



BABIES AND CHILDREN LIVING IN PRISON: POLICY AND PRACTICE IN UN MEMBER STATES

The Quaker United Nations Office (Geneva) represents the Friends World Committee for Consultation (Quakers) which is an NGO in General Consultative Status with ECOSOC. It has worked on issues related to children of prisoners since 2005, as part of its wider work on women in prison and children of prisoners. Details of our work and our other publications can be found at www.quno.org.

This submission focuses on the policies and practices of certain UN member states in relation to children living in prison with their parents. It is based on responses to a survey distributed by the Quaker United Nations Office (QUNO) to all the Permanent Missions in Geneva in April 2011. The survey as distributed is annexed to this submission. Responses have come from both government departments/agencies (including prison services) and from non-governmental organisations.

Responses were received from the following States: Austria, Canada, Colombia, Ecuador, Estonia, Finland, Germany, Ghana, Hungary, Iceland, Luxembourg, Norway, Poland, Portugal, Slovenia, Sweden, Switzerland, Ukraine, United Kingdom (England & Wales) (two submissions) and United Kingdom (Scotland). A response was also received from Bahrain but too late to be included in this document. However, QUNO is grateful to all those who responded, whether or not the response was able to be used.

The remainder of this paper follows the format of the survey. Some questions, which received long and wide-ranging responses, have been divided for ease of reading. Where responses were made in languages other than English, they have been translated into English. Imperfections in the translation, and any errors or misrepresentations of the information provided, are the fault of the authors. We welcome any additions, corrections or amendments about the States detailed below, as well as information from or about the policy and practice in other States. QUNO can be contacted using the details above.

Can babies and children live in prison with their parents?

In all responding States bar one, babies and children can live in prison with their mothers. The one exception, Norway, is planning 'to send a juridicial inquiry for consultation [on changing the policy] during 2011'. In four (Finland, Germany, Portugal and Sweden), fathers may also have children living with them, though in Sweden this is a recent policy change and so has not happened in practice.

In some States it is explicitly mentioned that adoptive parents can have children living with them as well as blood parents (Austria, Sweden).

Most responding States do not differentiate between babies and children who are born during a mother's imprisonment and those born prior to her imprisonment. Hungary and Slovenia appear to be exceptions, talking only of 'children who are born during the time of imprisonment' or a woman who is 'pregnant or has given birth while serving sentence' respectively. Luxembourg allows children born outside prison to move there only in 'extraordinarily exceptional' circumstances.

Finland and the UK (England & Wales) allow remand (pre-trial) prisoners to have children live with them; other responding States do not mention whether this is the case.

For those States with federal or devolved authority for prison issues, policy may vary between different parts of the State. Even in countries with a single policy, not all prisons will permit babies and children because only some prisons have required facilities.

In what circumstances should babies and children live in prison with their parents?

All responding States require babies and children to be below a certain age or developmental stage in order to live in prison. Usually this is an age limit, but in some cases the child must reach a certain stage of development. Such a stage may be a point of physical development, such as being weaned (Ghana), or a point of social development, such as starting school (Germany). Some responding States either try to avoid imprisoning parents (Germany) or ordinarily remove mothers from prison after they give birth (Luxembourg).

Some responding States allow children to live in prison if their mother wants it (Ukraine, Slovenia, Colombia – though in the latter case they are advised on the best course by the prison authorities). Others may need to give permission to have the child stay in prison, such as child welfare authorities in Finland, cantonal authorities in Switzerland and a prison governor on the advice of a specially-constituted application board in UK (England & Wales).

Often there must be an assessment about whether living in prison is in the child's best interests. This may come before the child enters prison (Finland) or it may take place once the child reaches a certain age (Hungary, where after 6 months assessments must be made every month).

Mothers may need to meet eligibility criteria in order to have children live with them. In Canada these are:

- They have not been convicted of a serious crime involving violence, a serious crime involving a child or any sexual offence involving a child, or a serious crime of a sexual nature;
- They are classified as minimum or medium security in an institution;
- They have been screened against the National Child Protection Registry to verify whether information exists to indicate that they may pose a risk to the child; and
- They have completed a parenting program and first aid course.

Within the UK (England & Wales) a different set of criteria apply:

- It must be in the best interest of the child,

- The mother must provide a Urine sample which tests negative to illicit drugs and she is willing to remain drug free,
- The mother is able to demonstrate behaviours which are not detrimental to the safety and wellbeing of other residents on the unit
- The mother is able and eligible to care for her child without any impediments such as poor health or legal reasons such as the child or other children being in care or the child protection register as a result of the mother's treatment of the child/children.

However, in Sweden there is 'no limit concerning offence, parent's behaviour or length of sentence', though the best interests of the child must be taken into account.

Many responding States provide some flexibility in when children have to leave, to allow for the individual circumstances of that child to be taken into account. Such decisions may be taken by a Guardianship Court (Poland), prison governors (UK – England & Wales), the mothers themselves (Ghana) or others.

What is the upper limit?

The upper limit until which children can stay in prison varies from 0 years (not permitted) in Norway to 6 years for children living part-time in Canada's federal prisons. The full list, plus details from other States, is on the accompanying submission 'Babies and children living in prison: Age limits and policies around the world'.

What is the rationale for the policy?

In many cases, responding States spoke about the best interests or welfare of the child (Estonia). In England & Wales, authorities assert that 'in normal circumstances in the community, the best interest of the child is seen as remaining with its mother and starts from this point when deciding whether or not it is appropriate to allow an offender to reside with her child'. Some responding States referred to the importance of mother-baby bonding and attachment (Canada, Ecuador, Luxembourg), others spoke of humanity and the value of placing the children in appropriate conditions (Portugal), while still others mentioned the nutritional benefits of allowing children to continue breastfeeding (Ghana).

Do parents and children have separate facilities, or do they reside with the rest of the prison population?

Most prisons that allow children to live there have special separated sections in which the children and parents live, often called 'mother-child units' or similar. There is often space for multiple parents with children to live together, with each family having its own room or cell but with shared communal space. The communal space can include cooking and washing facilities (Switzerland), a living room (Germany) or a playground (Estonia). Some prisons have facilities for parents with more than one accompanying child (Germany has a maximum of 3 children admitted per mother). Only one responding State (Ukraine) reported having some facilities where children resided separately from mothers.

Many responding States have parent-child accommodation that is either physically separate from the rest of the prison or closely mimics accommodation in the community or both. In Germany almost all mother-child facilities are in separate buildings, some outside the prison grounds; Finland and Scotland also have some physically separate facilities.

Facilities may come with ‘equipment for the care and upbringing of a child’, such as ‘cart, changing table, a child bed, diapers, bottles, clothing, shoes, toys, [and] food’ (Slovenia). Prisons may also provide opportunities for imprisoned parents to buy baby products (Switzerland) or have books on child-rearing and child development in their libraries (Poland). There may also be ‘social welfare and healthcare professionals present’ to support and oversee the parents and children (Finland).

What contact do children living in prison have with the outside world and other family members?

Policy and practice varies, from States where the children have ‘practically no contacts’ with the outside world (Ukraine) to ones where opportunities to leave, meet family members for extended periods and mix with other children are actively encouraged.

Several responding States highlighted the fact that the children are not prisoners and have put in place policies to support this. Portugal and Colombia allow children to leave for a holiday with non-imprisoned relatives if the parents ask for it, while Iceland allows children to stay the night with grandparents. Scotland tries to ‘reflect all outside experiences for children living in prison’ by allowing excursions both with and without their imprisoned mother.

Visits may be longer or more frequent than normal (up to daily in Hungary, without a time limit in Poland), with further extensions for family members from abroad (Slovenia). There may be opportunities for visits in child-friendly environments, equipped with toys, crayons, books etc., or in special “visiting flats” with an outdoor area where the family can stay together for two or three days and live a nearly normal life’ (Sweden).

Indirect forms of contact (such as by telephone) may be allowed more frequently when children live with their parents (Slovenia).

Sometimes imprisoned mothers are also allowed out with the children for short periods (Canada). In the UK (Scotland) some mothers may go shopping or to the park with their children, or (at regular intervals) go to their home in the community. Children may also be accompanied by other adults – in England & Wales mothers must nominate two individuals to take their children for trips outside prison, and at least one prison has ‘baby walkers’ who ‘take the babies out in their prams to get used to the noise and sights of the environment outside the jail’.

Parents’ participation in other prison activities is often affected by having children live in prison. In Ghana, while mothers still have to participate in regular prison activities, these are ‘usually half the duration for other prisoners’. In Sweden and Estonia, imprisoned parents can care for their children during the day, while in other responding States they are cared for by others within the prison (Canada), in special prison nurseries (Austria, where prisoners’ children are cared for alongside the children of prison staff) or are placed in community nurseries/kindergartens (Estonia, Switzerland).

Unique or innovative practice

Sweden has ‘a special holiday camp prison where prisoners and their families can stay for a week at a time with good opportunities for play and outdoor life together’. Similarly, in Portugal the children ‘go to the beach for 15 days’ in the summer.

Every prison, remand prison and probation service in Sweden has ‘one or more children’s ombudsman designed to supervise that all personnel follow the UN Convention [on the Rights of the Child] and to support the inmates in questions concerning their children’.

In Poland mothers can ‘participate in meetings for anonymous alcohol or drug addicted persons’.

In the Canadian Province of British Columbia, even though women are not permitted to have children live with them in prison, they can have enhanced (private) visits at which they are also able to pump breast milk for use by the child’s day-to-day carers.

Similar to Canada’s policy of allowing children to live in prison part-time, Portugal has a house that ‘receives children up to 10 years old, located close to one central prison, where children can stay while the mother is in prison. That house called “Casa da Criança” (Children House) offers school and education outside prison and let children visit parents twice a week and in weekend.’

In Poland, released mothers are given support to stay with their children, including through the ‘Houses of Single Mothers’.

In Estonia, imprisoned mothers do not lose their access to state benefits given to mothers. In Ecuador, support goes further and children are given a monthly scholarship to support their development, which can be spent on food or other goods, health, education, transport or recreation as decided.

ANNEXE 1 RECOMMENDATIONS

1. In all situations affecting children living in prison, before, during and after their time in prison, their best interests must be a primary consideration.
2. Children living in prison are not prisoners and should not be treated as such. Policy and practice should ensure that they are not disadvantaged because they live in prison.
3. While the impact on children of living in prison is not fully understood, it appears that environments that more closely mirror the outside community are more beneficial to the child's future development and integration into the wider community than those which are not.
4. Efforts should be made to avoid sending parents or carers of minor children to prison, whether pre-trial detention or following conviction. This should include identifying a person's caring responsibilities prior to deciding on pre-trial measures or passing sentence. A model for this (at point of sentencing) can be found in the South African Constitutional Court case *S v M*, which identified a 5-point method for considering the issue:
 1. The sentencing court should find out whether a convicted person is a primary caregiver whenever there are indications that this might be so.
 2. The court should also ascertain the effect on the children of a custodial sentence if such a sentence is being considered.
 3. If the appropriate sentence is clearly custodial and the convicted person is a primary caregiver, the court must apply its mind to whether it is necessary to take steps to ensure that the children will be adequately cared for while the caregiver is incarcerated.
 4. If the appropriate sentence is clearly noncustodial, the court must determine the appropriate sentence, bearing in mind the interests of the children.
 5. Finally, if there is a range of appropriate sentences, then the court must use the paramountcy principle concerning the interests of the child as an important guide in deciding which sentence to impose

ANNEXE 2
QUESTIONNAIRE IN ENGLISH

1. Can babies and children live in prison with their parents in your country?

[Click here to enter text.](#)

2. If yes, in what circumstances?¹ Is there an upper age limit? Who decides whether children should stay with their parents or not?

[Click here to enter text.](#)

3. What is the rationale for this policy?

[Click here to enter text.](#)

4. Do parents and children have separate facilities, or do they reside with the rest of the prison population?

[Click here to enter text.](#)

5. What contact do children living in prison have with the outside world and other family members?

[Click here to enter text.](#)

6. If there is any unique or innovative practice in your country relating to children of prisoners, please tell us about it here.

[Click here to enter text.](#)

¹ For instance, gender of parent, relationship to parent (e.g. blood relative, step-parent, foster-parent, adoptive parent) nature of offence, type of prison, availability of suitable facilities, availability of suitable alternative care, parent's behaviour, number of children.

ANNEXE 3
QUESTIONNAIRE IN FRENCH

1. Dans votre pays, les bébés et les enfants peuvent-ils vivre en prison avec leurs parents ?

Click here to enter text.

2. Si oui, dans quelles conditions ? Y a-t-il un âge maximal ? Qui décide de laisser ou non parents et enfants ensemble ?

Click here to enter text.

3. Quelle est la raison d'être de cette politique?

Click here to enter text.

4. Parents et enfants sont-ils dans des espaces réservés ou résident-ils avec le reste de la population carcérale ?

Click here to enter text.

5. Quels types de contacts les enfants vivant en prison ont-ils avec le monde extérieur et les autres membres de leur famille?

Click here to enter text.

6. Votre pays a-t-il une pratique singulière ou innovante concernant les enfants de prisonniers ? Veuillez nous en faire part ici.

Click here to enter text.

ANNEXE 4
QUESTIONNAIRE IN SPANISH

1. En su país, ¿pueden los bebés y los niños pequeños vivir con sus padres en prisión?

Click here to enter text.

2. Si la respuesta es "sí", ¿en qué circunstancias? ¿Existe un límite de edad? ¿Quién decide si los niños pueden o no permanecer con sus padres?

Click here to enter text.

3. ¿Cuáles son las razones para esta política?

Click here to enter text.

4. ¿Tienen los padres y los niños instalaciones separadas, o viven junto con el resto de la población carcelaria?

Click here to enter text.

5. ¿Qué contacto tienen los niños que viven en prisión con el mundo exterior y con otros miembros de sus familias?

Click here to enter text.

6. Indíquenos si existe alguna práctica única o innovadora en su país en relación con los hijos de prisioneros.

Click here to enter text.