

Children living in prison with a primary caregiver: a global mapping of age restrictions and duration of stay



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Women represent a growing proportion of the global prison population of 11·5 million people. No reliable estimates exist of the number of pregnant women or number of children born in or living in prison with a primary caregiver. Permitting a child to stay in prison with a primary caregiver for any duration has advantages and disadvantages for both the caregiver and the child. Global consensus on the age at which child confinement inhibits healthy development has not been reached. Human rights violations worldwide illustrate the failures of prison systems to consider the needs of children and ensure humane standards for children living in detention. In this Health Policy, we map the global variation in age restrictions and durations of stay in prison with a primary caregiver. We show a broad range of approaches and provisions for the placement of children in prison. Policy makers are advised to adopt provisions of Article 30 of the African Charter on the Rights and Welfare of the Child, as it is the only set of explicit guidelines regarding individualised qualitative judicial decision-making processes, consideration of relevant safeguarding factors, practical application of permissions to stay in prison regarding standards of paediatric care, and provisions of safety-net supports on prison exit. Training of staff and routine monitoring of paediatric standards of detention by national prison inspectorates and UN Human Rights Treaty Bodies are crucial. Future research agendas must focus on optimal child safeguarding and development during transfer and confinement, and on requisite prison-exit supports in various cultural contexts and settings.

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Background

Women represent a growing proportion of the global prison population of 11·5 million people.¹ Currently estimated at 740 000 women, this minority prison population has increased by 33% in the past two decades.¹ Most women are detained for non-violent or poverty-driven crimes, or for the inability to pay fines or bail.¹ They are disproportionately affected by trauma and gender-based violence, poverty, learning disabilities, psychiatric illness, and drug dependence.^{1,2} Countries continue to incarcerate pregnant women and women with children, despite normative UN rules advocating for the prioritisation of non-custodial sanctions for pregnant women, or those with caregiving responsibilities.³ National data, where available, indicate that many incarcerated women have children (82% in Thailand, 66% in the UK, 80% in Russia, and 80% in the USA), and many are affected by mother-child separation.^{1,4} Quality and completeness of data remain variable in many regions of the world, with few reliable estimates of numbers of pregnant women in prison, children born in prison, or children living in prison with a primary caregiver (generally their mother). In 2018, the UN Global Study on Children Deprived of Liberty⁵ estimated that 19 000 children were living with a parent in prison. In Europe, while it is not known how many babies and young children are separated from their mothers in prison, it is estimated that 10 000 babies and children younger than 2 years are affected by their mother's imprisonment.⁶

The Council of Europe recognises that children living in prison with a primary caregiver experience substantial trauma, vulnerability, and stigmatisation and that, although prisons are not appropriate environments for children, forced separation of mothers and infants is highly undesirable.⁷ The UN Global Study on Children

Deprived of Liberty⁵ reported various advantages to children living in prison with their mother, which centre on the mother-child bond being crucial in child development, the multiple physical and mental health benefits of breastfeeding, and the minimisation of separation trauma during early infant years. UNICEF advises against separating infants from their mothers during custodial sentencing.⁸ Disadvantages centre on the life situations of primary caregivers (eg, in the case of drug or violent offences) and their relative effect on the care (or neglect) of children, and the restricted prison environment and its effect on the cognitive, psychomotor, linguistic, and emotional development of children (eg, restricted exposure to varied stimuli, little freedom to play in safe spaces, poor hygiene and sanitation, and congestion).⁵

Children living in prison with a primary caregiver have the same rights and (as far as possible) freedoms and opportunities as other children.^{5,7-9} The UN Committee on the Rights of the Child defines its general position on the issue with statements such as “every child has the right to stay and grow up with his/her parent(s)”, “it is in the best interest of the child to live with the mother”, “children should not be treated as if they are prisoners”, and that in situations in which the rights of a child are violated, alternatives (such as living with family) should be considered.^{10,11} The issue remains controversial given the complexities of defining and establishing that “in all actions concerning children...the best interests of the child shall be a primary consideration.”¹⁰ Throughout this Health Policy, the term best interests of the child is used to refer to this primary consideration from Article 3 of the UN Convention on the Rights of the Child.¹⁰ Various UN normative standards state that “best efforts should be made to ensure that children remaining in custody

Key messages

- Despite the growing population of women in prison, no reliable estimates exist of the number of pregnant women in prison, or the number of children born in prison or living in prison with a primary caregiver
- Permitting children to stay in prison with their primary caregiver has advantages (eg, mother–child bonding during breastfeeding) and disadvantages (eg, the impact of the institutionalised environment on child development)
- There is no global consensus regarding at what age confinement of a child inhibits healthy development, warranting removal from prison; the UN Committee on the Rights of the Child observes that determining a fixed age for separation and exit from prison is not viable and could compromise child protection standards in some States
- Timespan analysis of regulations permitting children to stay in prison with a primary caregiver showed a broad range of approaches and provisions across countries regarding the placement of children in prison; most countries stipulate a specific maximum age until which children are permitted to stay in prison, but some countries apply vague criteria
- Justice and penal systems worldwide experience challenges in balancing the best interests of the child and their right to family life when sentencing a primary caregiver
- Policy makers worldwide are advised to adopt provisions of Article 30 of the African Charter on the Rights and Welfare of the Child; globally it is the only set of explicit guidelines regarding individualised qualitative judicial decision-making processes, consideration of relevant safeguarding factors, practical application of permissions to stay in prison regarding standards of paediatric care, and provisions of safety-net supports on prison exit
- Routine monitoring of paediatric care standards of detention by national prison inspectorates and UN human rights treaty bodies is crucial for optimising child safeguarding and development; prison system authorities must ensure prison security and health-care staff are trained to assess the children's confinement conditions, health and development, and support mechanisms for their separation from caregivers upon leaving prison

See Online for appendix

with their parent benefit from adequate care and protection, while guaranteeing their own status as free individuals and access to activities in the community”, the prison environment “shall be as close as possible to that of a child outside prison”, and that in exit processes “the removal of a child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified”.^{3,10–12}

In 2022, we conducted a global socio-legal assessment on standards of detention for children, as reported by various UN Human Rights Treaty Bodies.¹³ The UN

Human Rights Treaty Bodies are committees of independent experts that monitor implementation of the core international human rights treaties. Various fundamental and health rights violations were documented in 43 countries (most of which were in Africa), which included the treatment of children as de facto prisoners; poor or unsafe living conditions; inadequate access to safe play, health care, and schooling; difficulties in securing identity documents when a child is born in prison; and inadequate support for children upon their exit from prison.¹³

In this Health Policy, we present a global mapping of prison age restrictions and durations of time that children are permitted to stay with a primary caregiver in prison. We scrutinised all countries, dependencies (territories or areas) and areas of special sovereignty (autonomous territories), and other countries recognised by the UN as not being self-governing.

Primary caregiver–child separation or placement of children in prison accommodation

Countries adopt a broad range of approaches with regards to the placement of children in prison: some do not permit children in prisons; some set strict time-bound limits; some provide degrees of leniency for requests of extensions on the basis of reasonable grounds or special circumstances; and some stretch official regulations well beyond set time durations (figure; appendix p 1).^{14–16} Placement policies in prisons can range from complete primary caregiver–child separation upon committal, to the provision of mother and baby units or prison nurseries for the duration of the breastfeeding period or for the duration of the prison sentence, to no specific provisioning at all—resulting in detention of the child under the primary caregiver's conditions of detention.

In China, Norway, and Slovakia, children are not permitted to live in prison compounds and are generally referred to orphanages, family, or foster care. In Norway, mothers are housed outside of the prison in a *mødrehjem* (home for mothers) until their children are old enough to be separated, generally around the age of 9 months.¹⁶ In Scotland, children younger than 5 years can be housed outside the prison with their mother in an independent living unit.¹⁷

166 countries, dependencies, or other territories permit children to stay inside prisons with a primary caregiver (generally their mother). Separation from the mainstream prison population occurs to varying degrees. In Germany, children can live in high-security prisons until age 3 years and in low-security prisons until age 5 years.^{14,15,17} Several countries cater for specialised prison-based housing for children. England and Wales provide mother and baby units in prisons until children turn 18 months.¹⁶ In the Netherlands, babies younger than 6–9 months stay in prison with their mother, and children live in mother–child houses until age 4 years.¹⁷

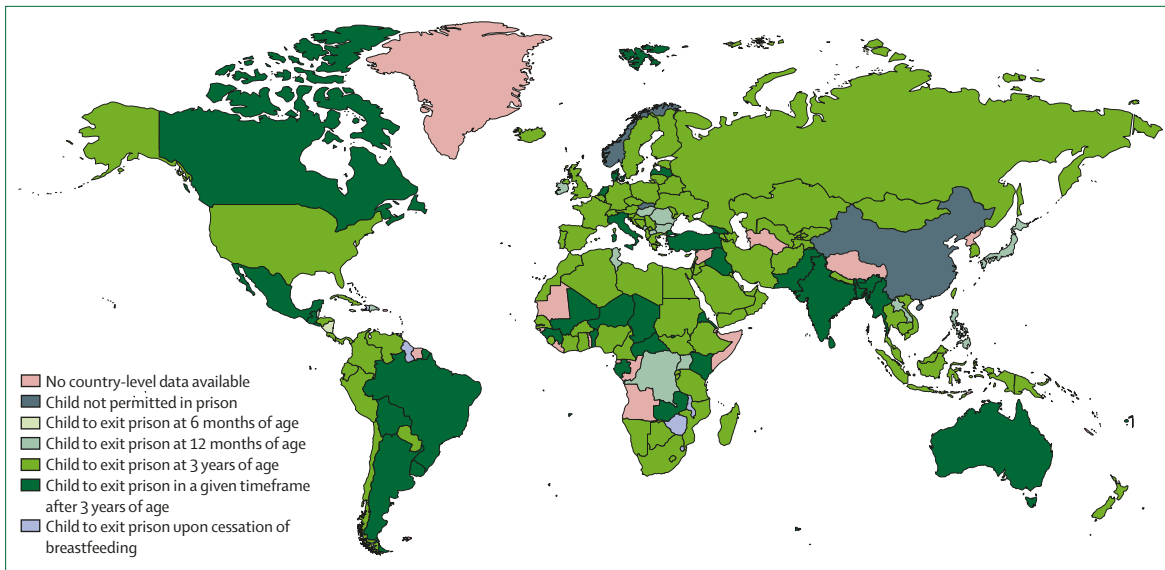


Figure: Exit requirements for children living in prison with a primary caregiver

Canadian prisons operate the Mother–Child Program for children younger than 4 years and a part-time programme for children up to 6 years of age.¹⁶

Despite efforts to advocate for the needs of fathers to be with their children,¹⁶ few countries explicitly allow children to co-reside with incarcerated fathers, and usually only in special circumstances when the child’s mother is deceased or incapacitated. Bolivia, Spain, Italy,³⁰ Belgium, Germany, Denmark, Sweden, and Finland are examples of such countries.⁵ Sweden and Australia have gender-neutral policies on children living in prison with their parent.¹⁶

Several Scandinavian countries provide family accommodation in prisons. Finland provides family units for children up to 2 years of age and open houses for children up to 4 years of age.¹⁷ In the Danish Horserød Prison, children can stay for up to 7 years of age in the pavilion for couples and families; here children can also stay with fathers until the age of 3 years.¹⁷

Permitted durations of time spent with a primary caregiver in prisons and age thresholds

Most countries stipulate a specific maximum age at which children are permitted to live in prison with a primary caregiver. Where stipulated, permitted age thresholds for children living in prison range from 3 months to 9 years globally. Two countries, Gabon and Eritrea, have no defined limit.¹³

A diverse range of non-specific or vague maximum age time limits were identified, whereby some countries permit children to live in prison “if a female prisoner is breast feeding her child” (Tonga),¹⁸ “during the normal period of lactation” (Belize and Dominica),^{19,20} “jusqu’à son sevrage” (ie, until weaned; Haiti),²¹ until the “child has been weaned” (Kiribati, Malawi, Tuvalu, and Zimbabwe),^{22–25}

as “an un-weaned infant” (Eswatini),²⁶ “under school age” (the state of Victoria in Australia),¹⁶ or until “the child starts school” (Tonga).²⁷ Some countries add specific age limits: “2 years or when weaned” (Ghana),²⁸ “during the normal period of lactation and longer (to a maximum of 12 months)” (Guyana),²⁹ and “if the child is being breast-fed by her and is less than 18 months in age” (Seychelles).³⁰ The Swedish provision simply refers to infant, which can be interpreted as the first few years of the child’s life.¹⁶

Among countries that set a specific maximum age limit (and excluding countries that adopt a non-specific maximum age—eg, during breastfeeding), the most common maximum age limit (found in 32% of countries) is 36 months, and the highest maximum age, on average, was found in South America (44·4 months; [table](#)).

Extended terms of stay based on reasonable grounds and special circumstances

Several countries and territories observe leniency with prison regulations and provide for the possibility of extended durations of time on the basis of special or reasonable grounds (appendix p 15). Special exceptions are made in Sweden when young children aged 12 months to 3 years are so traumatised by the separation from their mothers that being reunited is considered necessary for the welfare of the child.¹⁶ With regards to due process around these requests, little information is available to guide the exact processes and requirements for reasonable grounds, special circumstances, or even time-bound scope.

Variation is also observed at prison facility, state, and territorial levels. For example, in Australia, a child can stay with their mother in prison until age 4 years in the Australian Capital Territory but until age 6 years in New South Wales.^{15,16}

For more on prison populations in Gabon see <https://www.prison-insider.com/countryprofile/gabon-prison-en?s=populations-spezifikes#populations-spezifikes>

	Average set maximum age	Maximum set maximum age	Minimum set maximum age	Median age
Global (n=150)	33.7	108	3	36
Africa (n=34)	31.2	60	12	24
Asia (n=44)	35.2	108	12	36
Europe (n=40)	32.7	84	12	36
North America (n=14)	32.4	72	3	30
Oceania (n=8)	29.2	72	6	18
South America (n=10)	44.4	84	24	36

Data are in calendar months. This table only includes numerical values and excludes countries without specific age limits; ie, Belize, Dominica, Eswatini, Grenada, Guyana, Haiti, Kiribati, Malawi, Tonga, Tuvalu, Zimbabwe (which sets the limit at cessation of breastfeeding), Chad (which sets the limit to include young children), Eritrea, Gabon (which has no set limit), Guinea (which sets the limit at release or being taken into custody), and Sweden (which sets the limit to infancy).

Table: Global and regional set maximum age limits for children living in prison with a primary caregiver

Some countries provide for explicit maximum terms beyond which no extension is granted. Guyana and Grenada have set a maximum duration of 12 months.^{31,32} Croatia stipulates a maximum duration of 7 years with no exceptions.¹⁷ Uruguay permits an extension of up to 8 years.³³

Regulations appear to be ignored in low-resource and fragile states, generally due to weak state social care systems and inadequate familial or state capacity (usually orphanages) to assume care for affected children. In Chad, Cambodia, Iraq, the United Arab Emirates, Pakistan, India, and Yemen, children often live in prison well beyond official time restrictions and into adolescence.^{15,16,34-40}

Best interests of the child: balancing separation versus risk in the prison environment

We recognise the substantial difficulties for justice and penal systems to ensure full consideration of the best interests of a child and their right to family life when sentencing a primary caregiver.^{13,14} Challenges worldwide currently centre on the variability in policies, the lack of a framework for decision making (including practice-oriented checklists), and little data to inform decision making.

The development of UN normative standards regarding decisions to permit a child to stay in prison and for what duration, and regarding the adequacy of paediatric standards of detention could build on the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules⁴¹ and the Bangkok Rules for women prisoners.³ A best-practice guideline for countries with set criteria might not be attainable, however, due to diverse contexts, fragile states, and prison systems' capacities to fully consider humane and developmentally conducive conditions of detention for babies, infants, and children.

According to the UN Committee on the Rights of the Child, determining a fixed age for caregiver-child separation and exit from prison is not viable and could

compromise child protection standards in some countries.¹¹ The broad range of approaches worldwide reflects the absence of consensus around age limits for children living in prisons with primary caregivers and the age at which confinement of a child inhibits their development, warranting their removal from prison, and inconsistencies in the prison system's provisions for and protection of this vulnerable group of children.

We advise policymakers to integrate the normative provisions of Article 30 of the African Charter on the Rights and Welfare of the Child⁴² into their country's domestic policies and standards.⁹ Article 30 of the Charter on children of imprisoned mothers is the only set of international guidelines that provide explicitly for the prioritisation of non-custodial measures, the special treatment of mothers, and the practical application of the best interests of the child principle regarding caregiver-child separation or the permission to cohabit with a primary caregiver in prison.^{9,42} Article 30 applies to mothers, fathers, and other primary caregivers (eg, grandparents).

Article 30⁴² recommends that court and prison system decisions around permitting children to stay in prison for a duration be based on individualised, qualitative approaches, which are nuanced and based on actual information about the child and primary caregiver.⁹ Such individualised, qualitative approaches must consider relevant safeguarding factors as to whether (or for what duration) children should live in prison. These factors relate to the child's age, gender, maturity, and nutritional needs (eg, the optimal duration of breastfeeding); the quality of their relationship with their caregiver; the availability of alternative quality care in the community; and prison conditions. Article 30 further recognises that imposed age restrictions and leniency in special circumstances should depend on provisions in the prison (eg, health care, education, play, and hygiene) and whether viable alternative care is available.^{9,42} It provides explicit guidance on the practical application of permissions to stay in prison with regards to standards of paediatric care, the living environment for children during confinement, and provisions of safety-net supports upon prison exit.^{9,42} Article 30 specifies that prisons should ensure the services available to children in prison are equivalent to those for children in the community and that the prison environment provided for the child's upbringing should be as close as possible to that of a child outside of prison.

In addition to the integration and operationalisation of Article 30 of the African Charter on the Rights and Welfare of the Child⁴² into national policy and practice, policy makers and prison system authorities are advised to implement regular training of prison security and health-care staff on the placement of children with a primary caregiver in prison. Routine monitoring of paediatric standards of detention by national prison inspectorates and UN Human Rights Treaty Bodies is crucial, and these mechanisms are advised to scrutinise the situation of

Search and selection strategy

A comprehensive online search of the UN Human Rights Office databases, the US Department of State human rights webpages, various governmental and non-governmental organisation webpages, and the academic databases Scopus, Web of Science, PubMed, Science Direct, and the Surface Web was conducted in English in January, 2023. The following MeSH search terms were used: (mothers with *child*babies in *prison*detention, babies in *prison*detention, prison act *country). No restriction on dates of publication was applied, and when two or more sources were found, the most current information was included. Data were verified by crosschecking against domestic law. When information proved difficult to find, requests for information were made to the UN Office on Drugs and Crime. Domestic information could not be found for 58 countries. The complete dataset is available in the appendix (pp 3–14).

children when visiting sites of detention with an explicit focus on the conditions of their confinement, access to appropriate paediatric and developmental care, and the provisioning of safety-net support mechanisms for their separation and exit from prison.

Little is known about the developmental outcomes of children living in the prison nursery context for different durations.^{11,13} Future research agendas should focus on optimal child safeguarding processes and child development during confinement with a primary caregiver; the effect of confinement on children in relation to their age, gender, length of stay in prison, and living conditions; the experience of transitioning from confinement to freedom (and vice-versa), and identifying requisite prison-exit supports that are appropriate to various cultural contexts and settings.

Conclusion

The UN's 2030 Agenda for Sustainable Development shows clear global commitment to leaving no child behind.⁴³ Although the WHO Nurturing Care Framework⁴⁴ and its principles (good health, adequate nutrition, responsive caregiving, security and safety, and opportunities for early learning) recognise the vulnerabilities of the children of people living in prison, they do not explicitly refer to the situation and needs of children living in prison. Children living with a primary caregiver in prison remain undocumented and vulnerable in many countries. They should not be left behind.

Contributors

MCVH contributed to the conceptualisation, methodology, supervision, data validation, and writing of the original draft of this Health Policy. U-BK contributed to the conceptualisation, data curation, investigation, methodology, data validation, and reviewing and editing of this Health Policy. SF contributed to the conceptualisation, data curation, visualisation, methodology, data validation, and reviewing and editing of this Health Policy. HS contributed to conceptualisation, supervision, and reviewing and editing of this Health Policy.

1 Declaration of interests

We declare no competing interests.

Editorial note: The Lancet Group takes a neutral position with respect to territorial claims in published maps and institutional affiliations.

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For more on the UN Human Rights Office databases see www.ohchr.org

For more on the US Department of State human rights webpages see <http://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/>

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