

HUMAN RIGHTS WATCH

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HUMAN
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August 5, 2011

Members of the United Nations Committee on the Rights of the Child
Office of the United Nations High Commissioner for Human Rights

www.hrw.org

Re: Day of General Discussion on Children of Incarcerated Parents

Dear Committee Members:

We write in advance of the Committee on the Rights of the Child's ("the Committee") upcoming day of general discussion on children of incarcerated parents to highlight areas of concern we hope will inform your consideration of the issue. This submission documents conditions and healthcare of children incarcerated with their mothers in Ugandan and Zambian prisons, and makes recommendations to the Committee.

In July 2011, we published *"Even Dead Bodies Must Work": Health, Hard Labor, and Abuse in Ugandan Prisons*; in April 2010 we published *Unjust and Unhealthy: HIV, TB, and Abuse in Zambian Prisons*. These reports describe the health, conditions, and abuse of people in detention, including women incarcerated with their children. They are based on interviews with prisoners and prison officers in each country. The information included in this submission is drawn from research conducted for those reports; research was conducted in Zambia between September 2009 and April 2010, and in Uganda between November 2010 and March 2011.

In both Uganda and Zambia, Human Rights Watch documented non-existent or inadequate prenatal health services for pregnant women in detention, and inadequate healthcare for children incarcerated with their parents. Nutrition, which is insufficient for many prisoners in both countries, is particularly problematic for pregnant or lactating women, and food is frequently not provided at all for children incarcerated with their mothers. Unavailability or non-use of non-custodial alternatives including bail, and lack of legal representation, contribute to arbitrary and extended pre-trial detention, which strains available resources and removes parents from their homes, sometimes unnecessarily. For more extensive discussion of these issues, please refer to our reports, which are attached to this submission.

In your upcoming day of general discussion, Human Rights Watch urges the Committee to consider the conditions faced by children incarcerated with their mothers in Ugandan and Zambian prisons—which are representative of similar conditions in many neighboring countries—and to particularly examine:

1. *The adequacy of nutrition provided to children incarcerated with their parents, and to pregnant and lactating women in detention;*
2. *The availability of health services for pregnant women and for children incarcerated with their parents; and*
3. *The availability of non-custodial alternatives to incarceration, particularly pre-trial, which would allow parents to avoid either unnecessary detention and separation from their children, or the unnecessary incarceration of children with their parents.*

Lack of Adequate Nutrition

Zambia

In Zambia, where reports of malnutrition are common among prisoners and food provided to prisoners consists entirely of maize meal and either beans or tiny, dried fish, there is no special diet for pregnant or nursing women. Despite a Zambian legal provision that, subject to the commissioner's conditions, "the infant child of a woman prisoner may be received into the prison with its mother and may be supplied with clothing and necessities at public expense," and may stay up until age four,¹ there is no food at all allocated to children under age four who live with their mothers in prisons; they are expected to share out of the portion of the mother. In situations where women are unable to breastfeed, the prison does not offer infant formula.

Uganda

In Uganda, where prison authorities acknowledge the nutritional insufficiency of the food, lack of adequate nutrition is particularly problematic for pregnant women prisoners and small children. Under Ugandan law, "[a] female prisoner, pregnant prisoner or nursing mother may be provided special facilities needed for their conditions."² Some women occasionally reported receiving supplemental milk or eggs during their pregnancy. However, pregnant or lactating women typically do not receive extra food rations. At Jinja Women's Prison, pregnant women who had been exempted from hard labor ate an even less nutritious diet than their non-pregnant colleagues because they did not grow greens which they could eat. Harriet, a new mother at Masaka Main Prison, reported: "The food we eat doesn't generate breast milk.... I'm breastfeeding but it's not enough." If prisoners choose not to breastfeed, or are unable to breastfeed, they do not consistently have access to formula or safe water with which to prepare it.³

Despite Ugandan law requiring children imprisoned with their mothers to be supplied with "necessities of life,"⁴ food is not generally allocated for these children.

Human Rights Watch urges the Committee to ask states parties about the availability of adequate nutrition for children incarcerated with their parents and pregnant women in prison and to urge them to improve prison nutrition, particularly for these populations.

Lack of Adequate Healthcare

Zambia

Despite provisions in the Convention on the Rights of the Child guaranteeing children's right to health, Human Rights Watch heard reports in Zambia that, as with adult prisoners, children under age four held with their mothers in prison do not consistently receive adequate healthcare. For those prisons without a clinic—and for more serious medical conditions at those with a clinic—access to care is controlled by medically unqualified and untrained prison officers. Lack of adequate prison staff for the transfer of sick prisoners and security fears conspire to keep inmates and their children from accessing medical care outside of the prisons, in some cases for days or weeks after they fall ill. Human Rights Watch heard a report at Lusaka Central Prison in October 2009 that a baby had died of diarrhea and was sick for three days before going to the clinic. Another mother informed Human Rights Watch that “my child had a high temperature and cough. She was taken to the [community] clinic by prison officers but there was no medicine.” Instead, a donation from a religious organization allowed the mother to purchase medicine for her daughter. “Sometimes there are no medicines for my baby,” she concluded.

Additionally, prison-based prenatal care does not exist at any of Zambia's prisons, and pregnant inmates must therefore leave the prison confines in order to access services. Some pregnant women reported being unable to access medical care including prenatal services entirely, even six months into their pregnancy. In other cases, prenatal care existed but was inadequate. The chief medical inspector at one prison claimed that the World Health Organization (WHO) Prevention of Mother-to-Child Transmission (PMTCT) of HIV protocols were used, though acknowledged that while such protocols are updated, additional training is not provided in the prisons when protocols are updated. HIV-positive pregnant inmates reported treatment directly contrary to the most recent WHO guidance. There is no PMTCT program in the prison medical directorate, though PMTCT has been scaled up in recent years in the general population.⁵

Uganda

As of March 2011, only 63 of Uganda's 223 prisons had any on-site healthcare worker. For those prisoners or their children at prisons without medical facilities or for those with more serious ailments that could not be dealt with at their prison health unit, prison wardens act as gatekeepers. Wardens frequently denied or delayed inmates' or their children's access to community medical facilities because of suspicions that prisoners were using ill health as an excuse not to engage in forced labor, or as a pretext for escape. One female prisoner at Fort Portal Women's Prison reported that in November 2008 her baby's fingers had to be amputated because of the delay in allowing her to the nearby hospital.

In Uganda, female prisoners who were pregnant or had given birth in prison reported that prenatal care was frequently unavailable or inadequate. Christine, six months pregnant at Fort Portal Women's Prison, said she had asked daily to see a doctor for the pain she was experiencing and blood in her urine but had been refused. Lydia, six months pregnant, had received no prenatal care for the month and a half she had been in prison. Women at Luzira Women's Prison receive prenatal services at the staff clinic, the only prison-based facility

offering delivery services; but even there, female prisoners claimed that care was inadequate. Postnatal care is minimal: One prisoner said she was forced to return to the prison two hours after giving birth at a hospital.

HIV testing for pregnant women suffered from numerous problems. Pregnant women reported “mandatory” testing in some instances. In others, testing was either not offered or the results were not shared with the woman who had been tested. PMTCT is available only through prison health services from one prison-based facility; or “if the situation allows, she can access the public health facility.”⁶ Some HIV-positive pregnant inmates described treatment contrary to WHO guidelines. Hellene, a 16 year-old who was six months pregnant, reported: “After the [HIV] testing, they told me I was positive.... I have no ARVs. They give me panadol, Septrin....PMTCT? They have never discussed with me.”

Pregnant inmates—nearly all of whom said that they were forced to work in the fields—also have their health particularly impacted by hard labor conditions and abusive punishments. At Fort Portal Women’s Prison, two female inmates separately described an incident in which a fellow inmate had a miscarriage at eight months pregnant, a result they believed of her forced labor and denial of healthcare. Overall, 30 percent of female inmates interviewed by Human Rights Watch said they had been beaten, including eight pregnant inmates. Hellene, the 16 year-old at Butuntumura Prison who was six months pregnant, described being beaten in the stomach by a warden while digging, necessitating a trip to the hospital. Mary, at Jinja Women’s Prison, reported being beaten and kicked while seven months pregnant, also leading to a hospital visit.

Human Rights Watch urges the Committee to ask states parties about the availability of adequate healthcare for children incarcerated with their parents and for pregnant women in prison, about any allegations of abuses against this population and the state's response to them, and about cases of miscarriages, infant deaths, maternal deaths or morbidity amongst the prison population, and to urge them to improve healthcare and treatment in prisons, particularly to these populations.

Alternatives to Incarceration

Zambia

Built to accommodate 5,500 prisoners, Zambia’s prisons housed 16,666 in 2010. Overcrowding is so severe that inmates at some facilities sleep seated or in shifts. Prolonged pre-trial detention in violation of Zambia’s international human rights obligations is a major contributing factor to overcrowding and its health consequences. Pre-trial detainees constitute over one-third of the total prison population.

The Zambian police and Drug Enforcement Commission enjoy broad powers under Zambian law, and reportedly arrest and hold alleged family members, friends, and innocent bystanders as “co-conspirators” when their primary targets cannot be found. Despite a Zambian law requirement that inmates be brought before a judge or magistrate within 24 hours of arrest, these limits are frequently ignored—one inmate reported being detained for over three years before an initial appearance before a judge. Even after an initial appearance, remandees are routinely held for years before trial. Another prisoner, now convicted,

reported being held 10 years in pre-trial detention. Unavailability of bail and low levels of legal representation contribute to unnecessary and unjust pre-trial detention. Lack of funding for community service alternatives, restrictions on the use of parole to prisoners with longer sentences, and delays in appeals further contribute to long detention periods, which strain the resources of the prison system and either keep parents away from children at home or bring children into prison with their parents unnecessarily.

Uganda

In Uganda, prisons are crowded to 224 percent of capacity. Overcrowding is a direct result of extended pre-trial detention and underuse of non-custodial alternatives such as bail and community service: Fifty-six percent of the Ugandan prison population has never been convicted of any crime and is by law presumed innocent. However, remand prisoners often wait for years for their cases to be resolved. While efforts have been made in recent years to address the case backlog, an insufficient number of judges, judges' failure to grant bail in accordance with Ugandan law, and inadequate legal representation still create significant remand times, particularly for prisoners awaiting trial before the High Court. Human Rights Watch interviewed one prisoner on remand who had been awaiting trial since 2002, and others still awaiting trial who had not entered a courtroom since 2006. Corruption is reportedly rampant in the criminal justice system, from arrest through trial, so in some cases those remaining in prison are simply those unable to pay the necessary bribe.

Overcrowding strains available food and healthcare resources in the prisons. When a parent is detained unnecessarily or for an extended period of time, such detention can subject their children to either unnecessary time in prison, or extended separation from their parent.

Human Rights Watch urges the Committee to ask states parties about criminal justice reform initiatives to decrease extended and unnecessary detention, in particular through efforts to increase the availability of non-custodial alternatives such as bail, community service and parole, and to provide detainees with access to legal representation from the time of arrest.

We hope you will find these comments useful. Thank you for your attention to our concerns, and best wishes for a productive day of discussion.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Joseph Amon". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Joseph Amon
Director, Health and Human Rights Division
Human Rights Watch

Lois Whitman

Lois Whitman
Director, Children's Rights Division
Human Rights Watch

¹ Prisons Act, *Laws of Zambia*, vol. 7, chapter 97, 1996, http://www.parliament.gov.zm/index.php?option=com_content&task=view&id=21&Itemid=49 (accessed February 22, 2010), sec. 56. Zambian policy also provides that these children shall be provided with food. See Zambia Prisons Service, "Zambia Prisons Service HIV and AIDS/STI/TB Strategic Plan (2007-2010)," p. 7 ("Similarly, there are some infants and young children who are imprisoned along with their mothers. By definition these children are under the care of the State—in this case Prisons Service. It is important to recognise these children's rights and their needs, i.e. necessary facilities and actions to promote the health and wellness of these children and reduce their vulnerability to HIV and AIDS, STIs and TB."); Zambia Prisons Service, "HIV & AIDS/STI/TB Workplace Policy of the Zambia Prisons Service," July 2006, p. 25 ("Children born with HIV should receive appropriate treatment and nutrition through linkages with public health systems and other cooperating partners.").

² The Prisons Act of 2006, sec. 59(3).

³ The World Health Organization recommends that mothers known to be HIV-infected should only give infant formula as a replacement when safe water and sanitation are assured, sufficient formula can reliably be provided, and it may be prepared cleanly and carry a low risk of diarrhea and malnutrition. WHO, "Guidelines on HIV and Infant Feeding," http://whqlibdoc.who.int/publications/2010/9789241599535_eng.pdf (accessed May 13, 2011), pp. 7-8. In Uganda, national guidelines recommend that HIV-positive mothers opt for replacement feeding if affordable, feasible, acceptable, sustainable and safe, yet acknowledge that most Ugandan mothers cannot meet this standard. Richard Hasunira, Aaron Muhinda, Rosette Mutambi and Beatrice Were, "Uganda," in *Missing the Target: Failing Women, Failing Children: HIV, Vertical Transmission, and Women's Health*, International Treatment Preparedness Coalition, May 2009, p. 62.

⁴ The Prison Act of 2006, sec. 59(2)-(4).

⁵ World Health Organization, UNAIDS, and UNICEF, "Epidemiological Fact Sheet on HIV and AIDS: Core Data on Epidemiology and Response: 2008 Update: Zambia," October 2008.

⁶ Human Rights Watch interview with prison medical authority, Uganda Prisons Service, November 18, 2010.