

Policy Brief

**Falling through the Cracks: the Plight of Women Incarcerated with Children**

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# Falling through the Cracks: the Plight of Women Incarcerated with Children in Uganda

## SUMMARY

- ✚ Women incarcerated with children represent a small percentage of the prison population, their specific concerns and challenges therefore get left out at policy, planning, budgeting and implementation of government and private interventions. As the number of female inmates in Uganda rises, the number of women detained with children is rising significantly
- ✚ The Constitutional (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013) are not uniformly applied: judicial officers are not giving due consideration to the best interests of the child when handing down sentences to pregnant women and women with babies. As a result, a large number of the women in prison with children are first time petty offenders.
- ✚ While women detained in urban prisons have better access to health care services, accommodation facilities and food both for themselves and their children; those in rural prisons face hardship in access to healthcare and nutritious food for their children.

## INTRODUCTION

S 59 (1) of the Uganda *Prisons Act 2006* provides that female prisoners should be admitted with their infants. It further provides that a female, pregnant or nursing prisoner should be provided with special services as needed. Statistics from Uganda Prisons Service indicate a steady increase in the number of women in detention. As at May 2015 there were 1933 women in custody compared to 2530 women by May 2016 marking a 31% increase.<sup>1</sup> Similarly, the number of children in detention with their mothers continues to rise: at May 2016 there were 215 children compared to 256 children by May 2017, marking a 19% increase.<sup>2</sup>

The number of children in detention with their mothers has been rising over the years. As at May 2016 there were 215 children compared to 256 children by May 2017, marking a 19% increase. (UPS Statistics)

## PROBLEM

United Nations General Assembly resolution A/RES/58/183 on human rights in the administration of justice calls upon "...governments, relevant international and regional bodies, national human rights institutions and non-governmental organizations to devote increased attention to the issue of women in prison, including the children of women in prison, with a view to identifying the key problems and ways in which they can be addressed".

State Parties must put mechanisms in place to minimize arrests of parents/primary caregivers, taking all other considerations into account, such as the crime allegedly committed and alternative methods for securing attendance to court.

<sup>1</sup> Statistics from Uganda Prisons Service

<sup>2</sup> Statistics from Uganda Prisons Service, December 2016

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The protection provided for under the key human rights instruments can be categorized into; access to legal protection, non-custodial measures, protection for the best interests of the child, health and hygiene and nutrition.

In Uganda, women in prison are a small minority in the national prison population, and women with babies are even less in numbers, their specific needs, vulnerabilities and characteristics as subjects of the criminal justice system have therefore remained unacknowledged and unaddressed

### FINDINGS

The issues and challenges facing by pregnant women and women arrested with children are:

- ✚ When arresting women with infant children, police do not give due consideration to the welfare of their children. The Uganda Police does not have clear guidelines and protocols for arresting women with children and babies. Consequently children, including infants can find themselves left alone at home or abandoned.
- ✚ The primary need identified by pregnant women and women arrested with children is legal representation, most of the women are illiterate, first time offenders with no knowledge of their rights, do not understand court process and cannot afford lawyer
- ✚ Many female inmates with children are first offenders and are serving custodial sentences for petty crimes like theft and assault because alternative sentencing was not considered by the Judicial officers and neither are interests of the child considered.
- ✚ Many pregnant end up in detention facilities far from home and lose contact with families as they are brought to urban prisons to bring them closer to medical facilities for delivery.

### RECOMMENDATION

- Establish a formal pathway and clear police and judicial protocol for handling women with children when they are first presented before court
- ❖ Define the core of 'the best interests of the child' as provided for under the Children's Act and what it means for each of the criminal justice actors.

### POLICY IMPLICATIONS

- ❖ The government must expeditiously adopt the National Legal Aid Policy to ensure access to legal aid services for all suspects.
- ❖ Gender-mainstreaming at planning and policy development levels within the criminal justice system; at police, prosecution, judiciary and prisons to

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better protect and provide for the rights of women incarcerated with their babies.

### CONCLUSION

PILAC through in this research has shown the shortcomings, gaps and opportunities for intervention in the handling of pregnant women and women with children through each stage of the criminal justice system. Several actors in the criminal justice system are blind to the lived realities and challenges faced by pregnant women and women with children who come into conflict with the law.. This study highlights the need for comprehensive guidelines on the handling of this category of offenders at the various stages of the criminal justice process.