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Submission for CRC Day of General Discussion, 30 September 2011

Protecting Children in Prison with a Parent – Implement and Develop the Bangkok Rules

"I want to be with my brothers and sisters. I will be with them if my mother gets bail."¹

1. Introduction

The issue of babies and young children born, living and/or growing up inside prisons requires the urgent and immediate attention of policymakers and practitioners around the world. Whilst facilities and conditions vary around the world, it is generally accepted that a child with an incarcerated parent must not be treated as an offender. For children who are in conflict or contact with the law, standards have been developed within the UN Standard Minimum Rules for the Administration of Juvenile Justice (*'Beijing Rules'*) and the UN Rules for the Protection of Juveniles Deprived of their Liberty. Specific guidelines aimed at addressing the issue of children of prisoners, however, have been largely absent, other than in the African Charter on the Rights and Welfare of the Child.²

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (known as the *'Bangkok Rules'*), adopted by the UN General Assembly in December 2010, have introduced a set of instructions for policymakers and practitioners dealing with this issue in the context of women prisoners. These act as a basic international framework within which to assess, amongst other issues, whether the penitentiary system is equipped to comply with dependent children's needs when imprisoned with their parent.

Growing up in a prison can be traumatic, but it is often seen as the only option if children cannot live with extended family, for example because of the risk of harm or stigma attached to the crime of which their parent is accused. Separation from a parent is also traumatic, which is why many authorities try to make basic provisions, at least in allowing babies and young children to stay with their mother until a certain age limit and providing for separate accommodation for mother and child. However, it is questionable whether provisions setting a strict age limit on this are consistent with the prerogative of the best interest of the child and the requirement of individual assessments. Often the lack of dedicated resources puts children's wellbeing at risk³. Not enough is done to promote alternatives to custody for mothers with young children, for example education and rehabilitation programmes or early conditional release.

Penal Reform International (PRI) urges states to take immediate steps to assess their prison standards against the Bangkok Rules and to review legislation as well as practice in order to ensure implementation.

2. Overview of the Bangkok Rules

As a starting point, the Bangkok Rules stipulate that decisions as to when a child is to be separated from its mother (or father⁴) must be based on individual assessments and the best interests of the child (*Rule 52*) and that children in prison with their mother (or father) should never be treated as prisoners (*Rule 49*).

They also make it clear that children must be taken into account at all stages of a parent's contact with the criminal justice system, specifying that women must be allowed as many opportunities as possible to see the children who are

imprisoned with them (*Rule 50*) and that the child's experience must be as close as possible to life for a child outside (*Rule 51.2*). See **Annex 2** for all Bangkok Rules relating to children in prison with their parent.

3. Examples and PRI experiences from around the world

It may be useful to look at a range of countries and their current practices for prisoners with children as a starting point for discussion.

Europe

a) **Ukraine:** PRI's Swiss-funded project to support penitentiary reform has highlighted that women giving birth in prison can stay with their children up to the age of 3 or, exceptionally, 4, but are separated for much of the time and are only able to see each other twice a day, for two hours, unless they are breastfeeding.⁵ When they reach the age limit, children are taken to orphanages, making it difficult for the mother to stay in contact and to monitor their welfare. PRI, in its aim to improve human rights for vulnerable groups of prisoners, has carried out work to encourage the respective authorities to adopt new rules governing the conditions of women's and children's joint accommodation. In 2010 regulatory changes were made, leading to the construction of the first 11-room unit for mothers with children under 3 in one of the two women's prisons. This unit has appropriate nursery facilities and is well-furnished. Decisions as to the allocation of these facilities to a mother are based on whether she is breastfeeding, how she engages within the group, on her attitude towards her child and on general behaviour. The facilities have led to women communicating better with and taking responsibility for their child, as well as acquiring practical skills for use in childcare, such as food preparation.

b) **Russia:** babies and small children accompanying their mothers in places of detention generally live in separate units and see their mothers once or twice a day. In 2002 PRI initiated and assisted in the organisation of the first joint accommodation in Russia for imprisoned mothers and their babies in one of the Russian colonies.⁶ Following awareness-raising, there is now a set of procedures in place to protect small children, and a dedicated working group to promote and implement them.

c) **Georgia:** legislation allows for a suspension of the sentence for a pregnant woman up until a year after the pregnancy. Otherwise, imprisoned mothers can keep their babies with them up to the age of 3 years. Norwegian funding has enabled the construction of a mother and baby unit with adequate childcare conditions. In July 2011 there were 6 women with babies in the women's prison. The moment when mothers have to let go of their children (upon reaching 3 years of age) is stressful for both mother and child. If possible, children are cared for by other family members or, if there is no family, placed in children's homes. However, regular contact time with their mother has proven to be problematic in practice.

d) **Armenia:** pregnant women or women with children under 3, except those imprisoned for serious crimes for more than 5 years, can be exempted from punishment or the punishment can be postponed by the court for the period when the woman is exempted from work due to pregnancy, childbirth and until the child reaches the age of 3.

e) **England & Wales:** there are seven mother and baby units housing 100 babies. Between 2005 and 2008 there were almost two births per week to women prisoners.⁷ Babies can stay with their mothers until the age of between 9 and 18 months, or longer if the release date is imminent.⁸ It is estimated that over 17,700 children annually are separated from their mother by imprisonment,⁹ and the rule is that a mother will only be able to obtain a place in a mother and baby unit if it is considered to be in the child's best interests. Any risk of harm, for example, would preclude this form of accommodation.¹⁰

South Asia

f) **Bangladesh:** female prisoners serving long-term sentences can only bring their babies into the prisons by a respective court order. Joint accommodation can last up to the age of 4 years or, with the permission of the prison

superintendent, up to the age of 6. Subsequently, mothers can apply for their child to be accommodated in a social welfare institution. While ten of the central jails have child development centres, the 55 district jails lack separate facilities. See **Annex 3** for further information about the situation in Bangladesh, from PRI's Board member Imman Ali.

g) **India:** rules in most States permit imprisoned mothers to keep children with them up to the age of 6. Some State prisons have allowed girls of 10 and 12 who have a disability to remain in prison with mothers. However, clear guidelines that take stock of the realities need to be put in place. In the course of a joint project in the State Jail for Women in Andhra Pradesh, PRI and its partner PRAJA presented a proposal to the Prison Department to allow children eligible for nursery school to attend the local community school, in order to normalise their experiences as much as possible. Having been piloted after much deliberation, this practice became a reality acclaimed as a progressive step. Some prisons (e.g. Tihar in New Delhi) promote the maxim 'if you can't bring the children outside, bring the outside to the children', the goal being to minimise psychological damage caused by abnormal surroundings.

Africa

h) **Sierra Leone:** PRI's contact, AdvocAid, is the only civil society organisation which focuses on girls, women and their children in detention; it reports that children living in prison with a parent are faced with malnutrition and poor sanitation, subjected to the confines of prison life and denied their most basic rights.¹¹ Whilst policy allows children under the age of 2 to be in prison with their mothers, there are often worsening factors such as lengthy periods on remand, lack of legal representation for those in the judicial system and severe overcrowding in prisons. Any existing policies relating to children, such as those governing decisions on where they are placed, often seem arbitrary. All of these issues have an enormous impact on the welfare of children and their mothers, both in prison and after release. The physical effects of poor nutrition and health standards are perhaps the most visible signs of the impact of imprisonment but there are also heavy emotional, psychological and economic consequences. Former prisoners, including children, are often faced with exclusion from their families and communities once they are released, due to the stigma attached to the institution.

i) **South Africa:** mothers have to part with their children once they reach the age of 2, when they have to be sent to other family or foster carers. The age limit had been previously set at 5 years, but was changed as this provision was considered damaging for child development. Small children were reported to have to participate in prison roll call.¹²

Following on from these examples, PRI has made a series of recommendations, based on the Bangkok Rules, for how children of prisoners should be treated and how decisions on their care should be made. These recommendations follow in **Annex 1**.

Acknowledgements

Penal Reform International would like to thank the following experts for their kind contributions to this submission:

Justice Imman Ali, PRI Board member and Supreme Court Judge, Bangladesh
David Daubney, PRI Chair and Restorative Justice Expert, Canada
Sabrina Mahtani, AdvocAid, Sierra Leone
Marianne Moore, Justice Studio, UK
Oliver Robertson, QUNO, Switzerland
Dr Rani Shankardass, Penal Reform And Justice Association, India
Frances Sheahan, Consultant, Egypt / UK
Olena Suslova, Women's Information Consultative Center, Ukraine



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Annex 1.

Recommendations for CRC Day of General Discussion, 30 September 2011

Protecting Children in Prison with a Parent – Implement and Develop the Bangkok Rules

- 1. Alternatives to custody should be applied wherever possible, if someone facing imprisonment has sole caring responsibilities.** This might include remand on bail, community service, a suspended sentence – perhaps until the child is older, or mediation / restorative justice.
- 2. Children should be allowed to stay in adequate joint accommodation with their parent, preferably separate from the prison,** if s/he has to be imprisoned at all. If living with their parent is not considered suitable, appropriate carers, for example their wider family, or foster families, should be explored. NGO involvement should be considered as a path to a solution.
- 3. Children's best interests must be taken into account at all stages of the criminal justice process** where a parent is facing imprisonment, particularly if s/he is their sole carer or where a newborn baby is concerned. To that end, strict age limits for a child to remain in prison with its parent should be replaced by individual assessments on a case-by-case basis, to be reviewed on a regular basis. Such a decision should rest with competent authorities who have the capacity to enforce, follow up and review decisions, and should apply the principle of the best interest of the child equally for children of detained mothers as well as fathers.
- 4. Maximum efforts must be made to enable family members to visit** the parent and child easily, so that relationships with the wider family can be maintained and children do not risk losing their care network. To that end, flexibility in frequency and timing of visits should be shown to visitors to make family unions as frequent as possible. Facilities for visits should allow for a suitable environment to make for greater sociability. Factors such as distance from the prison and frequency of visiting should be taken into account when determining the length of visit allowed, and visits by the extended family unit should be specifically facilitated to make for sustained relationships for the future of the children.
- 5. Children of incarcerated parents should not be stigmatised** by a society's prevailing attitudes towards prisoners. They should, as far as possible, have safe contact with the outside world and the opportunity to access education and play activities, spend time with their wider family and meet other children. To that end, governments should engage in public awareness-raising, involving civil society organisations.

ANNEX 2. Selection of Bangkok Rules relating to children of incarcerated parents¹³

Rule 2.2 Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

Rule 22 Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison. **& Rule 23** Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.

Rule 33.3 Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.

Rule 42.2 The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities. **& 42.3** Particular efforts shall be made to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison.

Rule 48.1 Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers. **& 48.2** Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so.

Rule 49 Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.

Rule 50 Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.

Rule 51.1 Children living with their mothers in prison shall be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services. **& 51.2** The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.

Rule 52.1 Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws. **& 52.2** The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials. **& 52.3** After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

Rule 57 The provisions of the Tokyo Rules shall guide the development and implementation of appropriate responses to women offenders. Gender-specific options for diversionary measures and pre-trial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.

Rule 60 Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.

Rule 63 Decisions regarding early conditional release (parole) shall favourably take into account women prisoners' caretaking responsibilities, as well as their specific social reintegration needs.

ANNEX 3. Mothers with babies in prison in Bangladesh

In Bangladesh there are 70,000 prisoners in different prisons across the country; of these 2,570 are female prisoners. The vast majority of these prisoners are in custody pending trial. In May 2011 a study was undertaken on 900 female prisoners in Dhaka Central Jail and Kashimpur Central Jail-III (which is exclusively for female prisoners) of whom only 211 were convicted and the remaining were under trial.

As of 17 July 2011, along with the 2,570 female prisoners there were 389 babies inside the prisons; some of the women have more than one child residing with them. The babies are in the prisons because their parents are not able to make any alternative arrangement for them outside the prison or because the babies are too young or breastfeeding and cannot be kept with other relatives.

Some of the mothers start as petty offenders due to poverty-generated need and become habitual offenders. They get bail due the existence of young children who need care. They come in and go out of prison on a regular basis and their children similarly frequent the prisons with their mothers.

Female prisoners serving long-term sentences bring their babies into the prisons only by the order of the court and can keep them there up to the age of four years or, with the permission of the superintendent of the prison, up to the age of six years. If a female prisoner fails to bring her child with her on first entry into the prison, she can apply to the court subsequently through the prison authority to bring the baby inside the prison. Similarly orders need to be passed from the court for the release of those babies after attaining the age of four years or, at the discretion of the superintendent, six years. If any mother is interested to transfer her baby to any approved institute, for example those run by the social welfare department, she can apply to the District Magistrate to take the child into the care of the authority.

According to the Jail Code, it is the responsibility of the jail authorities to care for the children who reside on their premises, including provision for their food and clothing. Mothers who have children with them are also entitled to nutritious food and certain other privileges. The children are kept in a separate place when their mothers are engaged in duties allocated to them as convicted prisoners. In ten of the central jails the government has set up child development centres, where they are kept during the daytime. Dhaka Central Jail has a fully-fledged Day-Care Centre, where children are kept while their mothers take part in vocational training. The District jails, of which there are 55, do not have any separate facilities for children. They are kept in the areas designated for female prisoners. Sometimes one or two female prisoners are assigned duty to take care of all the children during the day.

The downside of having children in prisons is that their psychological, mental/intellectual development is deficient, inasmuch as they do not see the outside world and have no idea about nature and real-life surroundings. There is no scope for them to grow up 'normally' as other children in free society amongst friends and relatives. They do not have the benefit of their father's presence and his guidance. There is also no scope for any type of education for the children inside the prisons. From the beginning of their lives they are exposed to confinement with women who are convicted or accused of criminal offences. Just like the prisoners, the children have no freedom of movement or association/interaction with others. The likelihood is that they may become misfits in society, e.g. after release, they would not realise what to do if they came across a cat or a dog. The children may also leave prison with a stigma attached to them for the rest of their lives. This would have an immense negative psychological effect when they enter mainstream education.

Various alternatives can be considered for 'child-rearing' women who are accused of criminal offences. Taking them into custody pending trial should be the exception and not the norm. They should be offered counselling about the possibility of their being separated from their children and/or the negative and detrimental effects of the child residing inside the prison.

If incarceration of child-rearing mothers is at all necessary, then an alternative system of open-type prisons should be available for women with suckling babies or very young children. Alternatively the State should ensure better placement of these children within immediate, extended or other families.

Where incarceration is inevitable, then facilities should be provided for the care of children in a separate compound away from the prison where educational and other everyday facilities may be provided. Other possible ways to deal with the situation might be a change in the sentencing system whereby the mother's sentence is suspended until after the baby is weaned from breast-feeding and is old enough to be left at home. Periodic imprisonment may be considered whereby the mother is kept in confinement only at weekends or a set number of hours during the day. In this way the child can be kept 'free' with maximum contact with the mother. There can be many other permutations of this.

Alternatively incarceration of the mother may be avoided altogether by awarding a sentence of community service. The best interest of the child must be a primary consideration and first preference should always be to avoid incarceration of children. Laws of the State parties must indicate that the above matters have been considered and adequate measures taken to avoid confinement of children in prisons.

Justice Imman Ali, 21 July 2011
PRI Board member and Judge

ENDNOTES

¹ Statement by a 4-year-old child in prison in India, part of research published in: Shankardass, R. (2001) *Where the Mind is without Fear and the Head is Held High: Mental Health and Care of Women and Children in Prison in Andhra Pradesh*, India: PRI / PRAJA

² Article 30: '[...]ensure that a non-custodial sentence will always be first considered when sentencing such mothers'

(http://www.achpr.org/english/info/child_en.html)

³ Penal Reform International Briefing on the Bangkok Rules, February 2011, p2 (http://www.penalreform.org/files/PRI-QUNO_English_1.pdf)

⁴ Bangkok Rules, para. 12 of the preliminary observations: 'Some of these rules address (...) both men and women, including (...) parental responsibilities (...)'
(http://www.penalreform.org/files/United_Nations_Rules_for_the_Treatment_of_Women_Prisoners_and_Non-custodial_Measures_for_Women_Offenders_the_Bangkok_Rules.pdf)

⁵ <http://www.penalreform.org/news/pris-work-imprisoned-women-and-children-ukraine>

⁶ For more information, see PRI's project factsheet:

http://www.penalreform.org/files/Fact%20Sheet_Women%20and%20Babies%20Russia_2010.doc

⁷ Prison Reform Trust, *Bromley Briefings Prison Factfile*, June 2011, p23:

(http://www.prisonreformtrust.org.uk/Portals/0/Documents/Fact%20File%20June%202011%20web.pdf?dm_i=47L,GNM1,3V7K0K,1CV95,1)

⁸ PRI briefing on The Treatment of Mothers with Babies in Prison, March 2010

([http://www.penalreform.org/files/HMP%20Eastwood%20Park_Mother%20and%20Baby%20Unit%20\(2\).pdf](http://www.penalreform.org/files/HMP%20Eastwood%20Park_Mother%20and%20Baby%20Unit%20(2).pdf))

⁹ Prison Reform Trust, *ibid*

¹⁰ Prison Reform Trust / HM Prison Service, *Prisoners' Information Book: Women Prisoners and Young Offenders*, 2003, p 49

¹¹ Mahtani, S & Thompson, A, *Children living in prison: Insights from Sierra Leone* (Advocaid: 2008)

¹² CNN, (<http://edition.cnn.com/2011/WORLD/africa/05/05/johannesburg.prison.babies/>) accessed 5 May 2011

¹³ For the full Bangkok Rules document, see http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/United_Nations_Rules_for_the_Treatment_of_Women_Prisoners_and_Non-custodial_Measures_for_Women_Offenders_the_Bangkok_Rules.pdf