***Committee on the Rights of the Child***

***Work to date: Children of incarcerated parents***

**The Committee on the Rights of the Child has provided interpretation of the Convention on the Rights of the Child and guidance to States on the issue of children of incarcerated parents for over ten years.**

This briefing provides a short summary of the work it has done so far, primarily developed through:

* General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration.
* The Day of General Discussion on Children of Incarcerated Parents, 2011.
* Concluding Observations to State Parties to the Convention.

This briefing is taken from a longer paper on the Committee’s work on children of incarcerated parents, which includes a full list of sources. Please see: **L. Townhead ‘Briefing Paper: Children of Incarcerated Parents International Standards and Guidance’, (2015) *Quaker United Nations Office****,* available online at: [www.quno.org/resource/2015/4/children-incarcerated-parents-international-standards-and-guidance](http://www.quno.org/resource/2015/4/children-incarcerated-parents-international-standards-and-guidance)

A further useful resource is a **database of Concluding Observations** of the Committee related to children of incarcerated parents. The database was compiled by the Child Rights Connect Working Group on Children of Incarcerated Parents and can be found at: [www.crccip.com/main.php](http://www.crccip.com/main.php)

1. **Initial recognition of the vulnerabilities of children of incarcerated parents**

In 2005, the Committee recognised such children as being at particular risk in their 2005 General Comment on Implementing Rights in Early Childhood:

Children’s rights to development are at serious risk where they are orphaned, abandoned or deprived of family care or where they suffer long term disruptions to relationships or separations (e.g. due to … parental imprisonment…). These adversities will impact on children differently according to their personal resilience, their age and their circumstances, as well as the availability of wider sources of support and alternative care.

1. **Development of the best interests of the child principle in criminal justice contexts**

The overarching principle for children of incarcerated parents was outlined in the Committee’s ***General Comment No.14,*** highlighting that the best interests of the child should be taken into account in all decisions relating to the detention of someone with child caring responsibilities.

In Concluding Observations of a variety of States, the Committee has emphasised that in the context of children of incarcerated parents or children of those facing possible incarceration, best interests assessments should be incorporated into:

* Actions and decisions at point of arrest
* Decisions regarding whether or not to detain someone before trial
* Decisions about sentencing once convicted, including alternatives to custody and the application of the death penalty
* Decisions about whether a child should go into prison with their carer or remain in prison with their carer
* Decisions about the removal of any State financial or other support from the child or the carer.

In addition, the best interests of the child should be carefully and independently considered by competent child health and welfare professionals and decisions should be reviewed throughout the relevant period and open to judicial review.

The CRC has also provided guidance on weighing up different considerations in assessing best interests, recommending that “procedures and criteria [are developed] to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving it due weight as a primary consideration.” This process of balancing should be made on an individual basis, involve consideration of “the overall conditions of the prison context and the particular need for parent-child contact during early childhood” and the potential impacts of any non-custodial alternatives.

1. **Ensuring a focus on children of incarcerated fathers and carers, as well as mothers**

The Committee identified that because the aim is to uphold the rights of the child and to pursue their best interests, the standards and protections should apply to children of incarcerated mothers, fathers or alternative carers equally. Reference to caregivers as well as parents is included in the recommendations issued by the Committee on the Rights of the Child following their Day of General Discussion on Children of Incarcerated Parents.

1. **Creating Guidance for States**

Wide ranging guidance for States has been offered by the Committee in regards to children of incarcerated parents, including (but not limited to):

* **Child’s views:** States should respect the child’s right to have their views taken into account in decisions affecting them.
* **Stigmatization:** States should prevent stigmatization and discrimination against children with one or both parents in prison, including through protection of the child’s right to privacy.
* **Law enforcement procedure:** Protocols should be developed for law enforcement personnel to follow when a child will be present at the time of arrest of their parent and for informing children not present at time of arrest.
* **Births in prison:** Avoid the birth of babies in prison (or by prisoners) through the use of non-custodial alternatives to incarceration for pregnant women.
* **Preventing separation:** through the use of non-custodial alternatives to incarceration for parents and caregivers, including at the pre-trial stage.
* **Children residing in prison:** Develop and implement guidelines on children residing in prison, covering age of the children, the length of stay, contact with the outside world and movement in and outside the prison, with a view to limiting the stay to situations in which it is in the child’s best interests. Ensure living conditions for children residing in prison with a parent are safe, adequate for the child’s physical, mental, moral and social development, including access to health and education services.
* **Maintaining relationships:** Ensure that children can maintain a relationship with their incarcerated parent (where this is in the child’s best interests), including by supporting children in alternative care to maintain a relationship with their incarcerated parent (or parents). Regular visits should be available and must take place in a manner that respects children’s dignity and privacy.
* **Children of parents sentenced to death or executed:** States should not carry out death sentences on mothers who have a child they are caring for. Uphold the child’s right to information regarding the location and status of their parent.