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**Mental Health, Human Rights and Criminal Justice**

Friends World Committee for Consultation (Quakers), an international non-governmental organisation in General Consultative Status with ECOSOC welcomes the opportunity to submit the following information in response to the OHCHR request for information on mental health and human rights, mandated by UN Human Rights Council resolution 32/26.

This briefing focusses on the links between criminal justice, mental health and rights protection, with a particular focus on children of parents in the criminal justice system. States are required to respect, protect and fulfil their citizens’ right to the highest standard of mental health. State responsibilities for upholding this right are greater with regard to people who come into contact with state institutions, particularly for people directly in their custody and for vulnerable groups, including children.

There is an absence of agreement on the most appropriate terminology and operational definitions for discussing mental health.[[1]](#footnote-1) This briefing follows agreed UN language on mental health conditions and those with psychosocial disabilities, making the distinction between the two groups where necessary.[[2]](#footnote-2)

**Mental health and criminalisation**

The overrepresentation of people with a mental health condition or psychosocial disability in criminal justice systems is recognised as a global problem.[[3]](#footnote-3) Reliable data on this is scarce, however, according to studies undertaken in a number of countries, 50 to 80% of prisoners have some form of mental health condition.[[4]](#footnote-4) Many academics and practitioners note that there are a large proportion of people with a mental health condition or psychosocial disability who end up in the criminal justice system for reasons other than their criminal behaviour. This is known as the criminalisation of mental illness and is caused by a range of factors related to widespread negative attitudes towards mental health and the lack of fulfilment of other rights.[[5]](#footnote-5) Within most societies, people with a mental health condition face marginalisation, stigma and discrimination, due to widespread misconceptions about mental ill health. Many of these societal attitudes to mental health are linked to perceptions about criminality, including a general intolerance to difficult or disturbing behaviour and a perception that people with mental health conditions or psychosocial disabilities are a danger to the public. However, research shows that people with mental health conditions are far more likely to be a victim of violence than a perpetrator.[[6]](#footnote-6)

These societal perceptions feed into criminal justice systems. Some law enforcement officials believe that they can deal with deviant behaviour more quickly and efficiently within the criminal justice system than in the mental health system.[[7]](#footnote-7) Police, often the first point of contact for people with the criminal justice system, are often ill-equipped to deal with people experiencing mental illness. Negative societal attitudes also create situations where mental health treatment, care and rehabilitation are not resourced or promoted by Governments. In some parts of the world, criminalisation is so severe that prisons can end up becoming dumping grounds for people with chronic and severe mental health conditions, including people who have been incarcerated on the basis of very minor offences or simply because of the lack of mental health services.[[8]](#footnote-8) For these individuals, a multiplicity of rights are violated, and their mental health condition is often unnoticed, undiagnosed and untreated.

People with mental health conditions and psychosocial disabilities often have a wide range of interconnected vulnerabilities, including previous trauma, substance abuse, poor physical health, poverty and homelessness, which mean that they also face other types of stigma and discrimination. Intersectional discrimination exacerbates risks and decreases access to support and justice for many including women, girls, minority groups, indigenous peoples, older people and LGBT people. The need for individualised responses is recognised in the Nelson Mandela Rules on the Treatment of Prisoners.[[9]](#footnote-9)

Good practice: Health systems should focus on existing inequalities and make investments ‘upstream’, so that a comprehensive approach to mental health which prioritises adequate community care, ensures that people with mental health conditions are ultimately prevented from entering prison.[[10]](#footnote-10) In the UK, a Government-funded project places ‘liaison and diversion’ practitioners in magistrates’ courts, crown courts and police custody settings who assess the needs of individuals to ensure their right to health is upheld and that they receive the treatment they need at the earliest possible stage of the criminal justice system. Link workers then work with individuals throughout the criminal justice pathway to help them engage or re-engage with relevant services to ensure their broader needs are met.[[11]](#footnote-11)

**Rights abuses within the system**

At all stages of the criminal justice system, people with a mental health condition or a psychosocial disability are disadvantaged in their access to justice and their rights are often violated. In particular, systems are not well-designed to ensure that these people are fully aware of their legal rights, able to gain proper access to legal counsel, and are treated fairly and equally by criminal justice professionals. High prevalence of mental illness amongst the poor means that there can be added financial challenges for these individuals in accessing legal counsel.[[12]](#footnote-12) Stigmatization, discrimination and ill-treatment at the hands of law enforcement officials is commonplace in many parts of the world. In addition, coercion into committing offences is more likely amongst people with a mental health condition, and especially for those with psychosocial disabilities. Studies have shown that these individuals are more often convicted of the offence for which they are arrested, rather than a reduced charge, and plead guilty more readily.[[13]](#footnote-13) In prisons, individuals with mental health conditions are also at greater risk of abuse from other prisoners and prison staff.[[14]](#footnote-14)

Good practice: Individuals who are diagnosed with severe mental health conditions should not be detained in prisons.[[15]](#footnote-15) Criminal justice systems must make provisions at all levels to ensure that people with mental illness have the same access to their legal rights as others, including through developing or improving detailed mental health legislation.[[16]](#footnote-16)

**Negative effect of criminal justice systems on mental health**

In general, criminal justice systems are not designed to care for people with mental health conditions or psychosocial disabilities and continue to be ill-equipped to respond appropriately to their needs. Experiences of arrest, detention, trial and imprisonment can be extremely distressing for any individual, let alone someone with prior experience of mental illness. The prison environment in particular is known to exacerbate existing vulnerabilities of all kinds, including for those with a pre-existing mental health condition.[[17]](#footnote-17) Moreover, incarceration can also cause mental ill health. As the UN Office on Drugs and Crime, World Health Organisation and International Committee of the Red Cross have noted: ‘the large majority of prison systems worldwide fail to provide an environment which does not harm the mental well-being of its inhabitants.’[[18]](#footnote-18) There are various factors through which prisons can have a negative impact on the mental wellbeing of those incarcerated, including: isolation from society, poor prison conditions, overcrowding, various forms of violence and lack of safety, enforced solitude or lack of privacy, lack of meaningful activity and inadequate health services, especially mental health services. Depression and anxiety have been found to exist in most prisoners, which may develop into more serious mental disabilities in these environments. Many prisoners have experience of previous trauma or other vulnerabilities, including both personal experience and structural injustice and discrimination, making them more vulnerable to mental illness during incarceration.[[19]](#footnote-19) Indeed, trauma may be connected with prior experiences in the criminal justice system itself.

Good practice: Individuals within the criminal justice system with mental health needs have a right to access general and specialist health care services, at least equivalent to that in the community, and based on informed consent. The promotion of mental health in prisons should be a key element of prison policy and all staff should have training on mental health awareness.[[20]](#footnote-20)

**Mental health of children of prisoners**

Criminal justice systems and prisons in particular put great strain on the families of those who come into contact with them. It is well acknowledged that maintaining links with family members is vital for the mental wellbeing of prisoners, but the mental health and wellbeing of the family members of those who have been incarcerated is often less fully considered.[[21]](#footnote-21) The need for attention to be paid to the rights of children of incarcerated parents has been directly acknowledged by a number of international human rights bodies and instruments.[[22]](#footnote-22)

The 2010-2012 ‘Children of Prisoners: Interventions and Mitigations to Strengthen Mental Health’ (COPING) was the first major study on the mental health of children of imprisoned parents.[[23]](#footnote-23) The report found that children in Europe with imprisoned parents are at a significantly greater risk of suffering mental health difficulties than children who do not have parents in prison. Children’s risk of mental health issues such as depression, anxiety, anger and hyperactivity are increased as a result of having a parent imprisoned. These children also often face stigma, discrimination and shame because of what their parent has been alleged or convicted of doing, which adds to the negative impact on their mental health and emotional wellbeing. Moreover, children can also experience an ambiguous sense of loss and disrupted attachment, contributing to a shaken sense of their ontological security. This can partly explain the evidence of an increased incidence of intergenerational crime amongst those who have experience of a parent’s incarceration.[[24]](#footnote-24)

Good practice: For decision-making in all cases, the best interests of the child should be taken into account as a primary consideration at all stages of the parent’s interaction with the criminal justice system, including at sentencing.[[25]](#footnote-25)The COPING report found that where parents are incarcerated, the child’s resilience was usually strengthened by maintaining contact with the imprisoned parent (including regular telephone contact and positive environments for children’s visits to prisons), as well as ensuring supportive relationships outside prison.[[26]](#footnote-26) Systematic collection on data on children of incarcerated parents is also essential to identify and meet their needs.[[27]](#footnote-27)

**Mental health of children of parents sentenced to death or executed**

Unlike any other criminal punishment, the death penalty irrevocably severs the parent-child relationship by design, with profound and often highly damaging impacts on the child’s mental health. Existing research has consistently connected an individual’s death sentence or execution with major psychological and emotional implications for their children and families. Impacts on children include low self-esteem, loss of appetite and behavioural issues, as well as more severe mental health problems, including delusional beliefs (thinking that one is living in another world) and post-traumatic stress disorder (PTSD) symptoms. In severe cases, the child may enter a state of dissociation (withdrawal into the self, due to inability to process the event). These impacts may occur at different stages of the criminal justice process (at or after arrest, trial, sentencing, imprisonment or execution) and can be exacerbated by other factors, such as witnessing violence in the home. Witnessing the execution of a parent first hand can be particularly distressing for the child, and the manner of the execution and the circumstances surrounding it can all impact greatly on the child’s mental health. Many of the behaviours noticed in children whose parents have been sentenced to death or executed may be indicators of trauma, which may or may not be recognised. Non-diagnosis, as well as personal or cultural aversion to counselling or stigma around mental health, can prevent children accessing the counselling and support services they require.[[28]](#footnote-28)

Good practice: Pending abolition of the death penalty, the impact on the child’s best interests should be considered during sentencing, including in cases involving the death penalty. Specialist support should be provided to children of parents sentenced to death or executed, and children and families kept well-informed about available support.[[29]](#footnote-29)

**Resources**

* The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), especially rules 2, 31, 32, 33, 46, 76(d), 109, 110.
* Handbook on Prisoners with Special Needs (UNODC)[[30]](#footnote-30)
* WHO/Europe: Partnership for Health in the Criminal Justice System.[[31]](#footnote-31)
* Children of Prisoners: Interventions and Mitigations to Strengthen Mental Health (COPING) report.[[32]](#footnote-32)

1. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Commission on Human Rights, Sixty-first Session, Economic, Social and Cultural Rights, E/CN.4/2005/51, 11 February 2005, para. 18. [↑](#footnote-ref-1)
2. Human Rights Council resolution 32/26 on Mental Health and Human Rights, A/HRC/32/26 as of 29th June 2016. [↑](#footnote-ref-2)
3. Amanda Butler, Mental Illness and the Criminal Justice System: A Review of Global Perspectives and Promising Practices, (2014). Available online: <http://icclr.law.ubc.ca/sites/icclr.law.ubc.ca/files/publications/pdfs/Mental%20Illness%20and%20the%20Criminal%20Justice%20System_Butler_ICCLR_0.pdf> [↑](#footnote-ref-3)
4. UNODC, Handbook on Prisoners with special needs, (2009). Available online: <https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf> [↑](#footnote-ref-4)
5. Amanda Butler, Mental Illness and the Criminal Justice System: A Review of Global Perspectives and Promising Practices, (2014). Available online: <http://icclr.law.ubc.ca/sites/icclr.law.ubc.ca/files/publications/pdfs/Mental%20Illness%20and%20the%20Criminal%20Justice%20System_Butler_ICCLR_0.pdf> [↑](#footnote-ref-5)
6. World Health Organisation, Service Standards and Quality in Mental Health Care. (2015) Available online: <http://www.who.int/mental_health/policy/quality_rights/infosheet_hrs_day.pdf?ua=1> [↑](#footnote-ref-6)
7. Amanda Butler, Mental Illness and the Criminal Justice System: A Review of Global Perspectives and Promising Practices, (2014). Available online: <http://icclr.law.ubc.ca/sites/icclr.law.ubc.ca/files/publications/pdfs/Mental%20Illness%20and%20the%20Criminal%20Justice%20System_Butler_ICCLR_0.pdf> [↑](#footnote-ref-7)
8. World Health Organisation, Service Standards and Quality in Mental Health Care. (2015) Available online: <http://www.who.int/mental_health/policy/quality_rights/infosheet_hrs_day.pdf?ua=1> [↑](#footnote-ref-8)
9. United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) Rule 2.2 In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory. [↑](#footnote-ref-9)
10. World Health Organisation Europe, Prisons and Heath: 11. Mental Health in Prison. (2014) <http://www.euro.who.int/__data/assets/pdf_file/0017/249200/Prisons-and-Health,-11-Mental-health-in-prison.pdf?ua=1> [↑](#footnote-ref-10)
11. <http://www.together-uk.org/our-mental-health-services/criminal-justice-mental-health/liaison-and-diversion/> [↑](#footnote-ref-11)
12. UNODC, Handbook on Prisoners with special needs, (2009). Available online: <https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf> [↑](#footnote-ref-12)
13. UNODC, Handbook on Prisoners with special needs, (2009). Available online: <https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf> [↑](#footnote-ref-13)
14. WHO, ICRC, Information Sheet, Mental Health and Prisons. (2005). Available online: www.euro.who.int/Document/MNH/ WHO\_ICRC\_InfoSht\_MNH\_Prisons.pdf [↑](#footnote-ref-14)
15. UNODC, The United Nations Standard Minimum Rules for the Treatment of Prisoners. (2015). Available online: <https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf>. [↑](#footnote-ref-15)
16. WHO, ICRC, Information Sheet, Mental Health and Prisons. (2005). Available online: www.euro.who.int/Document/MNH/ WHO\_ICRC\_InfoSht\_MNH\_Prisons.pdf [↑](#footnote-ref-16)
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18. WHO, ICRC, Information Sheet, Mental Health and Prisons. (2005). Available online: www.euro.who.int/Document/MNH/ WHO\_ICRC\_InfoSht\_MNH\_Prisons.pdf [↑](#footnote-ref-18)
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    [↑](#footnote-ref-19)
20. UNODC, Handbook on Prisoners with special needs, (2009). Available online: <https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf> [↑](#footnote-ref-20)
21. World Health Organisation Europe, Prisons and Heath: 11. Mental Health in Prison. (2014) <http://www.euro.who.int/__data/assets/pdf_file/0017/249200/Prisons-and-Health,-11-Mental-health-in-prison.pdf?ua=1> [↑](#footnote-ref-21)
22. Including African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), Art. 30; The African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013). Committee on the Rights of the Child, General Comment No. 7 (2005) Implementing child rights in early childhood, CRC/C/CG/7/Rev.1 of 20 September 2006, para. 31(b); Human Rights Council resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69. [↑](#footnote-ref-22)
23. A Jones, B Gallagher, M Manby, O Robertson, M Schützwohl, A Berman, A Hirschfield, L Ayre, M Urban, K Sharratt and K Christmann ‘Children of Prisoners: Interventions and mitigations to strengthen mental health’ (University of Huddersfield, 2013). Available online: <http://eprints.hud.ac.uk/18019/> [↑](#footnote-ref-23)
24. Ontological security is a state of mind that rests on a sense of continuity regarding events in one’s life, allowing one to have a positive view of the self, the world and the future (Giddens, 1991). [↑](#footnote-ref-24)
25. Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, paras. 69(a) and (d). Human Rights Council Resolution 10/2, Human rights in the administration of justice, in particular juvenile justice, preamble. Committee on the Rights of the Child General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14 of 29 May 2013, paras. 28 and 69. United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, contained in E/CN.15/2014/L.12/Rev.1 of 15 May 2015, para. 34(l). See Quaker United Nations Office (2015) [*Briefing Paper on International Standards and Guidance on Children of Incarcerated Parents*](http://www.quno.org/sites/default/files/resources/QUNO%20-%20Children%20of%20Incarcerated%20Parents%20International%20Standards.pdf) for further references including concluding observations of the Committee on the Rights of the Child. [↑](#footnote-ref-25)
26. A Jones, B Gallagher, M Manby, O Robertson, M Schützwohl, A Berman, A Hirschfield, L Ayre, M Urban, K Sharratt and K Christmann ‘Children of Prisoners: Interventions and mitigations to strengthen mental health’ (University of Huddersfield, 2013). Available online: <http://eprints.hud.ac.uk/18019/> [↑](#footnote-ref-26)
27. Barnados, Every night you cry: the realities of having a parent in prison. (2009). Available online: http://www.barnardos.org.uk/everynightyoucry\_briefing\_final\_double.pdf [↑](#footnote-ref-27)
28. Oliver Robertson and Rachel Brett, Lightening the Load of the Parental Death Penalty on Children. (2013). Available online: <http://www.quno.org/sites/default/files/resources/Lightening%20the%20Load.Web_.EN_.pdf> [↑](#footnote-ref-28)
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31. <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/prisons-and-health-partnership-for-health-in-the-criminal-justice-system> [↑](#footnote-ref-31)
32. Adele D. Jones Agnieszka and E. Wainaina-Woźna, Children of Prisoners Europe. (2013). Available online: <http://childrenofprisoners.eu/wp-content/uploads/2013/12/COPINGFinal.pdf> [↑](#footnote-ref-32)