.⁴⁹⁵

A 2013 US Department of State report indicated there were a total of 37,936 prisoners in the Uganda prison system, 1,592 of whom were female.⁴⁹⁶ The report also noted that the Uganda Prisons Service was not allocated funds to accommodate pregnant women and mothers with infants.⁴⁹⁷ No statistical information regarding the number of children living in prison was located.

Ukraine

According to the Criminal Correctional Code of Ukraine, pregnant women and women with children under three years of age serving a prison term must be transferred by the prison administration from a correctional institution where they serve their sentence to a prison that has a child care facility if these women cannot be released from serving their sentence under the Criminal Code of Ukraine.⁴⁹⁸ Child care facilities for children under three years of age must be

⁴⁸⁸ Prisons Ordinance 1985, s 28(2), <http://www.tuvalu-legislation.tv/tuvalu/DATA/PRIN/1990-072/PrisonsAct1985.pdf>.

⁴⁸⁹ *Id.*

⁴⁹⁰ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2013: TUVALU 2 (2013), <http://www.state.gov/documents/organization/220451.pdf>.

⁴⁹¹ Prisons Act of 2006 § 59 (July 24, 2006), available on the University of Pretoria website, at <http://www.icla.up.ac.za/images/un/use-of-force/africa/Uganda/Prisons%20Act%20Uganda%202006.pdf>.

⁴⁹² *Id.*

⁴⁹³ *Id.*

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.*

⁴⁹⁶ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013: UGANDA 5 (Feb. 27, 2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=220173&year=2013#wrapper>.

⁴⁹⁷ *Id.*

⁴⁹⁸ CRIMINAL CORRECTIONAL CODE OF UKRAINE art. 141, Law 1129-IV of July 11, 2003, <http://zakon4.rada.gov.ua/laws/show/1129-15>.

established in prisons for women, and a woman who gives birth to a child in prison may be allowed to live with her child in the child care center until the child reaches the age of three years. If a woman has not expressed a desire to live with the child at the child care center, she nonetheless has an unlimited opportunity to visit her child during her nonworking hours.⁴⁹⁹ When a child is three years old, he/she must be given to the persons designated as the child's guardians or transferred to an orphanage.⁵⁰⁰

In 2013, the Human Rights Commissioner of the Ukrainian legislature issued a report on implementation of the rights of imprisoned pregnant women and women with minor children. According to the report, seven thousand women are serving sentences in thirteen Ukrainian penitentiaries. Two of them have child care facilities and are providing care to ninety-four children under three years of age. The report stated that current legislation does not regulate issues of medical service for children in prisons and that the children are not receiving social benefits or state assistance for families with children.⁵⁰¹

United Arab Emirates

Law No. 43 of 1992 states that a newborn in the United Arab Emirates can remain with his/her imprisoned mother until he/she reaches the age of two. However, if the child's health does not allow him/her to stay in prison, the prison authorities turn the child over to his/her father or any other relative. If the child does not have a father or any other relatives, the prison authorities place the child in an outside orphanage. The imprisoned mother will be notified of the location of the orphanage so that she can visit the child in accordance with regulations.⁵⁰² According to a June 2014 news report, twenty-nine mothers, including a number of foreigners, were housed with their children in special facilities available in an Abu Dabi prison.⁵⁰³ The total number of children residing in prison with their mothers in the country could not be located.

Uruguay

According to Uruguayan Law 14470 on the Imprisonment System⁵⁰⁴ the children of a female inmate who are younger than four years of age may live in prison with her. In special cases and with the prior recommendation of a psychologist or psychiatrist of the Consejo del Niño (Council

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ *Rights of Women and Children in Prisons Were Discussed by the Ombudsman*, OFFICE OF THE VERKHOVNA RADA COMMISSIONER ON HUMAN RIGHTS (Jan. 24, 2013), http://www.ombudsman.gov.ua/ru/index.php?option=com_content&view=article&id=2017:2013-01-24-16-49-26&catid=14:2010-12-07-14-44-26&Itemid=75 (in Russian).

⁵⁰² Law No. 43 of 1992, art. 21, 10 Oct. 1992, available on the official website of the Dubai Police, at http://www.dubaipolice.gov.ae/dp/portal/public/downloads/rules_proc.pdf?itemId=208 (in Arabic).

⁵⁰³ *The Mafrq Prison Where Children Come First*, AL BAYAN (June 23, 2014), <http://www.albayan.ae/editors-choice/varity/2014-06-23-1.2150648> (in Arabic).

⁵⁰⁴ Ley No. 14470, Se Establece un Sistema de Normas sobre Reclusión Carcelaria [Law No. 14470, Which Establishes the Imprisonment System], Dec. 12, 1975, <http://www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=14470&Anchor>.

on the Child) or the Instituto de Criminología (Institute of Criminology) and a justification report from the penitentiary authorities, the maximum age may be extended up to age eight. In this case both mother and child are under the periodic supervision of the authorities.⁵⁰⁵

If the parent who is not in prison is unable to take care of the child, penitentiary authorities intervene to decide on the child's living arrangements when the child turns four years old.⁵⁰⁶

According to a 2006 government report there were 370 women inmates with a total of thirty-three children living with them in prison at that time.⁵⁰⁷

Vanuatu

The Vanuatu Correctional Services Act 2006 allows for children below the age of six months to be admitted into a correctional center with the mother who is lawfully detained.⁵⁰⁸ Furthermore, “under special circumstances and where the correctional centre manager deems it justifiable,” a child between six months and two years of age may be admitted. In making a decision on the admission of a child, the correctional center manager “must take into consideration the best interests of the child.”⁵⁰⁹ Where a child is admitted with the mother, “the correctional centre manager must ensure that the basic needs of the child are adequately provided for.”⁵¹⁰

According to a September 2012 detainee census, at that time there was only one female detainee in custody in Vanuatu; however, there had been eight female detainees earlier in the year. The numbers were therefore noted as slowly climbing, since “in past years it has been quite normal to go for long periods of time with no female detainees.”⁵¹¹ There was no information in the census on the numbers of children that might have accompanied the detainees.

Venezuela

According to Venezuela's Law on the Penitentiary Regime,⁵¹² children of up to three years of age may live in prison with their incarcerated mothers. This age limit may be extended by the Court of Protection of the Child and Adolescent.⁵¹³

⁵⁰⁵ *Id.* art. 29.

⁵⁰⁶ *Id.* art. 30.

⁵⁰⁷ MINISTERIO DEL INTERIOR ET AL., MINISTERIO DEL INTERIOR, MUJERES PRIVADAS DE LIBERTAD EN EL URUGUAY: INFORME SOBRE LAS CONDICIONES DE RECLUSIÓN [WOMEN DEPRIVED OF FREEDOM IN URUGUAY: REPORT ON PRISON CONDITIONS] 17 (Sept. 2006), http://www.inmujeres.gub.uy/innovaportal/file/19658/1/5_informe_reclusas.pdf.

⁵⁰⁸ Correctional Services Act 2006, s 19(2)(a), http://www.paclii.org/vu/legis/num_act/csa2006234/.

⁵⁰⁹ *Id.* s 19(3).

⁵¹⁰ *Id.* s 19(4).

⁵¹¹ VANUATU CORRECTIONAL SERVICES, 2012 DETAINEE CENSUS 4 (Sept. 2012), <http://vanuatuCorrectionalServices.gov.vu/pdfs/census%20report.pdf>.

⁵¹² Ley del Régimen Penitenciario [Law on the Penitentiary Regime], June 19, 2000, available at the Defensoria del Pueblo website, <http://www.defensoria.gob.ve/dp/index.php/leves-regimen-penitenciario/1357>.

Yemen

Pursuant to Presidential Decree No. 48 of 1991, a pregnant woman inmate shall be accorded before, during, and after delivery the necessary medical care and treatment in accordance with the recommendations of the physician in charge.⁵¹⁴ The mother shall not be allowed to keep the child with her in prison after the child reaches the age of two years. At that age the child shall be delivered to his/her father or one of his/her relatives unless the physician in charge determines that the state of the child does not allow that.⁵¹⁵ In early 2014, a media report stated that there were ten children, ranging in age from one month to six years, residing with their mothers in the Central Prison in Sana'a.⁵¹⁶ Information on the total number of children living with their mothers in prison could not be located.

Zambia

Zambian law permits an infant child under the age of four of a woman prisoner to live with the mother.⁵¹⁷ Once the child reaches four years of age, the Zambia Prison Service is required to place the child with relatives or family friends able and willing to provide support; in the absence of this option, the Prison Service is required to hand the child over to the welfare authority.⁵¹⁸

A 2013 Zambia Human Rights Commission report indicated that no special accommodation was made for young children who accompanied their mothers to prison. The report specifically stated that “[t]he Prison Service did not have special diets for children who go in prison with their mothers at the time of the visits. Inmate mothers shared their food rations with their children[,] and clothing, bathing or washing soaps were not provided for these children. . . .”⁵¹⁹

A 2011 survey found that the general prison population in Zambia was around seventeen thousand, with 1,316 women inmates; 412 of these women had their young children with them.⁵²⁰

⁵¹³ *Id.* art. 75.

⁵¹⁴ Presidential Decree No. 48 of 1991, art. 28, available on the website of Yemen’s former President, at http://www.presidentsaleh.gov.ye/showlaws.php?_lwbkno=2&_lwptno=1&_lwnmid=235 (in Arabic).

⁵¹⁵ *Id.*

⁵¹⁶ Amal Al-Yarisi, *Living Behind Bars with Mom*, YEMEN TIMES (Jan. 7, 2014), <http://www.yementimes.com/en/1744/report/3328/Living-behind-bars-with-mom.htm>.

⁵¹⁷ Prisoners Act of 1966, § 56, 7 LAWS OF THE REPUBLIC OF ZAMBIA, Cap. 97 (rev. ed. 1995), version amended through 2000 available on the Zambia Legal Information Institute (ZAMLII) website, at <http://www.zamlii.org/zm/legislation/consolidated-act/97>.

⁵¹⁸ *Id.*

⁵¹⁹ HUMAN RIGHTS COMMISSION, PRELIMINARY FINDINGS OF THE HUMAN RIGHTS COMMISSION DURING VISITS UNDERTAKEN TO PRISONS AND OTHER PLACES OF DETENTION IN 2013 (May 14, 2014), <http://www.hrc.org.zm/prisons.php>.

⁵²⁰ Peter Kayula, *Protecting Rights of Female Prisoners, Circumstantial Children Important*, TIMES OF ZAMBIA (Feb. 1, 2014), <http://www.times.co.zm/?p=7357>.

Zimbabwe

A female prisoner in Zimbabwe may be allowed to bring her breastfeeding child to live with her in prison.⁵²¹ Once the child has been weaned, the Prison and Correctional Services (ZPCS) is required to hand over the child to relatives or friends of the family able and willing to maintain the child; whenever this is not an option, the child is to be placed with the child welfare authority.⁵²²

According to the ZPCS, as of May 2014, Zimbabwe had a prison population of 17,318, of which 308 were female inmates. At that date there were 29 infants living with their mothers.⁵²³ A 2012 US Department of State report indicated that there were thirty to forty children under the age of three years living with their incarcerated mothers.⁵²⁴ The report further noted that although prison officials prioritized food distribution to female inmates over male inmates, and that female inmates by and large received more food from their families than did male inmates, the children were not allocated food by the ZPCS.⁵²⁵

IV. Bibliography

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⁵²¹ Prisons Act of 1956, § 58, STATUTE LAW OF ZIMBABWE, Cap. 7:11 (rev. ed. 1996), version amended through 2002 available on the University of Pretoria website, at <http://www.icla.up.ac.za/images/un/use-of-force/africa/Zimbabwe/Prisons%20Act.pdf>.

⁵²² *Id.*

⁵²³ Bev Clark, *Incarcerated with Their Mothers: The Case of Zimbabwe Child Prisoners*, KUBATANA (May 29, 2014), <http://www.kubatana.net/2014/05/29/1782/incarcerated-mothers-case-zimbabwe-child-prisoners/>.

⁵²⁴ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012: ZIMBABWE 10 (Apr. 19, 2013), <http://www.state.gov/j/drl/rls/hrrpt/2012humanrightsreport/index.htm?dliid=204183&year=2012#wrapper>.

⁵²⁵ *Id.*

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Tomkin, Jean. *Orphans of Justice, in Search of the Best Interests of the Child When a Parent Is Imprisoned: A Legal Analysis.* Quaker United Nations Office, Aug. 2009. Available at http://www.quno.org/sites/default/files/resources/ENGLISH_Orphans%20of%20Justice.pdf.

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