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Collateral Convicts: Children of incarcerated parents

Recommendations and good practice from the
UN Committee on the Rights of the Child
Day of General Discussion 2011

Oliver Robertson

English Français Español



Human Rights & Refugees Publications

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The Quaker United Nations Office

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Notes on the text

This paper draws together many of the examples of good policy and practice that were made at the UN Committee on the Rights of the Child's Day of General Discussion (DGD) 2011, on the topic 'Children of Incarcerated Parents'. It includes the written submissions made prior to the DGD, the oral interventions made by participants at the Day itself and at workshops before and after, and the speeches made by invited experts to the opening plenary session of the DGD. These plenary speakers were:

Abdullah Khoso, National Programme Manager on Juvenile Justice, SPARC Pakistan, speaking from a prison service professional perspective;

Ann Skelton, Director of the Centre for Child Law, South Africa, speaking from a legal perspective;

Isabel Altenfelder Santos Bordin, Head of Social Psychiatry Division, Federal University of Sao Paulo, Brazil, speaking from a child development perspective; and

Sian and Raheel from the UK, speaking from the perspective of children with parents in prison.

Selected other sources, not connected to the DGD, have been used when they also help identify how children of incarcerated parents can be best supported.

The paper will begin with an introduction and some general principles to consider at all times, then look at some issues that occur at various points (data collection, future research and what to tell the children about their parent's situation) before focusing in detail on each stage of the criminal justice process, from arrest to release and reintegration. Each section will begin with a general principle to help frame the issue, with more specific recommendations and examples of potential good practice made throughout the paper. The recommendations, good practice and issues are not meant to be exhaustive, but to highlight what emerged from the Day of General Discussion.

The words 'detention', 'incarceration' and 'imprisonment' all appear in this paper. 'Detention' is used only when people are placed in prison before trial and sentencing, while 'incarceration' and 'imprisonment' are used interchangeably to refer to people in prison at any stage of the criminal justice process – before or after conviction.

Many quoted sources in this paper, particularly written submissions to the DGD, cite other sources. However, footnotes and references within the extracts quoted have not been included. For full details of original sources, reference should be made to the submissions themselves, which are available online at the DGD 2011 website:

http://www2.ohchr.org/english/bodies/crc/discussion2011_submissions.htm

and the Child Rights International Network website:

<http://crin.org/resources/infoDetail.asp?ID=25009&flag=event#submissions>.

The following abbreviations are used in this paper:

DGD Day of General Discussion

CRC Convention on the Rights of the Child

NGO Non-governmental organisation

WG1 Working Group I of the Day of General Discussion, focusing on 'Babies and children living with or visiting a parent in prison'

WG2 Working Group II of the Day of General Discussion, focusing on 'Children left "outside" when their parent is incarcerated'

Introduction

The children of prisoners are the invisible victims of crime and the penal system. They have done no wrong, yet they suffer the stigma of criminality. Their rights to nurture are affected both by the criminal action of their parent and by the state's response to it in the name of justice.¹

'Children of Incarcerated Parents' was the topic for the 2011 UN Committee on the Rights of the Child's Day of General Discussion (DGD), held in Geneva on Friday 31st September of that year. This was the first time that any part of the UN system had looked in detail at the issue of children affected by parental involvement in the criminal justice system, and it attracted unprecedented interest and engagement. Fifty-one written submissions from thirty-nine sources were made, while over 200 people took part in the discussion on the Day itself. An exhibition of children's experiences and good practice (also named 'Collateral Convicts') accompanied the DGD, while workshops took place before and after the Day to explore the issues in more depth. This paper draws on all these sources, plus other important and relevant resources.

Children of incarcerated parents, like children in general, are all individuals. Each will have a different experience of and response to parental imprisonment, and the unique situation of each child should be considered in all interactions with them and decisions that affect them. But regardless of individual circumstances, each child also has rights, including the right not to be discriminated against based on the status or activities of their parents (Convention on the Rights of the Child Article 2(2)), to the opportunity to be heard in any judicial and administrative proceedings affecting them (Article 12(2)) and the right to have their best interests be a primary consideration in all actions concerning them (Convention on the Rights of the Child Article 3(1)).

Unfortunately, children of incarcerated parents are too easily ignored in the criminal justice system, which deals with identifying and responding to individual guilt or innocence. Children interacting with the criminal justice system (for example when visiting incarcerated parents) are 'reduced to a security risk assessment, [while] within the broader community they are silent and silenced'.² Only rarely do ministries responsible for children see them as a group of children exposed to particular challenges, meaning children of incarcerated parents often fall into the gaps between government agencies.

Children of incarcerated parents exist in developing and developed countries all around the world, with certain experiences and features common to many such children. For many, the removal and detention of a parent is a negative experience, with implications for their future wellbeing.³ The risks associated with parental incarceration have been categorised into five main areas:

1. Risk of deprivation of basic necessities and opportunities
2. Risk of danger of secondary victimisation and depersonalisation
3. Risk of deterioration of overall situation of a child
4. Risk of distance from incarcerated parent
5. Risk of descent into antisocial behaviour⁴

More specifically, children may experience impacts including: physical and mental health impacts related to separation and other aspects of parental incarceration;⁵ a risk of relationship breakdown; the possibility of having to move house or be taken into care; financial difficulties; problems at school (educational and behavioural); increased vulnerability to neglect, abuse and victimisation; and difficulties in visiting

* In the UK, these children suffer from serious mental health problems at three times the rate of their peers.

incarcerated parents.⁶ ‘Finally it increases the risk of a child’s own prospects, as they fear or distrust authority, fail to receive the help they need, live in impoverished and unstable circumstances, and begin to accept prison as “normal” – or as the only place they can be with their mum or dad.’⁷

Some of these problems will depend on factors such as the nature of the offence and sentence, the age and maturity of the child or which parent is imprisoned (children with incarcerated fathers are more likely to have another parent care for them than is the case when mothers are imprisoned). But as a group, children of incarcerated parents have faced all the issues detailed above and more, and would benefit from considered and timely interventions.

As shown at the DGD, there are many examples of good practice from around the world, often small and inexpensive changes that make a major difference to the lives of children. Many are detailed below. Unfortunately, these steps too often depend on the interest and involvement of individual prison staff or charities/non-governmental organisations (NGOs), rather than institutionalised good policy and practice.⁸ By sharing these examples and encouraging their use, we hope to increase the range, quality and consistency of support for children of incarcerated parents.

General principles

Important as specific responses are to support children of incarcerated parents, there are also some general principles to be remembered whenever considering or interacting with children of incarcerated parents. They include:

Children whose parents are involved with the criminal justice system **have equal rights to all other children**. Their rights should not be affected because of the status of their parent, or because of decisions about their parent.⁹

The **best interests of the child** must be a primary consideration in relation to all actions that may affect children of incarcerated parents, whether directly or indirectly. States should create and implement laws/policies to ensure this occurs at every stage of the criminal justice process.

Each child is an individual and will have individual needs. Decisions that affect them should be made on a case-by-case basis.

A child's needs are affected by their **personal situation**, including their age or stage of development, and any disabilities or special needs they have. All information available to children should be age, language and disability appropriate.

The child's **right to a relationship with their parents** should not be subordinate to the State's concerns for security; heightened security needs should be made compatible with the child's right to maintain contact with an imprisoned parent.

Whether detained with or separated from parents, children of incarcerated parents are vulnerable and are **entitled to specific kinds of care and protection**.¹⁰ Some children may not need or use specialist intervention or support, but should have the opportunity to access it if desired.

With children who are or may be placed in **alternative care**, the UN Guidelines for the Alternative Care of Children should be followed at all stages.

Children (and families) of prisoners should be **actively involved in decisions that affect them**, in accordance with their age and maturity. They should also be able to participate in the development and delivery of all services, training materials and guidelines concerning them.¹¹

Non-custodial measures should be prioritised when children will be affected, including for pre-trial detention, so as to prevent the negative impact on children of having a parent in prison.¹²

Parents involved in the criminal justice process **should not at any point be humiliated** in front of their children.¹³

All officials who may come into contact with children of incarcerated parents should receive **guidance and training** in how to respond to them.¹⁴

Potential good practice

A 'Bill of Rights for Children of Incarcerated Parents' was developed by children in the USA. They are the rights:

1. To be kept safe and informed at the time of my parent's arrest;
2. To be heard when decisions are made about me;
3. To be considered when decisions are made about my parent;
4. To be well-cared for in my parent's absence;
5. To speak with, see and touch my parent;
6. To support as I face my parent's incarceration;
7. Not to be judged, blamed or labeled because my parent is incarcerated;
8. To a lifelong relationship with my parent.¹⁵

Statistics

Guiding principle: Statistics about children of incarcerated parents should be routinely and consistently gathered, to help develop policy and practice.

The DGD confirmed what many practitioners and researchers already suspected: that in most countries, at no stage of the criminal justice process are details of prisoners' children routinely taken. Even in States that do record this information, the data may not be fully reliable or transparent, meaning that the true number of children affected by parental imprisonment is unknown.

Some places have estimates, though as seen below the type of information gathered varies widely.

USA: Between two and three million children of incarcerated parents,¹⁶ with 1.2m incarcerated men and women (54% of the prison population) having children under 18.¹⁷ 'One in 15 black children and 1 in 42 Latino children has a parent in prison, compared to 1 in 111 white children'.¹⁸

India: 2,135 children living with 1,774 mothers in prison in India in 2008, an almost 50% rise in four years.¹⁹

EU: 800,000 children separated from an incarcerated parent on a given day each year;²⁰ 980 infants living in prison with incarcerated parents.²¹

UK: 17,000 children with mothers sent to prison each year,²² with total children of incarcerated parents 'two and a half times the number of children in care and six times the number on the Child Protection Register'.²³

Aotearoa/New Zealand: Around 26% of males and 47% of female prisoners had dependent children prior to imprisonment, with 35% of female prisoners and 12% of male prisoners being sole carers for their children.²⁴

Recommendation: *Criminal justice agencies should develop data collection and monitoring systems aimed at protecting children's rights that capture the number of prisoners with children, the number of children each incarcerated parent has and other information necessary to plan policy and practice.*

However, information should not be gathered for its own sake. It is important that the motivations for gathering information about prisoners' children are clear, reasonable, respect the children's right to privacy and do not add to the stigma they face. Government agencies may only plan or provide for children they know about,²⁵ so better information could 'allow for early identification of service needs for children, increase interagency coordination, provide critical information about the magnitude and nature of the issues, and provide the basis for more public funding and private funding'.²⁶ Prisoners may be more willing to disclose information if they know the ways in which it will be used.

What to tell the children

Guiding principle: Children should be told, in an age-appropriate way, the truth about their parent's situation.

There has been considerable debate about what to tell children about parental incarceration, and when to do it. 'Commonly the fact of imprisonment will attempt to be concealed from the child completely, often without success as they realise the truth themselves or learn it from peers or neighbours.'²⁷

However, regardless of whether the fact of the incarceration can be concealed, there is growing evidence of the importance for children of learning at least a simplified version of this truth from their parents or carers. This is important to ensure strong, trusting parent/child relationships and to ensure that they do not fantasise about something worse having happened to their parent.²⁸ Issues about the child's right to know and the parent's right to decide who knows what about their situation are complex. It is important that parents and carers are supported and encouraged to tell the children, as it can be damaging for children to learn this truth from outsiders. Those caring for children of incarcerated parents 'should not, however well intentioned, mislead children or lie to children by concealing the facts of the situation. Misleading or lying to children simply provides the psychological space for children to develop fantasies divorced from fact, and/or, develop inappropriate attributions of self-blame, guilt or shame. As such, children of incarcerated parents should therefore be given every opportunity to make sense of and understand the facts behind their circumstances. Such information should be provided in suitably child or youth-sensitive ways, in keeping with their age and maturity, and be provided in conjunction with any necessary counselling or support.'²⁹

'While children may not need to know the full details of their parent's crime, truthful information can serve to reassure them of their parent's safety, that they are not to blame, and that they will be well-taken care of in their parent's absence. Children also need to be able to trust their caregivers; this becomes more critical when children may feel powerless and scared. When a well-intentioned lie is told (for example, that their parent is working, away at school, in the hospital or military), more confusion, anxiety, and ultimately, a breach of trust can result.'³⁰

Recommendation: *Parents and carers should be supported and encouraged to tell children, in an age-appropriate way, the truth about their parent's situation and to better understand the potentially negative repercussions that lying can have on a child's development. Guidance should be prepared on appropriate ways of telling children about parental incarceration.*

Children may also benefit from knowing details about the prison environment, such as the appearance of the parent's cell.³¹ They could receive this information as part of an early visit or remotely, such as through photographs.³²

Future research

Guiding principle: More research is needed on this issue, but it should be participatory and not harm children of incarcerated parents or those around them.

There is still a lot we do not know about children of incarcerated parents. Of particular interest to DGD participants was research to identify the relative importance of separate but associated risk factors, as well as protective factors,³³ and of prospective longitudinal research following children as they grow up, to identify the long-term impacts of parental incarceration.³⁴ Research on the impacts of different offences, different sentences, and the differential impact on children of different ages and genders are needed. Community-based research and community-specific action are especially valuable.³⁵ It is important to avoid depersonalising or de-individualising children, as generalised research can be detrimental to individual child and parent needs.

Whenever conducting research, it is important to ensure that it doesn't harm children of incarcerated parents (or others), increase stigma, decrease willingness to be honest or interfere with children's access to support.³⁶ Whenever research is carried out, there should always be involvement by the end-users (in this case, children of incarcerated parents), who are the real experts on the subject and are well-placed to help others going through the same issues.³⁷

Arrest

Adults talk about a 'violent' or a 'peaceful' arrest. But the children will always experience an arrest as dramatic. It is always traumatic that someone comes and removes a parent. It is important that we think in the child's perspective. Children find arrests much more frightening than we can imagine, because we see it with our adult eyes.³⁸

Guiding principle: Arrests should be conducted in accordance with the best interests of the child, with children's care and other needs met as part of the arrest process.

A parent's arrest can be the first time a child comes into contact with the criminal justice system. As a result, it can have a positive impact on the child's relationship with the police, courts and other criminal justice agencies if the arrest is conducted in a child-friendly way. Unfortunately, this too rarely happens and the arrest (along with the pre-trial period) is the stage of the criminal justice process at which the child is most neglected.³⁹

Children may or may not be present at an arrest (in Aotearoa/New Zealand, they are estimated to be there in about one in five cases⁴⁰). Research has found that witnessing the arrest of a family member is predictive of symptoms of significant trauma:⁴¹ 'In a 2010 study [in the USA] examining the relationship between witnessing arrests and post traumatic stress, children who witnessed the arrest and had a recently arrested parent were 73% more likely to have elevated post traumatic stress symptoms than children who did not witness an arrest and have an arrested parent.'⁴² The manner of the arrest and techniques used may also be relevant to children's stress and (where weapons are used) safety. One 1998 US-based study 'estimated that of parents arrested, 67% were handcuffed in front of their children, 27% reported weapons drawn in front of their children, 4.3% reported a physical struggle, and 3.2% reported the use of pepper spray.'⁴³

Police have spoken of how difficult they can find it separating parents from their children and expressed the need for guidance;⁴⁴ fortunately, there are measures that can make it less traumatic for all involved: child, parent and official conducting the arrest.

Potential good practice

In Poland, arresting officers are trained to take the children into another room when arresting parents.⁴⁵

Potential good practice

In Norway, social protection authorities are represented at the police station and they accompany arresting police on house visits where the alleged offender is known to be a parent.⁴⁶

Alongside seeing their parent being arrested, children can be distressed to see their home and property (including personal possessions) searched, removed or destroyed by officers making investigations. They may also be distressed if asked questions by officers about their parent's whereabouts or activities.⁴⁷

Recommendation: *Protocols or other guidance should be developed on how arresting officials should respond to children at or affected by an arrest.*

Recommendation: Arrest protocols should be comprehensive, covering:

- *measures to take before, during and after arrest;*
- *identifying whether the person being arrested is caring for children;*
- *different arrest situations, including those where children are not or are not expected to be present;*
- *groups to involve or notify, such as child welfare or social workers;*
- *how to seek parental cooperation in the arrest if children are present;*
- *identifying and delivering the children to alternative carers; and*
- *registering this situation in the records.*

Recommendation: Arrest protocols should uphold the rights and dignity of the child, including ensuring that the parent is not humiliated in front of the child. Children should be involved in developing such protocols.

Recommendation: Search warrants should include basic guidelines on how to act in relation to children at or affected by an arrest.

Often, it is only children present at the arrest who are noticed and considered.⁴⁸ Children not with the parent, for example because they are at school, may be overlooked, because arresting officials do not ask or parents do not tell about the existence of children. Communication with other agencies (such as child welfare agencies) about whether those being arrested have children should take place.⁴⁹ Officials conducting the arrest should look for signs that the person arrested cares for children, such as the presence of toys or children's clothes, and be aware that parents may lie about the existence of dependents when first questioned for fear that the children will be taken away. It may be appropriate to ask about children more than once – first at the point of arrest, and then again when they arrive at the place of investigation or detention, by a team with social and psychological expertise.⁵⁰

Recommendation: Efforts to identify children of parents in conflict with the law should begin from the moment of arrest and continue through to release. Information about the support needs of children should be shared with support services in the community, with due regard to the child's right to privacy.

Children who are not identified and contacted can have difficulty finding out what has happened to their parent. Some children only discover the situation from third parties or through stories in the media; they may go for extended periods – in some cases months – without knowing what has happened to their parent and with no information or support provided.⁵¹ Problems of identifying and contacting children can be particularly acute when the person arrested has crossed borders, been arrested in another jurisdiction and children have been left behind elsewhere.⁵²

Potential good practice

In India, the Code of Criminal Procedure requires police officers to tell relatives what has happened and to allow the person arrested to inform others about the arrest and place of detention.⁵³

Sometimes children are allowed to accompany arrested parents, which can be particularly helpful where there are young children or breastfeeding infants.⁵⁴ However, often children do not accompany a parent following arrest and therefore, if the arrested person is a sole carer or both parents are arrested,

alternative short-term care arrangements will need to be made. Official support often depends on the goodwill of individual officials, as many jurisdictions lack a standard procedure for child care in this situation.⁵⁵ Moreover, where institutionalised support systems do exist, they often operate from imprisonment onwards – at the point of arrest, there is nothing in place.⁵⁶

Making immediate childcare decisions may be difficult for parents in the process of being arrested; similarly, it may be difficult for relatives or neighbours to 'refuse to take care of the children, especially if the detention occurs during the night'.⁵⁷ Therefore, decisions about alternative care made at point of arrest should be seen as provisional and subject to change or review, though without affecting the children's right to be cared for at all times.

Potential good practice

The Federal Court of Appeals for San Martín in Argentina has a mandatory regulation that its judges must verify whether arrested persons are the sole carers for children. To enable this, police officers ask each person arrested if they are sole carers; those who are are asked to name a temporary alternative carer for the children. Upon delivery of the children, police take the name, address and signature of the new carers so that they stay in touch with parents and a competent child protection body. The caring arrangements will be considered at court, with opportunities for children to voice their opinions and for arrested parents and new carers to confirm or change their mind about the care arrangements after being interviewed by court social workers.⁵⁸

Potential good practice

In some communities in the USA, police arrest protocols have been drawn up which recognise the right of the parent to designate an alternative carer. Asking about the children is documented in the police arrest form and there is usually a follow-up by social services to check new care arrangements for children.⁵⁹

Recommendation: *Children should not be left alone following the arrest of a parent. They should be left in the care of an appropriate adult.*

Recommendation: *Regardless of whether persons arrested request it, they should be given information about planning for the care of children at and after the arrest. Arresting officials should be responsible for ensuring arrested persons have this information, including whether children can accompany them into custody.*

Recommendation: *Immediately following arrest, arrested persons should be allowed and supported to make temporary childcare arrangements for children under their care. Children themselves should be able to participate and be heard in decisions about alternative carers.*

Recommendation: *Post-arrest care arrangements should be temporary and open to review by both arrested parents and temporary carers. It may be appropriate to place limitations on the decisions that temporary carers can make about the children and/or provide judicial or other oversight to ensure the child is adequately protected.*

As well as obvious safety and welfare benefits for the children, having procedures in place for alternative care can be helpful for arresting officials and arrested parents. There are reports that police 'feel better

about doing their work when they know there are people and services available for the children',⁶⁰ while knowing that the children will be safe and cared for can make parents accept the arrest more readily.

Children, arrested parents and other family members may be unaware of the options available to them post-arrest, both in terms of legal rights and for practical or emotional support. Children may want support or someone to talk to when parents are arrested, to reassure them or to help answer questions.⁶¹ Institutions that operate over a wide area, such as the criminal justice system, are well-placed to provide them with information about the services available.

Recommendation: *Children and their families should be told about support available to them, including organisations, telephone helplines and websites. Criminal justice and other officials should provide this orally and in writing, in forms and languages children of different ages and stages of development understand.*

Recommendation: *All places where children of those in conflict with the law come into contact with the criminal justice system, including police stations, lawyers' offices, court holding cells and judges' benches, should display information about available support. Such information should also be available in other places children and families frequent, including schools, youth clubs and websites, as well as in prison for newly arrived prisoners.*

The arrest of a parent can have more far-reaching consequences. Parental arrest 'may be the first point at which children (future citizens) learn about fairness and the justice system.'⁶² Children's 'respect for the law and sense of right and wrong can be complicated by an arrest. This is particularly true if they were not aware of their parent's law-breaking, if they witnessed aggression toward their parent during an arrest, or if their parents did not take responsibility for their actions (e.g. using language to convey that arrests happen randomly or without justification). Few mental health professionals or social workers are trained in discussing parental arrest with children and it is common for children not to have spoken about this often traumatic experience with anyone.'⁶³

Recommendation: *Criminal justice, social work and other professionals that may come into contact with children of incarcerated parents should be trained in the rights and needs of such children.*

Pre-trial period

Guiding principle: The impact of pre-trial measures on children should be considered when considering or reviewing measures, with procedures put in place to mitigate any negative impacts on the children.

The arrest of a parent does not mean they will go to prison. Not all arrests result in a suspect being charged and prosecuted. Not all prosecutions reach a full trial. Not all trials result in a guilty sentence. And not all convictions result in incarceration. At each stage officials can consider which options best prevent any future harm related to the (alleged) offence and which options ensure the best interests of the child are met.

In the period between arrest and trial/sentencing, those arrested and accused may have pre-trial measures imposed on them. They may be placed in pre-trial detention, or allowed to remain in the community (with or without restrictions). The impact of such measures on children is rarely considered; nor is the fact that childcare responsibilities may be an indication that alleged offenders are unlikely to abscond and that restrictive measures (like pre-trial detention) are therefore unnecessary. It is important that any non-custodial, community-based measures should be designed to make allowances for childcare responsibilities, including the location, timing and nature of the measures, and responses to breaches (for example, parents may be unable to report to police because they have an ill child).⁶⁴ The avoidance of pre-trial detention for sole or primary carers is a good preventive strategy to avoid problems such as separation of family members due to loss of home or job because of detention.⁶⁵

Recommendation: *There should be a presumption against pre-trial detention and the best interests of the child should be a primary consideration when deciding on or reviewing pre-trial measures for a parent, in particular the decision to detain. Guidance should be prepared on what information is required for such decisions and on how to gather this information.*

Potential good practice

In Italy, pregnant women or those with children under six cannot be placed in pre-trial detention other than in exceptional circumstances, instead being detained at home or in 'attenuated custodial institutions'.⁶⁶

Children with parents in pre-trial detention face many of the same problems as children of convicted offenders, but also some additional restrictions. There may be limits on contact if children will be involved in the trial (for example as witnesses), or if those who could accompany them to prison are barred from contact. In some jurisdictions, pre-trial detainees are classified as maximum security by default, meaning family visits are prevented or forced to take place under maximum security restrictions, despite nobody involved having been convicted of an offence.⁶⁷ Some jurisdictions extend such restrictions to other forms of family contact, including telephone calls and letters.⁶⁸ However, given the child's right to a relationship with their parents and that their best interests are usually served by contact with their parents, access to parents in pre-trial detention should be the norm, with the detaining authority making provision for this.

Recommendation: *Unless it has been judged not to be in their best interests, children should have access to parents in pre-trial detention by default, facilitated by the detaining authority. Restrictions should only be permitted when the detaining authority has shown reasonable grounds for so doing.*

Even when parents remain outside prison on bail, it is stressful for children, with great uncertainty about what will happen and whether or when parents will be taken away.⁶⁹ ‘The pre-trial detention and sentencing period can be confusing and scary for children. Although their parent is technically “innocent until proven guilty,” this is not often how this period feels for families.’⁷⁰

Recommendation: *States should consider expediting cases of suspects with children, particularly in jurisdictions with long pre-trial periods, given the potential impact on children of pre-trial separation and/or uncertainty.*

Note: *Many of the impacts of pre-trial measures on children’s lives are similar to the impacts following conviction. They are covered in later sections, with specific impacts at the pre-trial period highlighted where appropriate.*

Court and trial

Guiding principle: Where they want to attend and it is in their best interests, children should be supported to attend the trial of a parent.

Children with parents accused of a crime may want to attend the trial.* However, they are often 'unlikely or unable ... to attend court',⁷¹ which can be an incomprehensible and intimidating place for them. The procedures of adult courts rarely take into account the best interests of the child, meaning that if children do attend the trial, they may need support to do so.

Case studies suggest that while a small percentage of children find trial attendance traumatic, none who did attend regretted doing so. Of those interviewed, only one was well prepared for the trial process by a counsellor. Given that research has suggested that children, especially young children find the legal process challenging to follow, it seems sensible that courts should “develop a more pro-active approach”, possibly ensuring a counsellor prepares and supports children through the trial process.⁷²

Such support should be part of moves towards 'child-friendly justice', where the criminal justice system 'understands and respects both [the children's] rights and their unique vulnerability'.⁷³ Children of incarcerated parents, who have substantial support needs,⁷⁴ should be an explicitly named group in such a system. However, despite research suggesting that it is in children's best interests to attend the trial, this view is not universally shared: 'there is general agreement among judges [in Aotearoa/New Zealand] for children not to be involved in their parents' trial processes because their involvement has the potential to normalise the court process in their minds, leading to a higher risk of future offending.'⁷⁵

Recommendation: *Children should be given individualised and age-appropriate support to attend the trial of a parent, where they wish to go and it is in their best interests.*

Recommendation: *States should progress towards having child-friendly justice systems that include children of incarcerated parents an explicitly named and considered group.*

The child or parents may be involved in multiple court processes simultaneously, such as criminal and family courts if alternative care arrangements for the child need to be decided. (In some States, including India, this is referred to as 'juvenile justice', because the term includes all justice processes related to children, not just children in conflict with the law.⁷⁶) However, this can create problems: when parents have concurrent criminal and Family Court cases, children's access to their parents may be affected by the decisions of either or both courts and the lack of coordination between the two. In particular, criminal court orders of protection pertaining to children sometimes ban children from seeing their parents for 5, 10 or more years and can do significant harm. Since family dynamics, children's development, parent-child attachment, or trauma treatment is generally not the focus of criminal courts, orders of protection risk harming children further and should be under the jurisdiction of the Family Court.⁷⁷ Furthermore, incarcerated parents may be unable to attend court proceedings related to their children's care or to access material relevant to the case, because of the restrictions of incarceration.⁷⁸

Recommendation: *Family Courts should be involved in both initial decisions and reviews of care arrangements and contact with parents for children with parents in conflict with the law. Incarcerated parents should be assisted to fully participate in these cases.*

* Some children may also be victims or witnesses to the crime of which their parent is accused and therefore required to attend the trial. Details of appropriate measures to take in relation to children in this situation can be found in the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, available at: http://ibcr.org/editor/assets/thematic_report/2/ecosoc_res_2005-20_en.pdf (accessed 1 February 2012).

Sentencing

Guiding principle: When sentencing a parent, courts should take into account the best interests of the child and the impact of potential sentences on children.

When parents are found guilty, the sentence they receive will have profound impacts on their children. However, in many jurisdictions the impact of proposed sentences on children is rarely taken into account, relying on individual judges or sentencing officials to consider it.

There is wide variation between jurisdictions as to what must be or can be considered a relevant factor in sentencing. Aotearoa/New Zealand allows pregnancy to be a relevant consideration in sentencing,⁷⁹ while (with limitations) Egypt permits sentences to be served consecutively if both parents are being imprisoned, so that there is always one parent outside to care for the children.^{*80} Italy allows mothers to spend part of their sentence in home detention, provided they have children under 10 years, have served a third of their sentence and are deemed not to be at risk of committing further offences.⁸¹ In Armenia, 'pregnant women or women with children under 3, except those imprisoned for more than 5 years for serious crimes, 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'.⁸² Cyprus has a similar law and the country's Children's Commissioner has recommended that this provision be broadened to cover all primary carers of children under eight (the limit of early childhood as defined by the Committee on the Rights of the Child's General Comment 7).⁸³

Within the Convention on the Rights of the Child, explicit mention of children of incarcerated parents is made only in Article 9(4). However, Article 30 of the African Charter on the Rights and Welfare of the Child is devoted to the issue of 'Children of Imprisoned Mothers' and several countries, including Argentina, India and South Africa, have rules or judgements that consider children when sentencing parents.

Within India, the High Court of the state of Gujarat ordered, in October 2011, that the state support the family of a prisoner, because the imprisonment had caused them 'untold misery and deprivation without any fault on their part'.⁸⁴ In Argentina, since 2009, women with children aged under five can be imprisoned at home, enabling them to continue caring for their children outside a prison environment.⁸⁵ A similar situation exists in Germany, where a 'housewife sentence' means women who meet the conditions of so-called open sentence leave prison during the day to be mothers and return to prison in the evening.⁸⁶ These systems can prevent many of the negative implications of imprisonment, though it is important to examine the impact on the mothers, and therefore also the children, of this enforced lifestyle.

In South Africa, the Constitutional Court has made two important judgements related to children of offenders. In 2007, the case of *S v M* established that 'all South African courts [must] give specific consideration of the impact on the best interests of the child when sentencing a primary caregiver. If the possible imprisonment will be detrimental to the child, then the scales must tip in favour of a non-custodial sentence, unless the case [is] so serious that that would be entirely inappropriate'.⁸⁷ The Constitutional Court set out five steps that should be used to establish these interests:

1. *The sentencing court should find out whether a convicted person is a primary caregiver whenever there are indications that this might be so.*
2. *The court should also ascertain the effect on the children of a custodial sentence if such a sentence is being considered. If the appropriate sentence is clearly custodial and the convicted person is a primary caregiver, the court must apply its mind to whether it is necessary to take steps to ensure that the children will be adequately cared for while the caregiver is incarcerated.*

* The restrictions are: that both husband and wife are first-time offenders, they are not sentenced for the same crime, they have a known residence, neither is jailed for more than a year and they have children under fifteen.

3. *If the appropriate sentence is clearly noncustodial the court must determine the appropriate sentence, bearing in mind the interests of the children.*
4. *Finally, if there is a range of appropriate sentences, then the court must use the paramountcy principle concerning the interests of the child as an important guide in deciding which sentence to impose.*⁸⁸*

Subsequently, the 2011 case of *MS v S* narrowed the scope of this provision, limiting it to single primary caregivers only.⁸⁹ This moves away from the case-by-case approach of the earlier judgement and limits eligibility for having the impact of parental offending be considered to children in particular categories only (i.e. those with just one caregiving parent).

In research in Scotland asking children how they wanted to express their views to the court, there was a diversity of opinions, varying from 'talking with the judge themselves, having someone speak for them or writing a letter'.⁹⁰

Recommendation: *Prior to sentencing, courts should identify whether those convicted have dependent children and take into consideration the impact of all potential sentences on children. The best interests of the child should be a primary consideration when choosing a sentence.*

Recommendation: *When considering potential sentences for a child's carer, sentences that are least damaging to the child should be considered first. These are likely to be non-custodial sentences. Guidance should be prepared on how different sentences affect children.*

Recommendation: *Pregnant women should not be imprisoned without ready access to adequate facilities for childbirth, prenatal and postnatal care.*

Non-custodial sentences (or non-custodial parts of sentences that also include custodial elements) should also be assessed for their impact on the children. Curfews, reporting requirements or restrictions on movement may affect parents' abilities to support their children (such as by preventing them from taking children to school or hospital during curfew hours). Financial penalties, whether as payment to the state or compensation to the victim, as in Shari'a law,⁹¹ can negatively affect children because of the general reduction in family funds. However, it is important that potential conflicts between requirements of childcare responsibilities and requirements of non-custodial sentences do not mean that offenders with children are given custodial sentences instead.⁹²

Potential alternatives to incarceration for cases where children would live with their parents in prison are considered in the *Children living in prison* sections below.

If parents are being detained (pre-trial or following trial and sentencing), the location and features of the prison can make a significant difference to how the children cope with the incarceration. Children want to have their views considered about where imprisoned parents are housed, with a clear preference for placement in prisons that are closer to home so that they can visit;⁹³ prisons that are easy to reach and have child-friendly arrangements (for both direct and indirect contact) can make contact easier. For these reasons, judges should be acquainted with where they are sending incarcerated parents,⁹⁴ while criminal justice authorities should consider these impacts when making decisions about transferring prisoners between prisons.

* The judge delivering the judgement, Albie Sachs, stated:
Every child has his or her own dignity. If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them. The unusually comprehensive and emancipatory character of section 28 presupposes that in our new dispensation the sins and traumas of fathers and mothers should not be visited on their children.

Child impact statements or assessments are a practical measure to help judges consider the best interests of the child when sentencing.⁹⁵ These could be similar to the victim impact statements that exist in several jurisdictions,⁹⁶ or alternatively take the form of a report describing the potential or actual impacts on the child of imprisonment or alternatives, informed by the views and experiences of the child. This would mitigate the problem of children's rights and best interests being considered only after a decision or policy has been implemented, as frequently happens at present.⁹⁷ It is important that any assessment isn't seen as a statement by or on behalf of the child, so that they don't feel pressured to say something helpful for their parent or guilty if there is an adverse outcome.⁹⁸

Recommendation: *Child impact assessments should be available whenever considering placing or releasing parents from custody, including decisions about pre-trial detention or early release, as well as when transferring prisoners between prisons.*

In some jurisdictions, offenders are immediately taken to prison following the imposition of a sentence, without the chance to say goodbye and/or make arrangements for their children's care. Parents often do not make such arrangements in advance and the reality of conviction and sentencing may be a shock for family members.⁹⁹

The UN Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) state:

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.

Such a standard should apply to all those caring for children.

Recommendation: *When a sentence causes parents to be separated from children for whom they are caring, they should be given sufficient time to make arrangements for those children prior to the commencement of the sentence, taking into account the best interests of the child.*

Sometimes parental incarceration can alter the legal connection between children and parents, with parents losing their parental rights either as part of the sentence or as a consequence of the sentence (e.g. because they are unable to fulfil requirements for maintaining parental rights, such as regular contact with their children over a period of time).¹⁰⁰

Recommendation: *When ongoing contact with children is a required condition for maintaining parental rights, incarceration of a parent should not be seen as a breach of this condition.*

Crimes against the child

Guiding principle: The complexity of the situation of children whose parents have committed offences against them needs further research and guidance.

There are situations where it may not be in the child's best interests to maintain contact with their incarcerated parent. Possible examples include cases where the parent has committed offences against the child, such as domestic violence, neglect and/or child abuse.¹⁰¹

As in other situations, the best interests of the child should be determined on an individual basis, while children should be able to be heard and to participate in proceedings where they are the victim of the (alleged) offence.¹⁰² This is an under-researched area with significant complexity: children may have conflicted feelings towards an offending parent, or be unhappy with collateral consequences of their parent being arrested and/or imprisoned. There have been cases where they testify, then 'take back their statements just so that they can have their parent back'.¹⁰³

Recommendation: *Further research and guidance should be produced on how to assess and protect the best interests of the child when a parent commits crimes against them, as well as how children can participate in proceedings related to this.*

Children living in prison – limits and restrictions

Guiding principle: Decisions about when children should live in or leave prison should be based on an individualised, case-by-case analysis of their best interests.

Some children live with one or more incarcerated parents (usually the mother). These children are not prisoners and have the same rights as children outside of prison.¹⁰⁴ In particular, given the often limited environment of prisons, their rights to live in a family and social environment conducive to their development¹⁰⁵ and to the same opportunities as other children, need to be considered and reassessed regularly to take account of the child's development.

Almost all States allow babies and children to live in prison with their mothers,* and a few (including Finland, Germany, Portugal and Sweden) permit children to live with fathers as well. However, the restrictions and requirements vary widely, with neighbouring countries, or even different jurisdictions within a single State, having different policies. Some only permit children to live in prison if they are born there, while many others do not differentiate between babies and children who are born during a mother's imprisonment and those born prior to her imprisonment. Some do not explicitly state that adoptive parents can have children living with them as well as blood parents – this will be a particular issue in jurisdictions that also require mothers to give birth in prison in order for children to stay with them. At least some States allow children to live with parents detained pre-trial as well as following conviction and sentencing.¹⁰⁶

The stated reasons for allowing children to live in prison generally relate to 'the best interests or welfare of the child. In England & Wales, authorities assert that "in normal circumstances in the community, the best interest of the child is seen as remaining with its mother and starts from this point when deciding whether or not it is appropriate to allow an offender to reside with her child".¹⁰⁷ Other States have spoken of 'the importance of mother-baby bonding and attachment ... humanity and the value of placing the children in appropriate conditions [or] ... the nutritional benefits of allowing children to continue breastfeeding'.¹⁰⁸

In all known jurisdictions, there is in law or practice an age or developmental stage beyond which children are not permitted to live in prison. Developmental stages may be a point of physical development, such as being weaned (as in Ghana), or a point of social development, such as starting school (as in Germany).¹⁰⁹ Age limits vary from a few days or weeks to seven years in law, and considerably older in practice.¹¹⁰ There was considerable discussion at the DGD about whether a uniform limit should be proposed, but this was ultimately rejected in favour of decisions based on each child's circumstances and best interests. Strict limits on the age (or the conditions) in which a child may live in prison risks being incompatible 'with the prerogative of the best interest of the child and the requirement of individual assessments'.¹¹¹

Children living in prison are often too young to make or communicate decisions about whether they want to stay there, so decisions are made by others. Some States allow children to live in prison if the mother wants it, while in others government authorities may need to give permission to have the child stay in prison. These can include child welfare authorities, regional governments or courts. Prison directors may also have the authority to decide on entry, either unilaterally or on the advice of a specially-constituted application board.¹¹² Increasingly, decisions about children living in prison have changed from being a prison management issue to a child welfare issue, a process facilitated by the strengthening of child rights.¹¹³

* Norway and some states in the USA do not, although Norway is, at the time of writing, in the process of reviewing its provisions. In all cases where children do live with mothers, the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) should be consulted and followed.

In some States, parents may need to meet eligibility criteria in order to have children live with them. These can include being considered a low security risk, completing training in parenting or first aid, testing negative for illicit drug use, or not being convicted of certain crimes (such as sexual offences involving children). In other States, there are no restrictions related to type of offence or length of sentence.¹¹⁴ Whenever such regulations do exist, they should be sufficiently flexible to allow the best interests of the child to be at the heart of decision-making and in particular avoid the automatic restrictions that can exist in regulations that are too detailed.

Recommendation: *Decisions about whether and when children should live in or leave prison should be based on an individualised, case-by-case analysis of their best interests. The child's place of birth or adoptive status, and the parent's gender should not be relevant considerations in such decisions. Factors such as offence, sentence length, behaviour in prison or similar should be considered only insofar as they affect the child's best interests and should not automatically exclude parents from having children live with them in prison.*

Potential good practice

Within Aotearoa/New Zealand, 'mothers whose babies live with them in prison must enter into a parenting agreement with the Chief Executive of the Corrections Department ("Chief Executive") under s 81B of the Corrections Amendment Act 2008 in relation to the child's placement, this includes: notice that the mother is responsible for the care of her child, and identification of an alternative caregiver in case of emergency or when the child's placement ends. Under this agreement the Chief Executive must provide parenting information; education and support for the mother; arrange for the child to receive all necessary health checks; and ensure the mother has adequate access to counselling to support her role as a mother in prison.'¹¹⁵

In several jurisdictions, alternative sentences are available for mothers with children. Within Argentina, mothers with children under 5 may be confined to her home, at the judge's discretion,¹¹⁶ while in Kyrgyzstan and other former Soviet republics women with children under a certain age can be given in effect a suspended sentence, provided their crime was not considered grave.¹¹⁷ Within Canada and Mexico, children may live in prison part-time, staying with incarcerated mothers on weekends and holidays.¹¹⁸ Other identified options include 'family-based communities, family homes etc. whereby a child can stay with his/her mother out of prison'.¹¹⁹ Non-prison measures for mothers of young children have been recommended by the Parliamentary Assembly of the Council of Europe, while the Committee on the Rights of the Child has recommended that States 'develop and implement clear guidelines on the placement of children with their parents in prison'.¹²⁰

Recommendation: *Guidance should be developed to assist decision-makers on factors to consider when deciding whether babies and children should live in prison with a parent.*

Children living in prison – physical conditions

Guiding principle: Children should live in an environment that is safe, healthy and beneficial to their development.

The nature and quality of a child's living conditions will have a significant impact on their development. Prisons, which are not primarily designed as a place to raise children, tend to be an adverse environment in which to raise children. The conditions in prisons can vary widely between and within States; developing countries report lower quality conditions than developed countries.¹²¹ The interlinked issue of the prison regime and its impact on positive child-rearing is explored in *Children living in prison – social and developmental conditions* below.

The International Committee of the Red Cross recommends that 'material conditions of detention, particularly, but not only, where children are detained with family members ... [should] ensure that infrastructure (including visiting space) is adequate and that those detained are safe and have enough space, light and access to fresh air. In this regard, the needs of infants require special attention'.¹²² They should be placed in clean and hygienic conditions, with access to 'proper food, water and clothing (including baby items), [and] medical care (including immunization and control of communicable diseases)'.¹²³

Provision of suitable facilities, such as separated mother and child units, 'has been noted as an important factor in reducing the incidence of the termination of parental rights and consequently the removal of children from their parents. Such dedicated units also serve to guarantee safety and security for children as opposed to mixing with the general prison population where violence, physical abuse, intimidation and abusive language may all be issues'.¹²⁴ Child-focused units are designed to be suitable for children and may include features such as: bright colours; child-sized and child-friendly furniture (without sharp edges); 'equipment for the care and upbringing of a child'¹²⁵ including toys, clothes, bottles and books on child-rearing; space for several parents with children to live together, with each family having its own room or cell but with shared communal space; and the possibility of shared cooking and washing facilities, living rooms or playgrounds. These facilities may be physically separate from the rest of the prison (potentially outside the prison grounds) or closely mimic accommodation in the community or both.¹²⁶

Potential good practice

In Brazil, incarceration units for women are legally obliged to have nursery rooms where babies can be breastfed until 6 months of age, special sections for pregnant women and day care for children.¹²⁷

Potential good practice

Following a Commission of Investigation and Supreme Court ruling in 2006, Indian prisons have to provide a crèche for children below the age of three and a nursery for children below the age of six. These facilities are required to be available to children of (female) prison staff as well, while some are open to the local community, thereby allowing children from different groups to mix. Some parents have been unwilling to have their children play with children of prisoners, but senior prison service officials have publicised the fact that their children attend, which has helped to dispel concerns.¹²⁸

Potential good practice

Spain has developed External Mother Units to enable children up to 3 years old (on occasion, up to 6) to live with their incarcerated mothers in a non-prison environment. The Units, which were created following a survey of mothers raising children in prison, are 'bright, colourful and spacious', containing an outdoor play area and separate 'apartments' for each family that include cooking, eating, sleeping and relaxation areas. They are built within the community, rather than separated from it, and 'mothers bring their children to school, doctor appointments, and community activities.' Support is also given to the mothers for education and job training.¹²⁹

Recommendation: Facilities for children living in prison should be child-friendly, clean and hygienic, designed with their development and safety in mind. Guidance should be prepared on appropriate features of such facilities.

In several States with child-focused accommodation, children may only live in prison if there is space for them (and the accompanying parent) in these facilities; mothers may be barred from entering the units because of concerns about how they would behave towards other mothers and children, rather than their relationship with their own child.¹³⁰

Potential good practice

In Aotearoa/New Zealand, mothers and their children 'are housed in self-care units, which provide them with greater independence and a more supportive environment for their child. Mothers who do not qualify for a self-care unit are permitted daily visits in purpose-built facilities to feed and bond with their child.'¹³¹

Some States have their prison-based child facilities inspected by outside agencies, either prison inspectorates or child/school inspectorates or both. For example, in the UK child play areas in prison are inspected by the body that inspects other child play areas and schools, meaning that inspectors will be knowledgeable about best practice in child development instead of prison conditions. Similarly, authorities overseeing the day-to-day running of facilities for children living in prison should be primarily focused on child welfare rather than prison management.

Recommendation: Areas used by children should be subject to regular and independent inspection, by the bodies responsible for inspection of similar facilities in the community. Day-to-day running of facilities for children living in prison should preferably be undertaken by bodies performing this role in the community rather than prison authorities.

Children, especially in early years, have particular and specific health needs, which may not be easily met in prison. The prison environment can be a health risk, particularly in situations of overcrowding or inadequate nutrition. Additionally, staff providing or controlling access to healthcare may not be trained in paediatric healthcare and be unable to identify the health needs of children. This can cause delays, problems or complications in the child receiving appropriate care, including if they need treatment outside the prison.¹³²

There is international guidance on how to provide for the health of children living in prison. The Bangkok Rules (Rule 33.3) require that:

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.

They also state (Rule 51.1) that:

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.

Recommendation: *Children should be regularly examined by paediatricians or other medical officers knowledgeable about paediatric medicine. They should receive routine vaccinations.*

Recommendation: *Everyone providing medical care in prisons, and all staff interacting with children living in prison, should be trained in the basic healthcare of children. Guidance should be prepared on the form and content of such training.*

For details of particular health issues related to babies and very young children, see *Children living in prison – pregnancy, birth and early years* below.

Having children live in prison may impose extra costs for the prison, such as providing additional food that is appropriate for the children. Particularly where prisons do not receive additional funding to support the children, they may be seen by officials as a further drain on limited budgets, which makes it even more important to remember that the children are not prisoners and should not suffer because of offences their parent is alleged or convicted of committing.

Recommendation: *Costs relating to children living in prison, particularly food, clothing, accommodation and medical care, should not be borne by them or their families.*

Children living in prison – social and developmental conditions

Guiding principle: In all areas of the child's life, the prison environment should reflect life in the community as closely as possible.

Children need more than material security for healthy development. Babies and young children need varied stimuli, access to which can be restricted in prisons.¹³³ Because children's needs change as they grow, 'prisons must ensure that they are equipped to accommodate the child's dynamic needs. A child at 24 months is also likely to be more mobile than a new born; there must therefore be sufficient space for the child to explore, including an outdoor space.'¹³⁴ Some prisons have adopted a normalisation approach, with the maxim 'if you can't bring the children outside, bring the outside to the children'.¹³⁵

Prisons can have severe negative effects on child development, such as cases where children living in prison are sexually abused.¹³⁶ However, they can also have positive impacts, with simple activities yielding beneficial results. Breastfeeding can enable 'eye-to-eye contact, physical closeness, emotional bonding, [which] are all considered essential for optimal child development'.¹³⁷ Taking children outside the prison can expose them to the normal features of the community – children in the past have been reported to be scared of cars, aeroplanes, trees and men because they haven't been exposed to them while in prison.¹³⁸ These activities conform with the Bangkok Rules, which state that 'the child's experience must be as close as possible to life for a child outside (Rule 51.2)'.¹³⁹

The behaviour of prison officials can also help the children, for example by not taking loud or aggressive disciplinary actions around children, and by ensuring all those in contact with the children (mothers and staff) dress in normal clothing (not prison uniforms) so as to help normalise the situation.¹⁴⁰ Staff may also need support or training to work successfully with the children, for various reasons: 'Many of the staff are mothers and father[s] themselves and seeing a baby behind the bars may be painful. Prison staff [are] sometimes unsure when to intervene to things happening between mother and a child. A child also does not act like a prisoner; it doesn't follow the rules and regulations.'¹⁴¹

Recommendation: *All those in contact with children living in prison should be trained and supported in how to act and behave around them. Those looking after children should be trained in childcare. Guidance should be prepared on the form and content of such training.*

Recommendation: *Staff in contact with children should not dress in prison uniforms or take loud or aggressive disciplinary actions when children are present.*

'The purpose of placing a child in prison with the mother is to strengthen the emotional attachment between the mother and child, which is a vital factor in a child's development.'¹⁴² However, imprisonment can have negative as well as positive influences. Research suggests that maternity in seclusion (such as in prison) can heighten the risk of maternal depression, and maternal anxiety and depression are a very important risk factor for various types of child emotional and behavioural difficulties.¹⁴³ Therefore, helping the parents, particularly in developing and maintaining emotional ties with the child,¹⁴⁴ can help prevent the parental deprivation and compromised child-parent relationship that is a potential root of developmental problems for the child.¹⁴⁵

Having children in prison whom they can 'take care of and properly feed ... can have positive benefits for the integration and re-education of incarcerated women. It can reduce recidivism and have positive spillover effects on other women beyond imprisoned mothers.'¹⁴⁶ The availability of help can mean a

better situation for both mother and child: 'Many times it is the first time for the mother that she gets help and support, or the first time she is accepting help. For the child the prison-time means proper meals in regular mealtimes, regular daytime naps and outdoor times and night-time that is protected for sleeping. For the mother the presence of the child can be motivator to rehabilitation.'¹⁴⁷ There are also other benefits: maintaining the mother-child relationship can reduce the chance of children being sent to shelters or being abandoned.¹⁴⁸

Children living in prison will need different support and guidance at different stages of development. Young children may need assistance in such functions as toilet training,¹⁴⁹ talking and learning to walk – research suggests that children in prison learn to walk very early (from 10 months) and speak and crawl before their peers 'on the outside', perhaps because their development is stimulated by constant interaction with so many adults.¹⁵⁰ The prison environment may mean that incarcerated parents require more support, space and understanding than they would outside prison, because 'everyday activities are naturally more complicated. Feeding the baby, washing the laundry, getting all the necessary accessories for the child or even putting baby to sleep is sometimes difficult.'¹⁵¹

Older children may need more formal education, though many have little chance of receiving it.¹⁵² When available, education may be through prison schools or tutors, or at community nurseries, kindergartens and schools. In-prison education systems may not be provided because the small number of children who use them is not seen as justifying the cost.

Potential good practice

The Yemeni Red Crescent Society provides both opportunities for children living in prison to play and receive basic education, and classes for their mothers in sewing, literacy and other subjects. The availability of care for the children was an important factor in some mothers participating in the classes.¹⁵³

Potential good practice

In India, some schools have 'lowered their tuition fees for children who are staying in prisons to make it more possible for children living in prisons to attend. Jails can save money by not having to create an educational facility and children can get educated and be mainstreamed at the same time.' One NGO in West Bengal provides transport from the prison to community-based schools.¹⁵⁴

Recommendation: *Children living in prison should be adequately supported in their development and education, including 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.*

The opportunities for contact and bonding between the mother or father in prison and any children living with them vary depending on the prison regime. In some, mothers are responsible for their children full-time, at least in the weeks and months after birth. In others, mothers continue with a normal prison routine during the day and look after their children at night, though in States such as Ghana the time they spend in regular prison activities is reduced.¹⁵⁵ In yet others contact between mother and child is limited to a few hours a day and decided by a doctor.¹⁵⁶ The people caring for children at different times also varies: 'In Sweden and Estonia, imprisoned parents can care for their children during the day, while in other ... States they are cared for by others within the prison (Canada), in special prison nurseries (Austria, where prisoners' children are cared for alongside the children of prison staff) or are placed in community nurseries/kindergartens (Estonia, Switzerland).'¹⁵⁷ International standards in the form of the Bangkok Rules state that 'women must be allowed as many opportunities as possible to see the children who are imprisoned with them (Rule 50)'.¹⁵⁸

Recommendation: *Incarcerated parents should be allowed as many opportunities as possible to see the children living with them, taking into account the best interests of the child. They should have the same opportunities to care for and bond with babies and young children as would be the case outside prison, including exemption without penalty from other commitments such as prison work.*

Alongside their relationship with their imprisoned parent, children living in prison also need to develop and maintain relationships with others, in particular other family members and those with whom they expect to live when they leave prison. As the children are not prisoners, they should not be subject to the same restrictions on visits as prisoners, and in several jurisdictions additional opportunities for contact are available:

Portugal and Colombia allow children to leave for a holiday with non-imprisoned relatives if the parents ask for it, while Iceland allows children to stay the night with grandparents ... Visits may be longer or more frequent than normal (up to daily in Hungary, without a time limit in Poland), with further extensions for family members from abroad (Slovenia). There may be opportunities for visits in child-friendly environments, equipped with toys, crayons, books etc., or in special "visiting flats" with an outdoor area where the family can stay together for two or three days and live a nearly normal life' (Sweden).

Indirect forms of contact (such as by telephone) may be allowed more frequently when children live with their parents (Slovenia).

Sometimes imprisoned mothers are also allowed out with the children for short periods (Canada). In the UK (Scotland) some mothers may go shopping or to the park with their children, or (at regular intervals) go to their home in the community. Children may also be accompanied by other adults – in England & Wales mothers must nominate two individuals to take their children for trips outside prison, and at least one prison has 'baby walkers' who 'take the babies out in their prams to get used to the noise and sights of the environment outside the jail'.¹⁵⁹

Any restriction on children's movements outside the prison should be those that apply in the outside world.¹⁶⁰

In some jurisdictions, the child can live outside the prison part-time or the whole non-incarcerated family can stay together within a prison setting, as happens in some open prisons in India.¹⁶¹ Conversely, children may be unable to easily contact other incarcerated family members, even if they are in different parts of the same facility (for example when both parents are incarcerated).¹⁶²

Potential good practice

Aranjuez prison in Spain has 'family cells', which allow couples who are both imprisoned to stay in the same prison unit with children aged under three. The cells are specially furnished to be child-friendly and include "cribs, Disney characters on the walls and access to a prison playground." The parents are taught parenting skills and allowed to bond with their children in an environment which is less inhospitable and threatening than standard prison cells.¹⁶³

Recommendation: *Children living in prison should be allowed contact with outside family members and others with whom they have a close relationship unrestricted in frequency, length, form or accompaniment, except where restrictions are in the child's best interests.*

Children living in prison – pregnancy, birth and early years

Guiding principle: The specific needs of children around birth and early years should be met.

Issues around pregnancy and the early stages of life can have profound and long-term consequences for the health and development of the child. Providing pregnant and lactating women with appropriate prenatal and postnatal care in prison can be beneficial to the health and wellbeing of both mothers and children.

The Bangkok Rules and commentary detail appropriate provision for pregnant women in prison (Rule 48), as well as breastfeeding women and those with children. Several submissions to the DGD contain detailed recommendations in this area, many of which are reproduced below. A key principle is the need for case-by-case consideration of the needs of women and children.

Some women and girls may discover they are pregnant while incarcerated.¹⁶⁴ Particularly for women and girls whose normal support networks are unavailable, extra support may be required. Before birth, it is important that women are not required to undertake activities that could be injurious to their health. There are cases where pregnant prisoners have been subjected to hard labour and/or beatings, some of whom subsequently miscarry.¹⁶⁵

Recommendation: *Pregnant imprisoned women and girls should have access to quality antenatal care, including guidance on optimal infant and young child feeding practices to make informed decisions about how to feed their children.*

Recommendation: *Pregnant women and new mothers, including breastfeeding mothers, should be provided with an appropriate diet for the healthy development of the children.*

Recommendation: *Children entering prison should be medically screened on entry. In addition, pregnancy tests should be offered to all women and girls of childbearing age on entry to prison. However, these should not be required and the woman's right to medical confidentiality must be respected.*

Regardless of whether a woman expects to give birth while detained in prison, planning should be made in advance for the birth.

Recommendation: *Pregnant imprisoned women should have the same access to assisted births as non-incarcerated women. As far as possible, childbirth should take place outside of the prison, in a suitable environment. Instruments of restraint must never be used on women during labour, during birth and immediately after birth.*

Recommendation: *Incarcerated parents should be able to benefit from all opportunities to bond with their infant, immediately after birth and beyond. Incarcerated mothers should be allowed including immediate skin-to-skin contact and early initiation of breastfeeding (within one hour of birth).*

Following birth, the birth should be registered without delay, with staff in prison responsible for ensuring this happens. Lack of birth registration can lead to future problems for the child, as they may be unable to access other services or support that require evidence of birth or nationality.

There may be cases, particularly with foreign national women, where they are unable to transmit nationality to their children. It has been recommended that in cases 'where the nationality of the children

is in doubt, the assistance of consular officials and of the Office of the UN High Commissioner for Refugees should also be sought.¹⁶⁶

Recommendation: *The birth of all children of incarcerated parents should be registered without delay. As stated in the UN Standard Minimum Rules for the Treatment of Prisoners, if a birth in prison occurs, this fact shall not be recorded on the birth certificate.*

Women should be allowed a suitable period of postnatal care to rest and recover. They should not, as has been reported in one case, be ‘forced to return to the prison two hours after giving birth at a hospital.’¹⁶⁷

Following birth, if the baby accompanies the mother into prison, particular arrangements will be needed to meet the child’s rights, needs and best interests. A child needs ‘a minimum period of close interaction with its mother to preserve a secure attachment and to reap the benefits of breastfeeding. Both these factors are believed to have a significant impact on a child’s healthy development and future wellbeing.’¹⁶⁸

Babies and young children have particular nutritional and health needs, and optimal infant and young child feeding practices contribute to the fulfilment of the right of the child to the highest attainable standard of health, including the right to adequate food, and to the right to survival and development of the child. Breastfeeding, which has been found to protect babies against illness, improve the mother’s health and aid mother-child bonding,¹⁶⁹ has been recommended by the World Health Organization and UNICEF as the exclusive form of feeding for children up to six months and as part of a child’s nutrition for children up to two years or beyond.¹⁷⁰ It is important that lactating mothers be provided with appropriate food to enable them to produce breast milk of appropriate quantity and quality, but many prisons, operating on limited budgets or poor understanding of the particular needs of pregnant and lactating women, do not provide this. Moreover, the feeding needs of babies and children may not conform to prison timetables and flexibility should be shown to enable them to be fed when needed.

Recommendation: *Children’s nutritional needs, in particular optimal duration of breastfeeding, should be a relevant factor when considering for how long children should live with incarcerated mothers. International guidance recommends exclusive breastfeeding up to six months and continued breastfeeding alongside complementary foods up to 24 months, to which children should also be ensured access.*

Recommendation: *Mothers who are separated from their breastfeeding children should be provided with adequate conditions to express and store breast milk.*

Recommendation: *Children whose mothers use artificial feeding, for health or other reasons, should be treated equally to breastfeeding children, including in decisions about separation. Artificial feeding materials should be prepared and used in accordance with the WHO Guidelines for the safe preparation, storage and handling of powdered infant formula.*

Recommendation: *Children’s feeding requirements should take precedence over standard prison schedules. Incarcerated parents should be excused from other prison duties in order to feed their children.*

Recommendation: *For HIV-infected pregnant or lactating women, the national policy implementing the WHO guidelines on infant feeding and HIV should be followed.*

Children living in prison may not receive the quantity and quality of food they require, because it is inappropriate (especially for babies¹⁷¹) or is partially or totally withheld.¹⁷² In such cases, mothers may have to share their food with any accompanying children.¹⁷³

Recommendation: *Separate and additional budgets should be provided to cover the costs of food for children living with incarcerated parents.*

Children living in prison – leaving prison

Guiding principle: Children leaving prison, with or without an incarcerated parent, should be prepared and supported before, during and after their departure.

Children may leave prison before or with their mother,* with each situation posing different problems. Children who leave before the mother (because they have reached the upper limit for remaining in prison or it has otherwise been decided that they should leave) will have issues about dealing with the separation (and potential reunification if the mother cares for them following her release), building a relationship with new carers and maintaining the relationship with the imprisoned parent in a different way. Children who leave with the parent may subsequently be separated if the released parent is perceived to be or is unable to adequately support them (because of inability to find a job or housing, for example). For all children, there will be issues around adjusting or readjusting to living in the community, stigma, and changing relationships with the released parent, other family members and others.

Even in situations where a child reaches the upper age limit and is required to leave prison, there may be flexibility in regulations (particularly if the incarcerated parent will shortly be released). Such flexibility is in accordance with the individual assessment of the child's best interests advocated in Rule 52.1 of the Bangkok Rules. Nor should children automatically stay in prison until the maximum age – the negative effects of institutionalisation¹⁷⁴ may outweigh the positive effects of staying with an incarcerated parent at different times for different children. However, too much uncertainty about whether and when a child will leave can damage parent-child bonding, with one UK-based campaigner explaining that mothers concerned about losing their baby may 'put it [bonding] off and put it off and try not to fall in love with the baby so all that emotional work needs to be done afterwards'.¹⁷⁵

Recommendation: *There should be regular assessments of which living environment is in a child's best interests. Guidance should be prepared on how to conduct such assessments, and how to do so in a way that does not damage parent-child bonding.*

Children may be automatically removed from prison upon reaching the upper age limit, or they may need permission from an outside body, such as a court.¹⁷⁶ They may also be released when a parent is pardoned or amnestied, or wins a legal appeal. The 2011 amnesty in Kazakhstan, celebrating the country's 20th anniversary of independence, included among amnestied categories 'pregnant women, women with minor children or children in disability categories I and II, as well as men who are the sole parent of minor children'.¹⁷⁷

Where children may be separated from incarcerated parents (either temporarily or permanently), planning for separation should occur in advance, including identification of suitable alternative carers and, ideally, having the child spend time with them and their new place of residence. For foreign-national prisoners, alternative care arrangements should be made in consultation with consular officials, as recommended in the commentary to Rule 52.2 of the Bangkok Rules. Other aspects of the child's life may also need to be organised, such as enrolment in a school for children of school age.¹⁷⁸

The moment of separation 'is stressful for both mother and child'¹⁷⁹ and for mothers in particular; it has been argued that separation from her child may be a far greater punishment, in terms of the effect on the woman and the child, than the imprisonment.¹⁸⁰ There can be a lack of appropriate support, such as psychological support, for children following their removal from prison.¹⁸¹

* There are reported cases of children remaining in prison following a mother's release (in Uganda) or execution (in Sudan). See Petride Mudoola (2012) '161 children in prison for no crime' in *New Vision* website, available at <http://www.newvision.co.ug/news/628368-161-children-in-prison-for-no-crime.html> (accessed 16 January 2012) for Uganda and CRC/C/SDN/CO/3-4 pp11-12 for Sudan.

Recommendation: *Planning for separation should occur in advance, including identification of suitable alternative carers and having the child spend time with them and the new place of residence.*

Recommendation: *Parents and children should both be provided with practical and emotional support before, during and after separation.*

'Once a child has left prison, contact with their mother may continue while the mother remains in prison and after she comes out. The ease, nature and frequency of this contact will differ depending on the mother and child's situation. Contact may be prevented or restricted because new carers may be unable or unwilling to allow the child to have contact with their mothers.'¹⁸² It is important that prison and child welfare authorities help to facilitate such contact, as stated in the Bangkok Rules 52.3,* which may need to be more regular and for longer periods than is normally the case for visits.

Recommendation: *As far as possible and in accordance with their best interests, after leaving prison the child should live close to the incarcerated parents to facilitate visits.*

Recommendation: *Visits from children formerly living in prison should be conducted in a manner and frequency in accordance with the child's best interests, taking into account their previous close contact with their incarcerated parent while living in prison. They should not count against normal visit limits.*

Some children do not leave prison when they reach the maximum age. This can be because nobody collects them or is available to care for them, or because they are forgotten about. Spending longer periods in prison may impede the child's social reintegration, with older children having 'an increased difficulty of being able to live in the outside community because their socialization pattern gets severely affected'.¹⁸³ There are also cases of children who remain in prison following a mother's execution,¹⁸⁴ or who are abandoned by mothers on release because the mothers have no income and cannot afford to care for them.¹⁸⁵

Sometimes children are 'removed from their parent and placed in alternative care, or put up for international adoption, due primarily to risks posed by prison living conditions ... processes to terminate parental rights in such cases can be conducted "in absentia". As such, decisions are made without necessary consultation or participation of a parent or other family members or due consideration for the best interests of the child. However, the provision of suitable child & mother units within prisons has been noted as an important factor in reducing the incidence of the termination of parental rights and consequently the removal from children from their parents.'¹⁸⁶

Recommendation: *No child should remain in prison following the release or death of their incarcerated parent(s).*

Recommendation: *Parental rights should not be removed from incarcerated parents, nor should children be put up for adoption, without consideration for the best interests of the child. Guidance should be prepared on how to conduct such assessments.*

* Rule 52.3 states:

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.

Indirect contact between child and incarcerated parent

Guiding principle: Children should be allowed to contact their incarcerated parents, in ways and forms with which they are comfortable.

Children have a right to a relationship with their parents, where this is in their best interests. 'When children lack regular and sustained contact with a parent their attachment to that parent can be prevented.'¹⁸⁷ For children of incarcerated parents not living in prison full-time, this relationship must be maintained through intermittent in-person contact and indirect contact, such as letters, telephone calls and (where available) text messages and electronic communication.

Contact with incarcerated parents is generally beneficial to the child's development, as well as helping to reduce recidivism for parents.¹⁸⁸ Letters are a widely used form of communication, with some benefits and problems. They are frequently cheaper than telephone calls or visits, due to the high cost of telephone calls to prisons in many jurisdictions and the often inaccessible location of prisons. However, in some jurisdictions, letters from prisons are clearly marked as such, which may limit families' willingness to receive such letters and thus limit contact.¹⁸⁹ Moreover, some children will be illiterate and/or too young to be able to write, meaning this form of contact is not suitable for everyone.

Recommendation: *Correspondence from prison should not be identifiable as such.*

Potential good practice

A number of jurisdictions have initiatives that allow incarcerated parents to produce an audio (or audiovisual) recording of a book for their children to listen to at night. 'These have been credited with strengthening the parent-child relationship, raising the self-esteem of prisoners and improving literacy among both children and prisoners ... The stories provide parents and children with something to talk about during prison visits, while children's fears and concerns for their imprisoned parent can be reduced when they hear their parent reading'¹⁹⁰

Perhaps more importantly for the relationship between children and parents, in many countries now the 'most common means of communication between older children and young people such as texting, instant messaging, Facebook, Skype ... and tweeting are not available if your parent is in prison. Thus the usual relationship between adolescents and their imprisoned parent or sibling is disrupted and restricted as letter writing is not a feature of teenage life in the twenty-first century.'^{191 192}

Some experiments in using modern communications technology in prison are taking place. 'Email a prisoner' services allow families and others to write emails, which are then checked and printed by prison officials and delivered to the incarcerated parent. This costs less than stamps and may be more comfortable for the child, but does not currently allow incarcerated parents to respond in kind.¹⁹³

Potential good practice

A social networking website for children and incarcerated parents is being prepared for use in Jamaica. 'Prisonbook' aims to allow children to share updates and photos with their parents in the style of social networking website facebook, but with a secure framework acceptable to prison managers.¹⁹⁴

Potential good practice

Some prisons in the Australian territories of Victoria and the Australian Capital Territory provide computers in prison cells, and there is a proposal by Australia NGO Justice Action to expand the system nationwide. There would be restrictions on the software and uses of the computers, but it is proposed that they would include email (checked by computer programmes and staff) to enable communication with family members and others. 'Furthermore, many female prisoners admit that computer skills are a great advantage when they returned home, since they allowed them to help their children with any computer problems.'¹⁹⁵

Computers have also been used to provide remote 'video visits' in various countries. Details of this are in the *Visits* section below.

Recommendation: *Modern and electronic means of communication, particularly those widely used by children, should be piloted and adopted more widely within prisons.*

Telephone contact can be very important – for some children, it is more important even than visits.¹⁹⁶ However, both cost and restrictions are frequently higher than for phones in the community. In many prisons, phones may only be used for outgoing calls – the children cannot phone their parents but have to wait to be called. If there are restrictions on the times of day when phones can be used, this may not fit with when children are available to speak, or may result in their being unable to do other things, such as after-school activities. For children living in a different time zone (either in another country or a different part of the same large country) this can be even more disruptive.

A second problem is that phonecalls from prison are often charged at a higher rate than normal phonecalls. They can 'take up a significant proportion of a prison wage',¹⁹⁷ assuming one is given; alternatively, families may have to provide funding for prisoners or take on the cost directly through collect/reverse charge calls (where the recipient pays, usually at a higher rate than if the caller paid). Such problems mean that 'keeping in touch by phone is limited to a few minutes at a time due to the cost and access to the telephone ... Telephones are situated on a prison landing and again there is very little privacy for prisoners to talk to their children or their carers on the outside.'¹⁹⁸

Potential good practice

In the UK, Lowdham Grange prison allows prisoners to have telephones in their cells, giving them the freedom to make private calls when their children are available.¹⁹⁹

Recommendation: *Telephones should be available for prisoners and their families to maintain regular contact, with both children and parents able to make and receive telephone calls. Call costs should preferably be free for those making or receiving them and in any case should not be prohibitive.*

Recommendation: *For parents incarcerated abroad, arrangements should be made to enable children's continued contact with their parent, which should take into account time differences and costs of international correspondence.*

Recommendation: *Indirect contact should supplement, not substitute, in-person visits.*

Visits

My mother is imprisoned and I visit her once a month. I'd like to see her more. We have to arrive at the queue very early, about 7 in the morning. It's boring. Then we line up for the inspection and have to take our clothes off. I am embarrassed. There's a room with a curtain that separates the men from the women. My dad waits behind the other curtain while a woman tells me to take clothes off and looks at everything. I go into the prison and stay with my mother. We have lunch. Other women who are imprisoned are there as well, each one of them on their beds.

Child, aged 10, Brazil²⁰⁰

Guiding principle: The settings for, duration of and activities during children's visits to incarcerated parents should be ones that strengthen the child-parent relationship.

Visiting is 'in most cases essential for children's adjustment to their parents' incarceration and to contribute towards their positive outcomes. While the debate continues, most experts agree visits reassure children that their parents are safe, relieve them of any blame they may be placing on themselves, maintain and strengthen the parent-child bond, provide opportunities for children to connect with positive qualities in their parents and by extension, within themselves, and allow parents to take responsibility for their actions and help their children make sense of the world around them. Sometimes an assessment of the jail or prison environment (as unhealthy or dangerous) and the process of getting to the visiting room (as lengthy or unpleasant) can be mistaken for an assessment of the quality of the parent-child interaction'.²⁰¹

Many children have concerns about how their parents are and the conditions in which they live, imagining scenarios far worse than the reality.²⁰² Positive visits can help maintain or strengthen the relationship with the incarcerated parent,²⁰³ but some aspects of them 'can be extremely stressful for children and families. Anxiety arises due to the often lengthy journey to the prison, the fear of being late, the prison environment and the searching and other security procedures'.²⁰⁴ However, often simple and low-cost changes can make the visiting experience much better for children and contribute to the maintenance of positive relationships with incarcerated parents.

Visiting can be a long, expensive and emotional experience. Many prisons are in isolated areas, making visits more difficult. 'In one study [in New Zealand], over 55% of surveyed prisoners stated that they lived more than an hour's drive from their children'.²⁰⁵ Within large jurisdictions, parents can be incarcerated hundreds or thousands of kilometres from their children, which has major impacts on contact and visiting rights; indigenous children may be particularly affected.²⁰⁶

Prison regimes frequently plan visits 'in a manner to comply with a prison's staffing profile and regime and not on the needs of the visiting children and families i.e. they do not accommodate families travelling time by starting mid morning or by being always available at weekends rather than in school time'.²⁰⁷ They also may not consider journey times or public transport timetables when setting visits times; this is particularly detrimental to families living in poverty before or because of imprisonment.²⁰⁸

Children may have questions about visits; these should be answered honestly and simply, which can reassure the child.²⁰⁹ Younger children may be helped by showing them what to expect using play or toys, while specially designed booklets or materials could be useful for children of all ages. At present, there is a reported lack of child-appropriate information available.²¹⁰

Potential good practice

UK children's charity Barnardo's Northern Ireland has produced a comic book about visiting prison, including the feelings and concerns of children before, during and after a visit, as well as detailing the procedures and features of visits in Northern Irish prisons. The brightly coloured drawings may make it more attractive and accessible to children of different ages.

It helps if children and families know about the specific procedures of the prison being visited, to avoid any surprises or problems when they arrive. Procedures can include a requirement to book in advance or be on a list of approved visitors, restrictions on which items can be brought into prison or limits on the number of people who can visit (due to limited chairs being available in visiting areas).²¹¹ Large families visiting prisons with limits on the numbers who can visit may have to see parents for short periods over several days to ensure that all children spend time with their incarcerated parent.²¹² In Namibia, children of those held in pre-trial detention 'in connection with events in the Caprivi Region in 1999' are allowed twice-yearly visits that last three days, with 30 minutes of contact each day.²¹³

There may also be limits on who counts as a family member (and therefore has a right to visit) that do not take account of non-traditional family structures and the emotional bonds between prisoner and visitor. For families that don't know about the restrictions and are 'turned away after making the journey to visit a loved one at a correctional facility [it] is extremely frustrating and may contribute to negative feelings toward future visits'.²¹⁴

Recommendation: *Information on prison procedures and regulations, and the reasons for these procedures, should be provided to families ahead of visits. If families have to book visits in advance, information should be provided at point of booking. Information should be available in places that children and families of prisoners may frequent (including police stations, courts, youth clubs, schools and websites).*

Recommendation: *Restrictions on people allowed to visit prisoners should be sufficiently flexible to permit the best interests of the child to be a key consideration. They should be sensitive to non-traditional family structures and relationships when classifying who counts as family and allow all children within a family to visit an incarcerated parent together, if desired.*

Recommendation: *Security measures should not prohibit the child's right to a relationship with an incarcerated parent. Guidance should be prepared on how to enable this.*

Even if the prison permits all children to visit, some people, including some children, have recommended that younger children should not visit imprisoned parents.²¹⁵ This may be in the best interests of some children, but it is important that decisions are made on a case-by-case basis.

Some jurisdictions require all those under 18 to be accompanied by an adult when visiting an incarcerated relative, while others (including Aotearoa/New Zealand) allow older children to visit unaccompanied, and younger children to visit alone if prison authorities 'are satisfied that there is good reason for the child to visit the prisoner unaccompanied by an adult; and it is in the best interests of the child to be allowed to visit the prisoner'.²¹⁶ Requiring accompaniment can often end up reducing visits, as older teenagers resent the need to be accompanied and the accompanying adult may be reluctant to go if there is ill feeling between them and the incarcerated parent.²¹⁷

Potential good practice

The 'roaming' project in Belgium has volunteers who can take children to visit incarcerated parents, perhaps because their day-to-day carers are unable to accompany them or are not on the list of permitted visitors. There are two volunteers per child.²¹⁸

Recommendation: *No child should be prevented from visiting an incarcerated parent solely because of their age. Regulations on children visiting prison should take account of the child's age and maturity, so that accompaniment by an adult is not mandatory.*

Some prisons have prison visitor centres, buildings outside the secure area of the prison where visitors can stay before visits (they may have long waiting times if, for example, public transport timetables do not align with visiting times). These may be staffed, and can provide food, toilets and information about the visit. They also give the opportunity to meet other children of incarcerated parents, which can help to reduce the feelings children have of shame and concern that nobody else is going through the situation.

Potential good practice

NEPACS, a charity in northeast England, provide special 'youth room' facilities for young people aged 8-18 at three prisons. Young people can play pool or computer games whilst they are waiting for their visit and there is also one to one support available for young people. The charity Send Family Link organises specific activities for older children, such as dance mats, on family visits.²¹⁹

Recommendation: *Prison visitor centres should be developed and maintained as a way of providing fun, information and social opportunities for children of incarcerated parents. They should be available to families before and after visits.*

When they enter the prison, children may be searched. The way in which the search happens and the attitude of staff can make a big difference to the child's experience of the process. The approach of some high-security prisons, where staff get to know the offenders and visitors, has been used as a model for a more child-friendly environment in Parc Prison in the UK.²²⁰

Potential good practice

UK charity Kids VIP has produced posters explaining what happens during a search. The posters use words and pictures so that children of different ages and languages can understand them.

Recommendation: *Searches should be carried out in a child-friendly manner and should be culturally and religiously sensitive. Guidance should be prepared on how to achieve this.*

Staff attitudes and procedures can make a major difference to children's experiences. One DGD submission noted that '[i]n some cases, visiting arrangements have improved physically but, in terms of what really counts to families – the atmosphere and the levels of respect with which they are, or are not, treated by staff – the visiting environment remains very variable.'²²¹ Children have also complained about this, saying that they feel like criminals themselves for visiting²²² and asking "Why doesn't the prison staff treat us like human beings?"²²³ Small changes can make a major difference, such as smiling at the children, kneeling down to speak to them at their level and explaining what is happening and why. Children have also asked that prisons speak to families at the beginning of the imprisonment and get to know them.²²⁴ It is important that visits are not seen solely as a security issue, but also as a rights issue, in particular the rights of the child.

Potential good practice

Parc Prison in the UK worked with staff and offenders to make its visits more child-friendly. They selected staff who were motivated to work in a more child-friendly way and trained them in child protection and working with dangerous or evasive parents and those with mental health issues. These staff then initiated family-focused activities and physical environments, for example by using plants, colour and art to make visiting areas more attractive.²²⁵

Potential good practice

In Denmark, a joint initiative between individual prisons, the Department of Prison and Probation Service and the Danish Institute of Human Rights has led to the creation of 'children's officers' in prisons, who 'work on securing the rights and needs of children of imprisoned parents'. These 'children's officers' may include prison officers or social workers; they receive training from human rights, prison, psychiatric and prisoners' family support professionals and visit institutions with existing good practice.²²⁶

Recommendation: Both the physical prison environment and staff behaviour towards children should be child-friendly and supportive. Guidance should be prepared on how to achieve this, with training and financial support provided to implement necessary changes.

Conditions of the visit itself can vary widely. It may be public (in the same space as other prisoners and their visitors) or private; physical contact may or may not be allowed; and available activities can vary from sitting and talking to being able to draw, play and read together. Visit length and frequency can also vary widely, from a few minutes to several hours or days at a time. Infrequent visits can concern children, with one asking: 'Why can I only see my dad once a month? I worry that he will forget me.'²²⁷

Particularly when visits are in public spaces or physical contact is prohibited, it can be very difficult to create a normal family environment.²²⁸ One negative visiting experience was described in a DGD submission: 'In a visit to Rwandan prisons overflowing with "genocidaires" in 2002, we discovered that children and families were allowed to visit only for 3 minutes and had to stand on one side of a line while the prisoners stood on the other, with no touching allowed.'²²⁹

Potential good practice

Small changes can make a big impact. Installing sofas in a visiting area, so that children and imprisoned parents can sit together and touch, can drastically improve the quality of visits,²³⁰ as can allowing children to visit on a different date to other visitors.²³¹

When asked, children have said they prefer private visits,²³² while researchers have asserted that child-friendly visits can 'promote open communication among incarcerated parents, children, and caregivers'.²³³ Better quality visits may also improve imprisoned parent behaviour in prison and reduce recidivism.²³⁴ Longer, more child-friendly visits seem to be valued by all participants and have better outcomes. They are not perfect: in some jurisdictions 'activities are often focused on younger primary school aged children',²³⁵ with facilities for older children ignored. It is important to consider all the elements that can make child-friendly visits a success: not just the length of the visits, but also when they are offered (visits during school holidays may make more children able to participate),²³⁶ activities for the children to do themselves or with parents, mementos to take away (such as photographs or books made together) and provision of food and drink.²³⁷

Potential good practice

Askham Grange prison in the UK has a special house where children up to 18 can stay overnight, unsupervised, with their incarcerated mothers. An independent evaluation found that while most children found ordinary visits 'false' or inadequate because they felt unable to raise important issues due to the public space and limited time for visits, the overnight visits were highly valued and could have a strong positive impact on the mental health of the children involved, including those with mothers serving long sentences.²³⁸

Potential good practice

At Jyderup prison in Denmark, weekend visiting times 'extend from 9:30 am to 7:30 pm, which gives families greater flexibility as to when to visit. Visits inside the prison typically take place in the prisoner's own room, and facilities are provided so that families can cook meals together, eat together, have time to play and watch TV, and so on. Additionally, the prison has accessible outdoor areas where parents can play with their children during a visit.'²³⁹

Potential good practice

The Catholic University of Milan has developed a 'Memory Box' project, which aims to help keep the child and parent in contact. It is a real box in which everything that comes to light during visits is stored. Issues are addressed through different expressive methods, which are often excellent tools to allow the expression of issues through drawings and short writings, issues too difficult to express in words. At the end of each meeting everything produced is placed in the Memory Box.²⁴⁰

Recommendation: *Facilities should be available to meet the needs of children visiting prison, including access to toilets, play spaces and seats from which parents are visible, audible and able to be touched.*

Recommendation: *Contact visits should be the norm for children visiting parents in prisons. Longer, private and/or child-friendly visits should be available whenever possible.*

Sometimes extended or child-friendly visits can be linked to or dependent on other activities. Within the USA, one scheme (the Linkages Program) has parents attend weekly parenting classes then gives them monthly visits without the Plexiglass barriers that are ordinarily used. The Girl Scouts Beyond Bars programme allows incarcerated mothers to help their daughters with activities in the Girl Scouts youth movement. And addiction programmes that involve the whole family have been piloted in a prison setting with positive initial responses.²⁴¹ When parenting skills are taught to incarcerated parents, they have noted successes 'in terms of their reported positive impact on both young and adult prisoners, partners and children';²⁴² it is important that opportunities are provided to practise these skills, either in person or remotely.²⁴³

Recommendation: *Parenting classes should be designed specifically for parents involved with the criminal justice system and made widely available. Other ways of strengthening the parenting role of incarcerated parents should also be supported.*

However, there are concerns from a child rights perspective about making parental participation in visits conditional on undertaking other activities or behaviour in prison. It means that visits are considered a privilege that can be withdrawn, rather than a right of the child that must be fulfilled. Similarly,

to restrict contact with children as a punishment or a way of pressuring those under investigation infringes the child's right to a relationship with their parent²⁴⁴ and is explicitly prohibited by Rule 23 of the Bangkok Rules.^{*245}

Recommendation: *Prison visits and other interaction with an incarcerated parent is the right of the child and should not be dependent on or restricted by the parent's behaviour, unless this is in the best interests of the child. Threats of or actual removal of contact should form no part of prison discipline.*

After a visit, children (as well as carers and incarcerated parents) may have questions or feelings provoked by the visit. They may have strong and negative reactions, including being upset and crying,²⁴⁶ or exhibiting 'hyperactivity, attention problems, difficulty concentrating, and excitability'.²⁴⁷ Such reactions may be a reason why some carers limit contact with incarcerated parents. However, there are also academic studies that have found children to be 'less disruptive after visiting their fathers in jail' and that 'satisfactory visits by children and their imprisoned mothers appeared to reduce the child's anxiety about their mother's absence'.²⁴⁸ Moreover, '[r]egular positive contact must be recognised as a critical component, not only in maintaining family ties, but also in allowing the parent-child relationship necessary space for catharsis'.²⁴⁹

Prisons rarely ask children and families for their views about visits or prison more generally. Some prisons have evaluation forms, though these may only be available following special family-friendly visits.²⁵⁰ On occasion, children's perspectives have been sought when constructing new prisons, such as in Norway.²⁵¹

Potential good practice

Norway, following the example of Sweden, has introduced Children's Officers and Children's Ambassadors in each prison. They are explicitly charged with the responsibility of making prisons more friendly and accessible.²⁵²

Recommendation: *Prisons should seek the opinions of children and others as to the quality of visits and other forms of contact, and their ideas for improvement.*

Recommendation: *A permanent children's ombudsman or officer with special responsibility for children's welfare should be a feature of all criminal justice systems/prison authorities.*

Children in particular situations may need extra help to maintain contact with their incarcerated parents.²⁵³ They may require financial support for travel and other costs associated with prison visits, or support for any disabilities or accessibility needs they have. Because children's situations can change, authorities should be prepared to reassess the support they need.

Recommendation: *Children unable to visit their parent on grounds of distance should be supported financially in visiting, particularly to prisons that are difficult to reach.*

Recommendation: *Prisons should ensure they are accessible to children with disabilities, including invisible disabilities such as poor hearing, as well as to children visiting or accompanied by those with disabilities. Meeting such needs should preferably be done inclusively, so that such children can visit their incarcerated parents in the same way as others, with specific separate provision as an alternative if integration does not meet that child's needs. Meeting the needs of children with, visiting or accompanied*

* Rule 23 states: 'Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children'.

by those with disabilities may require physical changes in the prison or changes to the behaviour and actions of prison staff and others. Provision should be in conformity with the Convention on the Rights of Persons with Disabilities.

Children of those in pre-trial detention may be unable to access the same quality and quantity of interaction with incarcerated parents as children of those convicted and sentenced. There may be restrictions on contact in general, because of concerns about prejudicing the trial or because pre-trial detainees are classified as high or maximum security, but there can also be bars on longer and family-friendly visits (or the activities that make parents eligible for them), because they are only available to sentenced prisoners.²⁵⁴

Recommendation: *Children whose parents are in pre-trial detention should always be allowed extended and child-friendly visits, unless such contact would interfere with the course of justice or not be in the best interests of the child.*

Some children of prisoners are themselves detained; they may need additional support to visit incarcerated parents. Organisations that work across multiple detention centres (such as the ICRC) may be well-placed to assist in such cases.

Having a parent incarcerated in a different jurisdiction can complicate many things. Incarcerated parents may have difficulty accessing relevant information about their children (such as details about schooling), thus limiting their ability to parent effectively.²⁵⁵ Children may have difficulty making any visits to a parent in a different jurisdiction (or a parent in the same large jurisdiction) – in some places such children receive extra and/or free telephone calls or letters in lieu of visits, or are allowed longer visits when they do come.²⁵⁶

Recommendation: *Children unable to visit their parent on grounds of distance (whether in the same or different country to their incarcerated parent) should be supported in alternative ways of keeping contact, including additional or free telephone calls and letters.*

There may be other reasons why children do not visit incarcerated parents, unrelated to the child-parent relationship. Some parents are incarcerated for involvement in serious organised crime, which in many countries means they have strict limitations on visits.²⁵⁷ Families where other members are in conflict with the law or whom the government wants to remove from the country are unlikely to visit prisons due to concern about contact with enforcement authorities.²⁵⁸ In these and other cases of restrictive conditions of incarceration, more research needs to be done and prisons procedures should ensure that the child's right to a relationship is not compromised.

It may be in the best interests of the child for their incarcerated parent to visit them outside prison. Temporary releases are sometimes allowed when children have key events such as school sports days or plays,²⁵⁹ can be permitted for compassionate reasons* or may just be an opportunity to spend time (often several days and nights) in the community together, thus nurturing the parent child relationship.²⁶⁰ Providing such opportunities can enable parents to see their children in their normal environment and help prisoners 'to parent more effectively throughout their sentence. It would also allow prisoners to see their children who sometimes as they get older decide they no longer want to visit the prison. This may be due to the stigma, because they find visits boring or simply because they would rather be with their friends.'²⁶¹

* This may be due to the illness or death of a close relative, for example. Additional or special visits by children to prison may also be permitted for these reasons. See Peter Scharff-Smith and Lucy Gampell (eds.) (2011) *Children of imprisoned parents*; The Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, p236

An alternative to visiting in person is to have remote ‘visits’ using video and audio equipment, which may be at the family’s home or in community or religious buildings. It uses the same principles as telemedicine and jail-to-courtroom video communication. Such arrangements may be favoured when families are a long way from the prison, when visiting conditions are felt to be unsatisfactory or because it allows contact to take place in a less noisy and more comfortable setting. Additionally, there have been rulings in family courts that parents going to live in other countries must have Skype or other forms of communication so that the children can stay in contact;²⁶² the importance of parent-child contact should extend to international prison situations also. There have been concerns that prison authorities may seek to have such systems replace in-person visits, because they are cheaper and easier to administer; it is important that such contact should be additional to direct in-person visits and not a substitute for them.

Potential good practice

The Red Cross provides video calls for families of detainees held in Bagram, Afghanistan. One call centre is based at Bagram (for detainees) and one at the ICRC delegation in Kabul (for families). Video calls have also been made internationally, from families in Yemen to relatives detained at Guantánamo Bay in Cuba.²⁶³

Recommendation: *Video visits should be available to children of incarcerated parents, in particular those unable to visit in person as often as permitted. Video visits should be seen as an additional form of contact, not a substitute for in-person visits.*

Informal and formal care

Guiding principle: Decisions about informal or formal care should be made on a case-by-case basis that promote the child's best interests and are in accordance with the UN Guidelines for the Alternative Care of Children.

Children may have to change their home or day-to-day carer when a parent is detained or imprisoned. Such separation and the loss of a parent or carer to prison can lead to various negative impacts on a child's health and wellbeing.

Children of incarcerated parents may be 'moved around too often; between family members; between alternative care arrangements; to new schools and/or communities'.²⁶⁴ Frequent changes in life circumstances essentially deny children the 'necessary stability, security and support to develop stable relationships, self-esteem, personal autonomy and resilience. Failures to [adequately avoid or] address these stresses and potential trauma can have significant implications for child development that can impact on [a child's] progress towards an independent adulthood'.²⁶⁵

Alternative care is more common when mothers are incarcerated (one UK study found that only 5% of children of incarcerated mothers stayed in the family home, compared to 90% of children of incarcerated fathers²⁶⁶), and may happen despite the efforts of the children:

*We're all just trying to keep hold of the house at the moment, trying to keep the house for mum so when she comes out she can still live in her house, I think, like, if anything, we owe her that ... for all that she's done for us all.*²⁶⁷

Informal care (where the carer does not acquire legal responsibility for the children and may not announce their role to the authorities) is very often undertaken by family members. Grandmothers are particularly common: research in Scotland found that they are perceived as the person always there for the children.²⁶⁸ Sometimes, informal carers may feel obliged to care for the children even if they lack adequate resources or capacity; in many cases it will result in disruption of existing routines for the new carers and others already living with them (such as children of their own).²⁶⁹ They may choose to look after the children informally because they don't know or trust the official channels, or because they are concerned that they may be refused permission to keep the children if they go through a formal process. While such an option is quicker than formal procedures and may provide more freedom to the carers (at least in the short term), it does mean that alternative carers may lack the authority to make decisions on behalf of the child (such as approval for medical procedures) and be ineligible for State support for the child. It is critical that families, single parents and other extended family members caring for children have access to all necessary support to guarantee quality care for children.

Moreover, if children and carers hide their living arrangements from others, this can increase feelings of isolation among the children and mean that schools and other agencies cannot provide the 'additional support or recognition they urgently require'.²⁷⁰ Those 'working to strengthen these informal care environments should, in full consultation with children and their family, develop and implement a plan that ensures that adults have the necessary "attitudes, skills, capacities, and tools" to provide quality care for children and to, for example, prevent abandonment, relinquishment, or the need to remove children to alternative care'.²⁷¹

Potential good practice

Relatives caring for children of incarcerated parents in Scotland can receive a kinship care allowance, State financial support for relatives that care for children but for whom the State has particular legal responsibility. For families that do not know about these payments at the start of their caring period, it may be possible to have payments backdated.²⁷²

Potential good practice

Holloway prison in the UK and NGO Prison Advice and Care Trust run a Kinship Care Support Project for the families and friends of incarcerated women. It provides information to kinship carers, acts as an additional means of communication between incarcerated mothers and children's carers, and offers one-to-one casework support.²⁷³

Recommendation: *Financial and other necessary support should be given to empower families, single parents, extended family and other carers of children of incarcerated parents and to prevent family separation.*

Formal care may be kinship care (which may also be informal), foster care, other forms of family-based care, or small group residential care or institutions.²⁷⁴

As stated in the UN Guidelines for the Alternative Care of Children (the UN Guidelines), participatory case-by-case assessment of the family's capacity to provide the necessary care is required. Such assessments should seek to assure the prevention of separation from the family as the first goal. However, if alternative care is deemed a "necessity" then decision-making should guarantee "the appropriateness" of any chosen alternative care option'.²⁷⁵

During any period spent in alternative care the potential to maintain family contact and the possibility of reintegration with the family must be considered. For example, as laid out in paragraphs 49-52 of the UN Guidelines: 'proximity to the prison for visits, the age of the children, the number of siblings, the desire to keep siblings together, the need for short or long-term care, maintaining links to the community, and the prospects for reintegration with either the extended family and/or the parent on completion of the sentence'.²⁷⁶

Recommendation: *When there is a possibility of alternative care for children of incarcerated parents, case-by-case assessment should take place, with decisions and placement in accordance with the UN Guidelines for the Alternative Care of Children. Children should not be placed in inappropriate care situations nor remain in care when family reintegration is in their best interests.*

Recommendation: *Guidance should be prepared about how to uphold a child's right to be heard when considering their care and residential status following a parent's incarceration.*

It is important that as the child and their situation changes, alternative care assessments should be reassessed. In particular, they should take place not only at point of incarceration for children who remain outside, but also for children leaving prison.²⁷⁷

Recommendation: *Case-by-case decision-making should be provided to assure the initial and ongoing necessity and appropriateness of alternative care provision for children of incarcerated parents.*

More commonly with formal than informal care, siblings may be separated from each other because one carer is unable or unwilling to look after them all.²⁷⁸ Children of incarcerated parents may also have more difficulty finding foster carers than other children, because of stigma towards them; this can be especially difficult for children whose parents are accused or convicted of particularly reviled offences, such as terrorism.²⁷⁹

It is important that State policies do not encourage separation of children from incarcerated parents. In Central America, in order to access a children's home a child must present a '*declaracion de abandono*'; this requirement means the system is blind to the needs of the children of incarcerated parents, who often need only temporary care and should be allowed to maintain relations with their incarcerated parent.²⁸⁰

Additionally, some children may be forced into situations of abandonment: in countries where there is no state support to families, when a father is imprisoned the mother may be forced to move to a new partner and this new partner often rejects the children from her previous relationship. It then falls to the grandparents to care for the children.²⁸¹

Recommendation: State policies and practices relating to alternative care and termination of parental rights should be assessed for their impact on families temporarily separated by parental incarceration, and any necessary amendments made.

In all situations related to strengthening families to prevent separation and the appropriate use of alternative care, the UN Guidelines should be consulted, as they include guidance on how to support and strengthen vulnerable families, as well as how to make decisions based on the best interests of the child.

Death penalty

Guiding principle: The impacts of a death sentence or execution on the children of the condemned should be considered and steps taken to ensure their rights and best interests are met.

Any sentence passed on a parent will affect their children. However, different sentences may have different impacts, and the imposition or execution of the death penalty has particular implications for children of the condemned.

Where permitted in law, the death penalty has limitations on its use. It is prohibited for crimes committed when under 18, which is relevant for children born both before and after such offences were committed, while there are prohibitions on executing pregnant and nursing women in the African Charter on the Rights and Welfare of the Child (Article 30), the Protocol on the Rights of Women in Africa (Article 4(1)) and the Arab Charter on Human Rights (Article 7(2)).²⁸²

Children of those sentenced to death have the same rights as other children of incarcerated parents, but may have less contact (direct or indirect) with their parents because of the different conditions under which death row prisoners can be detained.²⁸³ When they can visit, they are often banned from touching their parent, something distressing for children in any circumstance, but particularly so in this case – ‘especially if the child knows their parent has a limited time before they are executed’.²⁸⁴

Recommendation: *Children of those accused or convicted of offences carrying the death penalty should have access to their incarcerated relatives throughout the judicial proceedings and detention period, as should other family members and lawyers.*

Recommendation: *Children, as well as other family members and lawyers, should be kept fully informed of the prisoner’s place of imprisonment and, in advance, any transfer. They should be allowed to have regular and private meetings with the prisoner, and contact visits for children should be permitted as a matter of course.*

Recommendation: *Children of death row prisoners or their non-incarcerated parents or carers should be told, in an age-appropriate way, of the progress of petitions for pardons, reports presented to bodies such as clemency commissions and the reasoning behind the recommendations to these bodies to support or reject petitions.*

Details of the execution, including the place, date and other details of the execution and information about the remains of an executed parent, are withheld from the family (and sometimes lawyers) in some countries. Details of the place of detention may also be concealed. Failure ‘to provide the death row inmate, their families and children with information such as the date of the prisoner’s execution, or to allow a last visit or communication with the prisoner; the secrecy surrounding the actual execution, and the refusal to return the body to the family for burial or to indicate where the body is located, could all constitute forms of cruel, inhuman or degrading treatment for the family, including children, which is prohibited under Article 37(a) of the CRC. [If this happens, it would oblige States parties to the CRC to take steps to promote the child’s physical and psychological recovery (Article 39).] In addition, the impossibility of a true burial in the absence of a body may constitute a violation of the child’s right to manifest its religion (Article 14 CRC). Finally, withholding this information without explanation could be an arbitrary interference with the child’s family life (Article 16 of the CRC).’²⁸⁵ Various countries have

withheld details of the forthcoming execution of a parent and/or not returned bodies to families for burial.²⁸⁶ Such practices may violate Article 9 of the CRC, if this article is understood to contain a right to information about the fact and details of a parent's detention on death row, a pending execution and what has happened to the body after execution.^{*287}

Recommendation: *Children of prisoners should be informed in an age-appropriate manner of the execution date of their parent, well enough in advance to allow for a final visit. Final visits should always be permitted unless this is not in the best interests of the child and should be private and contact visits.*

Recommendation: *Following execution, families should be permitted to have the prisoner's body for burial and receive all personal effects.*

Recommendation: *The Committee on the Rights of the Child should consider whether Article 9 of the CRC includes the right to information about a parent's detention on death row, any pending execution and the whereabouts of the body following execution.*

There may be further impacts on the children. Their inheritance rights may be at risk and need protecting,²⁸⁸ while the execution of a parent can confuse children about the nature of justice. 'The contradiction of a cold blooded killing of an individual by the state in the name of justice was reflected in the confusion of a 10-year-old girl who asked at the time of her father's execution by the US state of Texas: "They're going to kill him because he killed somebody, so when they kill him, who do we get to kill?"'²⁸⁹

* The UN Human Rights Committee has stated that information on the use of the death penalty is of public interest, and that therefore a right to access of that information exists in principle in regard to Article 19 of the International Covenant on Civil and Political Rights (Communication No. 1470/2006, Toktakunov v. Kyrgyzstan, Views adopted on 28 March 2011).

Impacts on children

When Mark was asked what he missed most about his mum not being with him, he said: "Love, getting things and stuff like that, and playing stuff."²⁹⁰

Guiding principle: Parental incarceration can affect all areas of a child's life and the range of impacts should be identified.

The effects on children of parental incarceration are many and varied. They can include emotional and behavioural changes, impacts on mental and physical health, and risk of poorer life outcomes. Stigma and the attitudes of others can play an important role in how parental incarceration affects children. While many, and almost certainly most, children are negatively affected, 'for some children the removal of the parent is undoubtedly a relief'.²⁹¹ The extent and type of impact will differ between children, even within the same family,²⁹² as well as between boys and girls, those with incarcerated mothers rather than incarcerated fathers, and between children of different ages.²⁹³

Children of incarcerated parents 'tend to live in high-risk environments and experience a host of consequences'²⁹⁴ from parental incarceration. Some of the issues they face may have existed before parental incarceration, while others emerge solely as consequences of their parent's imprisonment. There is no universal experience for children of prisoners; responses therefore must be individually tailored.

Impacts on children – health and emotional impacts

Both mental and physical health and wellbeing can be affected by parental incarceration, or indeed incarceration of other relatives to whom the child is close: 'The relationship and its loss is the primary locus of the grief, not who is the parent.'²⁹⁵ Physical health effects can include bed-wetting and sleeping problems, as well as self-medication with drugs and alcohol.²⁹⁶ Behaviour changes have included depression, anxiety, anger and hyperactivity. Most participants in one Aotearoa/new Zealand study believed that children's health 'had worsened since the parent was incarcerated'.²⁹⁷

There are particular issues for young children, because early maternal separation can cause 'long-term difficulties, including impairment of attachment to others, emotional maladjustment and personality disorders'.²⁹⁸ 'Continuity of care is a preventative risk factor for children with imprisoned mothers',²⁹⁹ with mothers often 'the only "anchor" which children have, and when the mother is imprisoned the children are "cast adrift"'.³⁰⁰ Incarceration of a family member can have the effect of a bereavement, but whereas 'children will receive support in the event of a death in the family; with imprisonment, the family will often try to hide it, even from the child, restricting the child's access to support or even the opportunity to talk about their feelings'.³⁰¹ It may be more damaging for children to be separated from parents by incarceration than by divorce or death.³⁰²

There are a plethora of recorded mental and emotional impacts. Children of incarcerated parents 'have an increased risk of mental health problems compared to their peers, and of anti-social and delinquent behaviour compared to other children':³⁰³ 30% of UK children of incarcerated parents have mental health problems, compared to 10% of the general population.³⁰⁴ Research has suggested they are more vulnerable to fear (especially the very young), shame, anxiety, stress, trauma, anger, sadness, depression, guilt and low self-esteem,³⁰⁵ 'sometimes to the extent of provoking physical and mental damage'.³⁰⁶ Some children withdraw or regress, perhaps from fear of revealing what has happened. Alternatively, they may act out, behaving badly in school³⁰⁷ or elsewhere and being angry or defiant towards authority figures³⁰⁸ – the absence of a father has been found to favour aggressive behaviour and rule-breaking among adolescents living in urban areas in Sao Paulo.³⁰⁹

Children may have difficulty forming secure relationships with others³¹⁰ and may have to take on new roles: 'I suppose we behave a lot more responsible ... we've all had to grow up quickly', which may not be entirely positive: as one put it, 'I've done ten years of growing up in a matter of months'.³¹¹ Some describe the children as neglected, because of the (enforced) inability of their incarcerated parent(s) to care for and protect them.³¹² 'Separation anxiety can manifest itself in aggressive behaviour, depression and attachment problems. It is also important to note the prevalence of behavioural problems: these can include sleeping and eating disorders, delinquency, antisocial behaviour and problems at school.'³¹³

Various sources argue that a good relationship with the incarcerated parent can help to counteract the negative emotional and psychosocial impacts of parental imprisonment.³¹⁴ This is particularly so in the first three years, during which children need consistent contact with a primary carer.³¹⁵

Impacts on children – social, financial and other impacts

'[T]he short or long-term absence of a parent denies the child a potentially key relationship with respect to parental support, authority and parental hopes, aspirations, and expectations for development, for example in relation to school attendance and performance'.³¹⁶ Several studies have found that children of incarcerated parents face worse outcomes than their peers. A longitudinal study in the UK found 'a clear association between an offending mother and poorer outcomes for her children including a higher likelihood of poor parental interactions, anti-social behaviours and emotional problems'.³¹⁷ Another UK study found 'the main social cost incurred by the children of imprisoned mothers comes from an increased likelihood of their becoming NEET (Not in Education, Employment or Training) and therefore having poorer long term prospects'.³¹⁸

Financially, parental incarceration can mean a loss of any income the parent provided and benefits for which they were eligible, as well as imposing extra costs on the family in relation to visiting and maintaining contact. Others in the family may need to stop working to care for the children, or children themselves may stop education and start working to replace the lost income from the incarcerated parent. Financial security can be affected in other ways too: home insurance can be invalidated by incarceration³¹⁹ and some jurisdictions impose statutory bans to disqualify individuals with criminal records from eligibility for benefits, even after release.³²⁰ Many families of prisoners are poor to begin with; parental incarceration can push them into poverty and debt.³²¹ Children may need legal aid to help ensure their best interests are represented where necessary.

Recommendation: *Where required, children should receive legal assistance and support, including legal aid, to ensure their best interests are considered.*

Support for children

Guiding principle: Children of incarcerated parents should know about and be able to access support appropriate to their situation and needs.

Not all children need outside help. They are part of 'ordinary families in extraordinary situations'. Others may only need occasional support in some areas of their life, such as to help facilitate family contact.³²² Yet others may benefit from intensive or wide-ranging assistance: when 'the teenage children of imprisoned mothers receive stable and supportive care which promotes their family, school and peer relationships, they are less likely to engage in delinquent and risky behaviours.'³²³

Support can come from a variety of sources. It may be formal, from a professional or statutory organisation (such as social services or probation services), or informal, from the extended family and community.³²⁴ Children (and families) often try to cope without involving outside agencies or organisations; when they do, they often turn to schools in the first instance and others afterwards.³²⁵ Many formal support services 'who would be in contact with these children are unaware of their family circumstances unless directly informed by the family'.³²⁶

In addition, State responsibility for children of incarcerated parents may be spread among various government departments or agencies and at different levels of government – criminal justice being administered regionally or nationally but child welfare locally.³²⁷ Where the prison is in a different area from where the children live, authorities in both areas may claim they are not responsible for supporting the children.³²⁸ As it is better for both the child and the authorities to prevent the negative impacts of parental incarceration than to try to cure them after they have arisen in the form of 'poor attendance and/or attainment at school, behavioural issues, mental health concerns, etc.'³²⁹, good sharing of information between agencies may be needed to prevent children falling between the gaps.³³⁰

It is also important that incarcerated parents are informed about the situation and needs of their children and other dependent family members and given the possibility, where possible, to participate in resolving any problems. This can be beneficial for both the child and the parent, as prisoners who are frantic about what is going on outside will be less able to deal with any of their own problems, such as addiction, asocial behaviour, anger and violence, lack of education and training.³³¹ Some incarcerated parents may have pre-existing negative relationships with social workers and other support services; efforts are needed to build positive contact so that both the parent and family can best interact with services during and after incarceration.³³²

Recommendation: *Agencies and services that engage with children of incarcerated parents should develop flexible and repeatable needs assessment tools to help identify the needs of such children.*

Recommendation: *Agencies and services should coordinate to ensure the best interests of the child are met. Information about children should only be used or shared when in the best interests of the child.*

Recommendation: *Incarcerated parents should be given information about and enabled to participate in resolving any difficulties relating to their children, provided this is in the best interests of the child.*

Recommendation: *Information about all the support available for children of incarcerated parents should be mapped, collected and disseminated, including in child-friendly formats.*

Support services may be unsupportive to children of incarcerated parents,³³³ either because of not knowing how to support them or because of stigma. Moreover, children in different situations may need or receive different types of support, and support may be focused on some groups of children and not others. For example, in the USA 86% of prisoners' children were under 10 years old in 2008 (22% were under five), but the largest government-funded project was aimed at 8-16 year-olds.³³⁴ Minority groups, including indigenous peoples, Roma and travellers, and cultural or linguistic minorities, may not receive sufficient or appropriate help.³³⁵

Recommendation: *Support services should be aware of and appropriate for children of different ages, genders, cultural and linguistic backgrounds. Guidance should be prepared on making support services appropriate for children in different situations.*

While particular groups of children may benefit from particular types of help, any support needed should be equally available regardless of the child's circumstances.³³⁶ Prisoners' children and their carers may need help with:

- immediate financial and material support;
- access to legal advice and representation;
- counselling and psychosocial support for children and/or their carers;
- access to self-help and other community groups;
- facilitating access to education, such as school fees, uniforms, learning materials;
- working with teachers to support children in the classroom;
- supporting access to necessary health care;
- facilitation of birth registration and acquisition of other legal documentation;
- challenging stigmatisation and discrimination against children of prisoners;
- access to vocational training and advice on income generating activities; and
- providing training, such as on positive parenting, child rights, preventing child abuse, non-violent discipline, employment and family planning.³³⁷

As many children suffer financially because of the incarceration of a parent (both through lost income or benefits and by extra costs related to contact, and potentially in the longer term by loss of inheritance rights from the incarcerated parent), some have recommended that children and families of prisoners receive financial support from the government to help compensate for the loss of income from the incarcerated parent.³³⁸

Potential good practice

Various jurisdictions channel financial support towards children of incarcerated parents. The Indian state of Kerala pays a monthly stipend to children of prisoners serving at least a two-year sentence. 'In Estonia, imprisoned mothers do not lose their access to state benefits given to mothers. In Ecuador, support goes further and children are given a monthly scholarship to support their development, which can be spent on food or other goods, health, education, transport or recreation as decided.'³³⁹

There can be tension between sharing information to enable children to receive support to which they have a right, and their right to privacy and the potentially increased risk of stigma and bullying that may arise from inappropriate information-sharing.³⁴⁰ Informing other adults in children's lives about parental

incarceration should be done on a selective basis, depending in large part on the training, sensitivity and confidence of the person or professional, and whether the child would like for the person/professional to know.³⁴¹ Within Finland, it is the responsibility of the various authorities 'to take care of the best interest of the child and transfer information from step to step'.³⁴²

More generally, 'trained and sensitive professionals can offer much-needed support to children and information to caregivers and families experiencing the consequences of parental incarceration. For example, a trained teacher can better support a child who returns from visiting her incarcerated parent and exhibits angry or withdrawn behaviors, often related to the pain of having to leave the parent behind. Training for professionals who interact with children and families on the impact of parental incarceration is a critical step towards creating safe and supportive spaces for families to self-identify and seek help when a parent is incarcerated'.³⁴³

As at other times, children of incarcerated parents often want to speak and be listened to about their parent's imprisonment.³⁴⁴ When asked what support they would like, one child replied: "Why can we not have a support group set up for children who are going through the same thing...all I want is a friend."³⁴⁵

Recommendation: *Children should be consulted about the kind of support they want.*

Potential good practice

Children at Riksbryggan, a Swedish organisation supporting children of prisoners, helped design an animated film about having a parent in prison. It included the issues they had come across and their experiences of how their lives were affected, told from the perspective of a 10-year-old girl, Emilia. The film is available, in Swedish with English subtitles, at:

http://www.arnehed.com/workpix/emilia/emilia_eng.htm.

School and education

Guiding principle: Schools provide a major opportunity to support children of incarcerated parents and to help meet their needs.

Most children go to school and it has great potential as both a positive and negative influence on their lives.

'Children with a parent in prison are exposed to a high risk of under-achieving at school. Children with incarcerated parents can be the target of bullying or engage in violent behaviour themselves. Education is one of the most important factors in breaking the cycle of inter-generational crime, however there are no specific policies [in Aotearoa/New Zealand] dealing with this issue. Children of incarcerated parents may be compelled to move houses and cities to relatives or caregivers, which causes further disruption to their education.'³⁴⁶ Some 'may refuse to go to school for fear of finger pointing and social exclusion'.³⁴⁷

Due to the difficulty children of incarcerated parents face in some parts of the world in accessing education at all, they may benefit from having specific schools for the children of offenders.³⁴⁸ Within mainstream schools, teachers and others (such as janitors or kitchen staff) may also benefit from training to help them identify the characteristics of children of incarcerated parents and provide any appropriate support. This may also help explain academic difficulties, which one DGD submission argues are due to social problems, in turn complicated by psychological problems and depressive tendencies – only a tiny fraction of failures at school can legitimately be attributed to deficient mental capacities.³⁴⁹

Regardless of the cause, it is important for schools to support children in maintaining a relationship with their incarcerated parent. This may be direct – such as recognising prison visits as a justifiable absence from school³⁵⁰ – or may be indirect, such as disseminating information about parental incarceration to help reduce stigma. Staff may need training and/or lesson planning materials to best help them help children of incarcerated parents.³⁵¹

Potential good practice

School-based 'healing circles' using restorative justice techniques operate in the USA. The children involved can discuss parental incarceration through talking with each other and adults with parents in prison, asking questions of formerly incarcerated parents now working at the school, watching relevant DVDs and writing their thoughts and feelings in journals. Feelings of shame and stigma are often diminished by speaking to other young people in the same situation. In one case the children involved actually asked for a wider group to include children whose extended family or friends' parents had been incarcerated, recognising that this was an issue involving many children.³⁵²

Potential good practice

The Indian state of West Bengal has a law that if a detained person has dependent children studying in school or college, the State government will help pay for the child to continue going to school. The West Bengal Prison Directorate also encourages schools and institutions to allocate a part of their funding for the welfare and advancement of children of prisoners.³⁵³

Recommendation: *Guidance should be prepared and training provided so that teachers and other adults in schools are aware of the particular needs of children of incarcerated parents and can appropriately support such children in their performance, attendance and behaviour.*

Stigma

Guiding principle: Efforts are needed to reduce the stigma attached to having a parent in prison.

Children of incarcerated parents can face stigma and discrimination because of what their parent has been alleged or convicted of doing.³⁵⁴ The nature and extent of any stigma will depend on a variety of factors, which may include:

- the nature of the crime;
- the nature of the sentence;
- the publicity and awareness of others about the crime;
- community attitudes about crime in general; and
- community attitudes about children.

Stigma may not be malicious in intent and some of those doing the stigmatising may not fully appreciate the impact of their words and actions.

The stigmatisation of the children may vary according to the crime for which the parent is arrested, charged or convicted, as well as on the publicity of the case or the existing notoriety of the parent.³⁵⁵ There may also be variation depending on the sentence: children whose parents are subjected to the death penalty can face greater stigma than others,³⁵⁶ as can children whose parents have been convicted of offences considered 'unpatriotic', such as terrorism.³⁵⁷

However, some effects are felt regardless of the nature of the offence. Studies have found that teachers consider children with imprisoned mothers less competent than children separated from parents for other reasons.³⁵⁸ Children themselves 'may tell lies in order to conceal these circumstances [of parental incarceration], may overly demonize the incarcerated parent, or develop a sense of guilt, for example linked to self-blame where children attribute responsibility for their placement in a prison setting, or in alternative care, to themselves.'³⁵⁹

The general public can be 'concerned about, and sometimes fearful of, prisoners, prisons and all of those associated with them. They need to understand that to ascribe negative labels to prisoners' families, and their children in particular, is not to solve the problem but to perpetuate it'.³⁶⁰ 'Care needs to be given from family members, teachers, and counsellors to break the feeling of guilt the children feel on behalf of their parents.'³⁶¹ Some NGOs have developed information and factsheets for magistrates, teachers, health visitors and books/information for schools. Raising awareness helps to reduce stigma³⁶² and feelings children may have of 'guilt, shame, or denial with respect to their own, and their parents, circumstances.'³⁶³

When reporting on criminal cases, media organisations should respect the child's right to privacy and avoid sensationalism.³⁶⁴ Within Europe, the European Court of Human Rights has an emerging body of case law on the balance between the right to privacy and the freedom of the media: where children have been involved, the Court has almost always ruled in favour of the right to privacy.³⁶⁵

Recommendation: *Public information policies and, where necessary, education programmes should be developed for civil society, so that children of prisoners are not subject to stigmatisation, social exclusion or discrimination.*

Release

Guiding principle: The release of a parent is a major change in the child's life and they will need support to adjust to this before, during and after release.

Release can be a positive time for families, with many of the restrictions of imprisonment lifted. It can be a relief for children who were concerned their parents would never get out of prison.³⁶⁶ However, children can have very high expectations of how much better life will be once the incarcerated parent is released and there can also be fear³⁶⁷ or uncertainty 'about how to respond to a returned parent and may have difficulty re-forming bonds after a long separation.'³⁶⁸ Children may want large and unrealistic things, or they may want to get back to normal: one UK child, when 'asked what she is looking forward to most when her mum came out of prison ... simply said: *Just being with her*'.³⁶⁹ In some families, where the incarcerated parent was abusive or engaged in other destabilising behaviour (such as selling drugs from the family home), life may have improved or become less chaotic since incarceration and children may be fearful of what will happen post-release.

Alongside the emotional and relationship issues, there can be practical issues related to the released parent being able to live with and care for the children.

Release – decision-making

Just as the decision to imprison affects children of the incarcerated, so do decisions about release (temporary or permanent) and post-release limitations on parents. This was recognised in the Bangkok Rules, Rule 63 of which states: 'Decisions regarding early conditional release (parole) shall favourably take into account women prisoners' caretaking responsibilities, as well as their specific social reintegration needs'.³⁷⁰ However, consideration of the impact on children and their best interests are often ignored, and children's input is not sought,³⁷¹ whether on the personal and emotional impact of release or on the practicalities such as where they and/or the released parent will live, who will look after the children and any conditions attached to release. Actively involving children in considerations about the progression of a parent's sentence and preparations for release, such as through sentence planning when it exists, would be one way of doing this.³⁷²

Recommendation: *Children of incarcerated parents should be consulted and their views considered when decisions are made about sentence progression, resettlement and release of incarcerated parents.*

Authorities should be made aware of any provisions related to children of prisoners that may affect release decisions. For example, the 'New Zealand Parole Act 2002 gives the parole board discretion to grant early release on compassionate grounds to a prisoner who has given birth during her sentence.'³⁷³

Release – at and after release

Just as families need to adjust and get used to having a parent in prison, they also need to adjust to release. Particularly when a release date is known, preparation and planning for return to the community should begin before release, including full involvement and participation of the children. It can be very hard for children of prisoners serving indeterminate sentences (with no fixed release date) to prepare for release, as the time of release is unknown and can be decided suddenly.³⁷⁴

Potential good practice

'Family Transition Circles' use restorative justice techniques to help families discuss the harm done by incarceration and preceding behaviours and how to heal the harm and prepare for the future. It includes children of incarcerated parents, the prisoner, the carer looking after the children during incarceration, and other affected family members and friends. Together they meet several times, in prison and outside, to hold the Family Transition Circle.³⁷⁵

Recommendation: *Children should be supported and prepared for the release and return of an incarcerated parent before the date of release, in particular by parents and carers. Guidance should be prepared to address the needs of children at these times.*

Even short periods of incarceration can have long-lasting, profound impacts for the future circumstances and relationship of the family. However, when a parent has been in prison long-term, creating or recreating a relationship can be particularly difficult – one practitioner has observed that 'after long sentences, the family almost always splits up upon release'.³⁷⁶ Assuming the relationship is in the child's best interests, maintaining a good relationship during incarceration is important for ensuring a good post-release relationship, and better than trying to rebuild it on release.³⁷⁷

Potential good practice

Parc prison in the UK works with prisoners and families before release to help them think about how reintegration will work. This can include consideration of practical issues such as finance, as well as emotional issues such as the hopes and fears of the children. The prison helps them to set up a 'family first aid kit' to support the family after release.³⁷⁸

Once released, 'many mothers find it difficult to readjust to normal life. They have difficulties finding stable homes, jobs and in reconnecting with their families due to the negative effects of imprisonment. It is even harder if the mother has never cared for her child outside the prison environment or was given very little responsibility for her child's care while in prison'.³⁷⁹ One DGD submission described a mother who spent one month in custody followed by one month in the community on an electronic tag. In that time, she lost her house and custody of four of her children. Because she was in prison, she was classified as "single homeless" and was therefore only entitled to single person's accommodation on release. This in turn was not suitable for her to house her children, so she was unable to regain custody of them. Families Outside helped her regain stable accommodation, but after two years she still did not have custody of her children and only had three hours of supervised contact with them per week.³⁸⁰

Recommendation: *Laws and regulations should be amended so that a history of incarceration does not make ex-prisoners automatically ineligible for state benefits and support, particularly where this also affects their children.*

Post-release, families may receive support from outside agencies. The ICRC has provided micro-economic assistance to former detainees and their families in India.³⁸¹ However, services for reintegration were considered adequate at best in a multi-country survey (including developed and developing nations) carried out by Prison Fellowship International.³⁸²

Good and stable family relationships 'are a factor in reducing reoffending'.³⁸³ This is an important additional reason for supporting children's relationships with their incarcerated parents, but should not be the sole or main reason for promoting contact. Children are not instruments for reducing recidivism – they are individuals with their own rights and needs.

Endnotes

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- 11 Rebecca Cheung, POPS, oral intervention WG2
- 12 Ann Skelton, DGD plenary presentation
- 13 EUROCHIPS, personal communication
- 14 Peter Wedge, University of East Anglia, oral intervention WG2
- 15 From Family and Corrections Network website, available at: <http://www.fcnetwork.org/Bill%20of%20Rights/billofrights.pdf> (accessed 23 January 2012)
- 16 Dee Ann Newell (2012) 'Risk and Protective Factors for Secondary Girls of Incarcerated Parents' in *Family Court Review* 50(1): 106-112, p107
- 17 The Osborne Association's New York Initiative for Children of Incarcerated Parents and The Committee for Hispanic Children and Families, Inc, written submission, p1
- 18 National Resource Center on Children and Families of the Incarcerated, written submission, p1
- 19 HAQ Centre for Child Rights, written submission, pp2-3
- 20 EUROCHIPS website, available at: <http://www.eurochips.org/> (accessed 1 February 2012)
- 21 Associazione Comunità Papa Giovanni XXIII, written submission, p3
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- 32 Peter Scharff-Smith and Lucy Gampell (eds.) (2011) *Children of imprisoned parents*; The Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, p237
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- 80 Oliver Robertson (2008) *Children Imprisoned by Circumstance*; QUNO, p35
- 81 Associazione Comunità Papa Giovanni XXIII, written submission, p4
- 82 Penal Reform International, written submission, p2
- 83 Leda Koursoumba, Commissioner for Children's Rights of Cyprus, oral intervention WG1
- 84 'HC directs govt to take care of families of poor prisoners' in *The Times of India*, 31 October 2011, available at: http://articles.timesofindia.indiatimes.com/2011-10-31/ahmedabad/30341579_1_jail-inmates-prisoners-vadodara-central-jails (accessed November 2011)
- 85 Silvia Zega, Argentinian Appeals Court Prosecretary, oral intervention WG2
- 86 Sabine Skutta, German Red Cross and National Coalition for the Implementation of the CRC in Germany, oral intervention WG2
- 87 Ann Skelton, DGD plenary presentation
- 88 South Africa: Constitutional Court *S v M* (CCT53/06) [2007] ZACC 18 (26 September 2007), paragraph 36.
- 89 Ann Skelton, DGD plenary presentation
- 90 Tania Loureiro (2010) *Perspectives of Children and Young People with a Parent in Prison*; Scotland's Commissioner for Children and Young People and Families Outside, p6

- 91 Jan Wetzel, Amnesty International, oral intervention WG2
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- 94 IPJJ (2011) *Committee on the Rights of the Child Day of General Discussion 2011: Children of incarcerated parents*, p4
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- 99 Oliver Robertson (2007) *The Impact of Parental Imprisonment on Children*, QUNO, p17
- 100 Peter Scharff Smith, Danish Institute for Human Rights, oral intervention WG2
- 101 Associazione Comunità Papa Giovanni XXIII, written submission, p2
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- 124 SOS Children's Villages International, written submission, p3
- 125 QUNO, written submission, p4
- 126 QUNO, written submission, pp3-4
- 127 Isabel Bordin, DGD plenary presentation
- 128 Oliver Robertson (2008) *Children Imprisoned by Circumstance*; QUNO, p11
- 129 Sophie Feintuch (2010) 'New Spanish Practice Aims to Break the Cycle Among Mothers and Children' in *Corrections Today* 2010:6, pp38-42. A more detailed analysis of the External Mother Units, including potential problems, is available at: <https://www.aca.org/fileupload/177/ahaidar/Feintuch.pdf> (accessed 17 January 2012)
- 130 Penal Reform International, written submission, p2
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- 156 Oliver Robertson (2008) *Children Imprisoned by Circumstance*; QUNO, p13
- 157 QUNO, written submission, p4
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- 161 Enakshi Ganguly, HAQ Centre for Child Rights, oral intervention WG2
- 162 HAQ Centre for Child Rights, written submission, p8
- 163 Oliver Robertson (2007) *The Impact of Parental Imprisonment on Children*; QUNO, p33
- 164 African Women Corrections Association, written submission, p2
- 165 Human Rights Watch, written submission, p4
- 166 ELFI (undated) *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders: Draft*; ELFI, p76
- 167 Human Rights Watch, written submission, p4
- 168 Action for Children and Youth Aotearoa, written submission, p3
- 169 IBFAN, written submission, p2
- 170 World Health Organization and UNICEF(2003) *Global Strategy for Infant and Young Child Feeding*; World Health Organization and UNICEF, pp7-8
- 171 SOS Children's Villages International, written submission, p3
- 172 HAQ Centre for Child Rights, written submission, p7
- 173 Human Rights Watch, written submission, p2
- 174 Comisión de Derechos Humanos del Distrito Federal, written submission, p1
- 175 Oliver Robertson (2010) *The Decision to Imprison: How the best interests of a baby are assessed when deciding whether they can live with imprisoned mothers*; unpublished, p40. Available on request.
- 176 Penal Reform International, written submission, p7
- 177 Mary Murphy, personal communication
- 178 Berthey-Lee Adja, International Catholic Child Bureau, oral intervention WG1
- 179 Penal Reform International, written submission, p2
- 180 IBFAN, written submission, p5
- 181 Fondazione Marista per la Solidarietà Internazionale, written submission, p3
- 182 Action for Children and Youth Aotearoa, written submission, p4
- 183 HAQ Centre for Child Rights, written submission, p9
- 184 Committee on the Rights of the Child, Concluding Observations: Sudan CRC/C/SDN/CO/3-4, pp11-12
- 185 Petride Mudoola (2012) '161 children in prison for no crime' in *New Vision* website, available at <http://www.newvision.co.ug/news/628368-161-children-in-prison-for-no-crime.html> (accessed 16 January 2012)
- 186 SOS Children's Villages International, written submission, p3
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- 189 D. Dallaire, J. Poehlmann and A. Loper, written submission, p4
- 190 Oliver Robertson (2007) *The Impact of Parental Imprisonment on Children*; QUNO, p21
- 191 Action for Prisoners' Families, written submission, pp2-3

- 192 Wasim Hussein, oral intervention WG2
- 193 Email a Prisoner website, available at: <http://www.emailaprisoner.com/> (accessed 18 January 2012)
- 194 Jason Daye, oral intervention WG2
- 195 Justice Action (2011) Computers in Cells: Maintaining community ties and reducing recidivism p7, available at: <http://justiceaction.org.au/cms/images/stories/CmpgnPDFs/computersincells.pdf> (accessed November 2011)
- 196 Ben Raikes, University of Huddersfield, personal communication
- 197 Action for Prisoners' Families, written submission, p2
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- 224 Sian and Raheel, DGD plenary presentation
- 225 Parc Supporting Families, written submission, pp4-5
- 226 Peter Scharff-Smith and Lucy Gampell (eds.) (2011) *Children of imprisoned parents*; The Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, p259
- 227 Sian and Raheel, DGD plenary presentation
- 228 Action for Prisoners' Families, written submission, p2
- 229 Gwyneth Boswell and Peter Wedge, written submission, p3
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- 232 Sian and Raheel, DGD plenary presentation
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- 234 D. Dallaire, J. Poehlmann and A. Loper, written submission, p3
- 235 Action for Prisoners' Families, written submission, p2
- 236 Peter Scharff-Smith and Lucy Gampell (eds.) (2011) *Children of imprisoned parents*; The Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, p236
- 237 Parc Supporting Families, written submission, p6
- 238 Ben Raikes, University of Huddersfield, oral intervention WG1
- 239 Agnieszka Martynowicz (2011) *Children of imprisoned parents*; The Danish Institute for Human Rights, European Network for Children of Imprisoned Parents, University of Ulster and Bambinisenzasbarre, p33

- 240 'Collateral Convicts' exhibition, panel 4, available at:
<http://quino.org/geneva/pdf/humanrights/women-in-prison/2011/Collateral-Convicts-light.pdf> (accessed 23 January 2012)
- 241 Parc Supporting Families, written submission, p5
- 242 Gwyneth Boswell and Peter Wedge, written submission, p2
- 243 D. Dallaire, J. Poehlmann and A. Loper, written submission, pp4-5
- 244 Prison Fellowship International, oral intervention WG1
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- 266 Howard League for Penal Reform, written submission, p4
- 267 Howard League for Penal Reform, written submission, p2
- 268 Tania Loureiro (2010) *Perspectives of Children and Young People with a Parent in Prison*; Scotland's Commissioner for Children and Young People and Families Outside
- 269 Dee Ann Newell, The National Policy Partnership for Children of Incarcerated Parents, personal communication
- 270 POPS, written submission, p2
- 271 SOS Children's Villages International, written submission, p4
- 272 Families Outside Bulletin January 2012, available at:
<http://www.familiesoutside.org.uk/content/uploads/2012/01/Newsletter-Jan12.pdf> (accessed 24 January 2012)
- 273 Gwyneth Boswell, University of East Anglia, oral intervention WG1
- 274 The UN Guidelines for the Alternative Care of Children, para. 29c
- 275 SOS Children's Villages International, written submission, p5
- 276 SOS Children's Villages International, written submission, p6
- 277 SOS Children's Villages International, written submission, p6
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- 319 Nancy Loucks, Families Outside, oral intervention WG2
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- 324 Action for Children and Youth Aotearoa, written submission, p7
- 325 Alexander Hirschfield, professor of criminology, University of Huddersfield, personal communication
- 326 Action for Prisoners' Families, written submission, p1
- 327 Sabine Skutta, German Red Cross and National Coalition for the Implementation of the CRC in Germany, oral intervention WG2
- 328 Sarah Salmon, Action for Prisoners' Families, oral intervention WG1
- 329 Scotland's Commissioner for Children and Young People, written submission, p4
- 330 IPJJ (2011) *Committee on the Rights of the Child Day of General Discussion 2011: Children of incarcerated parents*, p6
- 331 Mary Murphy, ICRC, personal communication
- 332 Ben Raikes, University of Huddersfield, oral intervention WG1
- 333 SOS Children's Villages International, written submission, p1
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- 349 EUROCHIPS, written submission, p3
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- 368 Action for Children and Youth Aotearoa, written submission, p7
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- 373 Action for Children and Youth Aotearoa, written submission, p3
- 374 Lucy Gampell, EUROCHIPS, oral intervention WG2
- 375 Community Works website, available at: <http://communityworkswest.org/index.php/rgc/52-ftc> (accessed 9 January 2012)
- 376 Koen Sevenants, Morning Tears, oral intervention WG2
- 377 Action for Prisoners' Families, written submission, p3
- 378 Susan Ellis, G4S Care & Justice Service Ltd, oral intervention WG2
- 379 Action for Children and Youth Aotearoa, written submission, p4
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Appendix I: Guiding principles and recommendations

General principles

Children whose parents are involved with the criminal justice system **have equal rights to all other children**. Their rights should not be affected because of the status of their parent, or because of decisions about their parent.

The **best interests of the child** must be a primary consideration in relation to all actions that may affect children of incarcerated parents, whether directly or indirectly. States should create and implement laws to ensure this occurs at every stage of the criminal justice process.

Each child is an individual and will have individual needs. Decisions that affect them should be made on a case-by-case basis.

A child's needs are affected by their **personal situation**, including their age or stage of development, and any disabilities or special needs they have. All information available to children should be age, language and disability appropriate.

The child's **right to a relationship with their parents** should not be subordinate to the State's concerns for security; heightened security needs should be made compatible with the child's right to maintain contact with an imprisoned parent.

Whether detained with, or separated from parents, children of incarcerated parents are vulnerable and are **entitled to specific kinds of care and protection**. Some children may not need or use specialist intervention or support, but should have the opportunity to access it if desired.

With children who are or may be placed in **alternative care**, the UN Guidelines for the Alternative Care of Children should be followed at all stages.

Children (and families) of prisoners should be **actively involved in decisions that affect them**, in accordance with their age and maturity. They should also be able to participate in the development and delivery of all services, training materials and guidelines concerning them.

Non-custodial measures should be prioritised when children will be affected, including for pre-trial detention, so as to prevent the negative impact on children of having a parent in prison.

Parents involved in the criminal justice process **should not at any point be humiliated** in front of their children.

All officials who may come into contact with children of incarcerated parents should receive **guidance and training** in how to respond to them.

A 'Bill of Rights for Children of Incarcerated Parents' was developed by children in the USA. They are the rights:

- To be kept safe and informed at the time of my parent's arrest;
- To be heard when decisions are made about me;
- To be considered when decisions are made about my parent;
- To be well-cared for in my parent's absence;
- To speak with, see and touch my parent;
- To support as I face my parent's incarceration;
- Not to be judged, blamed or labeled because my parent is incarcerated;
- To a lifelong relationship with my parent.

Statistics

Guiding principle: Statistics about children of incarcerated parents should be routinely and consistently gathered, to help develop policy and practice.

Recommendation: Criminal justice agencies should develop data collection and monitoring systems aimed at protecting children's rights that capture the number of prisoners with children, the number of children each incarcerated parent has and other information necessary to plan policy and practice.

What to tell the children

Guiding principle: Children should be told, in an age-appropriate way, the truth about their parent's situation.

Recommendation: Parents and carers should be supported and encouraged to tell children, in an age-appropriate way, the truth about their parent's situation and to better understand the potentially negative repercussions that lying can have on a child's development. Guidance should be prepared on appropriate ways of telling children about parental incarceration.

Future research

Guiding principle: More research is needed on this issue, but it should be participatory and not harm children of incarcerated parents or those around them.

Arrest

Guiding principle: Arrests should be conducted in accordance with the best interests of the child, with children's care and other needs met as part of the arrest process.

Recommendation: Protocols or other guidance should be developed on how arresting officials should respond to children at or affected by an arrest.

Recommendation: Arrest protocols should be comprehensive, covering:

- measures to take before, during and after arrest;
- identifying whether the person being arrested is caring for children;
- different arrest situations, including those where children are not or are not expected to be present;
- groups to involve or notify, such as child welfare or social workers;
- how to seek parental cooperation in the arrest if children are present;
- identifying and delivering the children to alternative carers;
- and registering this situation in the records.

Recommendation: Arrest protocols should uphold the rights and dignity of the child, including ensuring that the parent is not humiliated in front of the child. Children should be involved in developing such protocols.

Recommendation: Search warrants should include basic guidelines on how to act in relation to children at or affected by an arrest.

Recommendation: Efforts to identify children of parents in conflict with the law should begin from the moment of arrest and continue through to release. Information about the support needs of children should be shared with support services in the community, with due regard to the child's right to privacy.

Recommendation: Children should not be left alone following the arrest of a parent. They should be left in the care of an appropriate adult.

Recommendation: Regardless of whether persons arrested request it, they should be given information about planning for the care of children at and after the arrest. Arresting officials should be responsible for ensuring arrested persons have this information, including whether children can accompany them into custody.

Recommendation: Immediately following arrest, arrested persons should be allowed and supported to make temporary childcare arrangements for children under their care. Children themselves should be able to participate and be heard in decisions about alternative carers.

Recommendation: Post-arrest care arrangements should be temporary and open to review by both arrested parents and temporary carers. It may be appropriate to place limitations on the decisions that temporary carers can make about the children and/or provide judicial or other oversight to ensure the child is adequately protected.

Recommendation: Children and their families should be told about support available to them, including organisations, telephone helplines and websites. Criminal justice and other officials should provide this orally and in writing, in forms and languages children of different ages and stages of development understand.

Recommendation: All places where children of those in conflict with the law come into contact with the criminal justice system, including police stations, lawyers' offices, court holding cells and judges' benches, should display information about available support. Such information should also be available in other places children and families frequent, including schools, youth clubs and websites, as well as in prison for newly arrived prisoners.

Recommendation: Criminal justice, social work and other professionals that may come into contact with children of incarcerated parents should be trained in the rights and needs of such children.

Pre-trial period

Guiding principle: The impact of pre-trial measures on children should be considered when considering or reviewing measures, with procedures put in place to mitigate any negative impacts on the children.

Recommendation: There should be a presumption against pre-trial detention and the best interests of the child should be a primary consideration when deciding on or reviewing pre-trial measures for a parent, in particular the decision to detain. Guidance should be prepared on what information is required for such decisions and on how to gather this information.

Recommendation: Unless it has been judged not to be in their best interests, children should have access to parents in pre-trial detention by default, facilitated by the detaining authority. Restrictions should only be permitted when the detaining authority has shown reasonable grounds for so doing.

Recommendation: States should consider expediting cases of suspects with children, particularly in jurisdictions with long pre-trial periods, given the potential impact on children of pre-trial separation and/or uncertainty.

Court and trial

Guiding principle: Where they want to attend and it is in their best interests, children should be supported to attend the trial of a parent.

Recommendation: Children should be given individualised and age-appropriate support to attend the trial of a parent, where they wish to go and it is in their best interests.

Recommendation: States should progress towards having child-friendly justice systems that include children of incarcerated parents an explicitly named and considered group.

Recommendation: Family Courts should be involved in both initial decisions and reviews of care arrangements and contact with parents for children with parents in conflict with the law. Incarcerated parents should be assisted to fully participate in these cases.

Sentencing

Guiding principle: When sentencing a parent, courts should take into account the best interests of the child and the impact of potential sentences on children.

Recommendation: Prior to sentencing, courts should identify whether those convicted have dependent children and take into consideration the impact of all potential sentences on children. The best interests of the child should be a primary consideration when choosing a sentence.

Recommendation: When considering potential sentences for a child's carer, sentences that are least damaging to the child should be considered first. These are likely to be non-custodial sentences. Guidance should be prepared on how different sentences affect children.

Recommendation: Pregnant women should not be imprisoned without ready access to adequate facilities for childbirth, prenatal and postnatal care.

Recommendation: Child impact assessments should be available whenever considering placing or releasing parents from custody, including decisions about pre-trial detention or early release, as well as when transferring prisoners between prisons.

Recommendation: When a sentence causes parents to be separated from children for whom they are caring, they should be given sufficient time to make arrangements for those children prior to the commencement of the sentence, taking into account the best interests of the child.

Recommendation: When ongoing contact with children is a required condition for maintaining parental rights, incarceration of a parent should not be seen as a breach of this condition.

Crimes against the child

Guiding principle: The complexity of the situation of children whose parents have committed offences against them needs further research and guidance.

Recommendation: Further research and guidance should be produced on how to assess and protect the best interests of the child when a parent commits crimes against them, as well as how children can participate in proceedings related to this.

Children living in prison – limits and restrictions

Guiding principle: Decisions about when children should live in or leave prison should be based on an individualised, case-by-case analysis of their best interests.

Recommendation: Decisions about whether and when children should live in or leave prison should be based on an individualised, case-by-case analysis of their best interests. The child's place of birth or adoptive status, and the parent's gender should not be relevant considerations in such decisions. Factors such as offence, sentence length, behaviour in prison or similar should be considered only insofar as they affect the child's best interests and should not automatically exclude parents from having children live with them in prison.

Recommendation: Guidance should be developed to assist decision-makers on factors to consider when deciding whether babies and children should live in prison with a parent.

Children living in prison – physical conditions

Guiding principle: Children should live in an environment that is safe, healthy and beneficial to their development.

Recommendation: Facilities for children living in prison should be child-friendly, clean and hygienic, designed with their development and safety in mind. Guidance should be prepared on appropriate features of such facilities.

Recommendation: Areas used by children should be subject to regular and independent inspection, by the bodies responsible for inspection of similar facilities in the community. Day-to-day running of facilities for children living in prison should preferably be undertaken by bodies performing this role in the community rather than prison authorities.

Recommendation: Children should be regularly examined by paediatricians or other medical officers knowledgeable about paediatric medicine. They should receive routine vaccinations.

Recommendation: Everyone providing medical care in prisons, and all staff interacting with children living in prison, should be trained in the basic healthcare of children. Guidance should be prepared on the form and content of such training.

Recommendation: Costs relating to children living in prison, particularly food, clothing, accommodation and medical care, should not be borne by them or their families.

Children living in prison – social and developmental conditions

Guiding principle: In all areas of the child's life, the prison environment should reflect life in the community as closely as possible.

Recommendation: All those in contact with children living in prison should be trained and supported in how to act and behave around them. Those looking after children should be trained in childcare. Guidance should be prepared on the form and content of such training.

Recommendation: Staff in contact with children should not dress in prison uniforms or take loud or aggressive disciplinary actions when children are present.

Recommendation: Children living in prison should be adequately supported in their development and education, including 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.

Recommendation: Incarcerated parents should be allowed as many opportunities as possible to see the children living with them, taking into account the best interests of the child. They should have the same opportunities to care for and bond with babies and young children as would be the case outside prison, including exemption without penalty from other commitments such as prison work.

Recommendation: Children living in prison should be allowed contact with outside family members and others with whom they have a close relationship unrestricted in frequency, length, form or accompaniment, except where restrictions are in the child's best interests.

Children living in prison – pregnancy, birth and early years

Guiding principle: The specific needs of children around birth and early years should be met.

Recommendation: Pregnant imprisoned women and girls should have access to quality antenatal care, including guidance on optimal infant and young child feeding practices to make informed decisions about how to feed their children.

Recommendation: Pregnant women and new mothers, including breastfeeding mothers, should be provided with an appropriate diet for the healthy development of the children.

Recommendation: Children entering prison should be medically screened on entry. In addition, pregnancy tests should be offered to all women and girls of childbearing age on entry to prison. However, these should not be required and the woman's right to medical confidentiality must be respected.

Recommendation: Pregnant imprisoned women should have the same access to assisted births as non-incarcerated women. As far as possible, childbirth should take place outside of the prison, in a suitable environment. Instruments of restraint must never be used on women during labour, during birth and immediately after birth.

Recommendation: Incarcerated parents should be able to benefit from all opportunities to bond with their infant, immediately after birth and beyond. Incarcerated mothers should be allowed including immediate skin-to-skin contact and early initiation of breastfeeding (within one hour of birth).

Recommendation: The birth of all children of incarcerated parents should be registered without delay. As stated in the UN Standard Minimum Rules for the Treatment of Prisoners, if a birth in prison occurs, this fact shall not be recorded on the birth certificate.

Recommendation: Children's nutritional needs, in particular optimal duration of breastfeeding, should be a relevant factor when considering for how long children should live with incarcerated mothers. International guidance recommends exclusive breastfeeding up to six months and continued breastfeeding alongside complementary foods up to 24 months, to which children should also be ensured access.

Recommendation: Mothers who are separated from their breastfeeding children should be provided with adequate conditions to express and store breast milk.

Recommendation: Children whose mothers use artificial feeding, for health or other reasons, should be treated equally to breastfeeding children, including in decisions about separation. Artificial feeding materials should be prepared and used in accordance with the WHO Guidelines for the safe preparation, storage and handling of powdered infant formula.

Recommendation: Children's feeding requirements should take precedence over standard prison schedules. Incarcerated parents should be excused from other prison duties in order to feed their children.

Recommendation: For HIV-infected pregnant or lactating women, the national policy implementing the WHO guidelines on infant feeding and HIV should be followed.

Recommendation: Separate and additional budgets should be provided to cover the costs of food for children living with incarcerated parents.

Children living in prison – leaving prison

Guiding principle: Children leaving prison, with or without an incarcerated parent, should be prepared and supported before, during and after their departure.

Recommendation: There should be regular assessments of which living environment is in a child's best interests. Guidance should be prepared on how to conduct such assessments, and how to do so in a way that does not damage parent-child bonding.

Recommendation: Planning for separation should occur in advance, including identification of suitable alternative carers and having the child spend time with them and the new place of residence.

Recommendation: Parents and children should both be provided with practical and emotional support before, during and after separation.

Recommendation: As far as possible and in accordance with their best interests, after leaving prison the child should live close to the incarcerated parents to facilitate visits.

Recommendation: Visits from children formerly living in prison should be conducted in a manner and frequency in accordance with the child's best interests, taking into account their previous close contact with their incarcerated parent while living in prison. They should not count against normal visit limits.

Recommendation: No child should remain in prison following the release or death of their incarcerated parent(s).

Recommendation: Parental rights should not be removed from incarcerated parents, nor should children be put up for adoption, without consideration for the best interests of the child. Guidance should be prepared on how to conduct such assessments.

Indirect contact between child and incarcerated parent

Guiding principle: Children should be allowed to contact their incarcerated parents, in ways and forms with which they are comfortable.

Recommendation: Correspondence from prison should not be identifiable as such.

Recommendation: Modern and electronic means of communication, particularly those widely used by children, should be piloted and adopted more widely within prisons.

Recommendation: Telephones should be available for prisoners and their families to maintain regular contact, with both children and parents able to make and receive telephone calls. Call costs should preferably be free for those making or receiving them and in any case should not be prohibitive.

Recommendation: For parents incarcerated abroad, arrangements should be made to enable children's continued contact with their parent, which should take into account time differences and costs of international correspondence.

Recommendation: Indirect contact should supplement, not substitute, in-person visits.

Visits

Guiding principle: The settings for, duration of and activities during children's visits to incarcerated parents should be ones that strengthen the child-parent relationship.

Recommendation: Information on prison procedures and regulations, and the reasons for these procedures, should be provided to families ahead of visits. If families have to book visits in advance, information should be provided at point of booking. Information should be available in places that children and families of prisoners may frequent (including police stations, courts, youth clubs, schools and websites).

Recommendation: Restrictions on people allowed to visit prisoners should be sufficiently flexible to permit the best interests of the child to be a key consideration. They should be sensitive to non-traditional family structures and relationships when classifying who counts as family and allow all children within a family to visit an incarcerated parent together, if desired.

Recommendation: Security measures should not prohibit the child's right to a relationship with an incarcerated parent. Guidance should be prepared on how to enable this.

Recommendation: No child should be prevented from visiting an incarcerated parent solely because of their age. Regulations on children visiting prison should take account of the child's age and maturity, so that accompaniment by an adult is not mandatory.

Recommendation: Prison visitor centres should be developed and maintained as a way of providing fun, information and social opportunities for children of incarcerated parents. They should be available to families before and after visits.

Recommendation: Searches should be carried out in a child-friendly manner and should be culturally and religiously sensitive. Guidance should be prepared on how to achieve this.

Recommendation: Both the physical prison environment and staff behaviour towards children should be child-friendly and supportive. Guidance should be prepared on how to achieve this, with training and financial support provided to implement necessary changes.

Recommendation: Facilities should be available to meet the needs of children visiting prison, including access to toilets, play spaces and seats from which parents are visible, audible and able to be touched.

Recommendation: Contact visits should be the norm for children visiting parents in prisons. Longer, private and/or child-friendly visits should be available whenever possible.

Recommendation: Parenting classes should be designed specifically for parents involved with the criminal justice system and made widely available. Other ways of strengthening the parenting role of incarcerated parents should also be supported.

Recommendation: Prison visits and other interaction with an incarcerated parent is the right of the child and should not be dependent on or restricted by the parent's behaviour, unless this is in the best interests of the child. Threats of or actual removal of contact should form no part of prison discipline.

Recommendation: Prisons should seek the opinions of children and others as to the quality of visits and other forms of contact, and their ideas for improvement.

Recommendation: A permanent children's ombudsman or officer with special responsibility for children's welfare should be a feature of all criminal justice systems/prison authorities.

Recommendation: Children unable to visit their parent on grounds of distance should be supported financially in visiting, particularly to prisons that are difficult to reach.

Recommendation: Prisons should ensure they are accessible to children with disabilities, including invisible disabilities such as poor hearing, as well as to children visiting or accompanied by those with disabilities. Meeting such needs should preferably be done inclusively, so that such children can visit their incarcerated parents in the same way as others, with specific separate provision as an alternative if integration does not meet that child's needs. Meeting the needs of children with, visiting or accompanied by those with disabilities may require physical changes in the prison or changes to the behaviour and actions of prison staff and others. Provision should be in conformity with the Convention on the Rights of Persons with Disabilities.

Recommendation: Children whose parents are in pre-trial detention should always be allowed extended and child-friendly visits, unless such contact would interfere with the course of justice or not be in the best interests of the child.

Recommendation: Children unable to visit their parent on grounds of distance (whether in the same or different country to their incarcerated parent) should be supported in alternative ways of keeping contact, including additional or free telephone calls and letters.

Recommendation: Video visits should be available to children of incarcerated parents, in particular those unable to visit in person as often as permitted. Video visits should be seen as an additional form of contact, not a substitute for in-person visits.

Informal and formal care

Guiding principle: Decisions about informal or formal care should be made on a case-by-case basis that promote the child's best interests and are in accordance with the UN Guidelines for the Alternative Care of Children.

Recommendation: Financial and other necessary support should be given to empower families, single parents, extended family and other carers of children of incarcerated parents and to prevent family separation.

Recommendation: When there is a possibility of alternative care for children of incarcerated parents, case-by-case assessment should take place, with decisions and placement in accordance with the UN Guidelines for the Alternative Care of Children. Children should not be placed in inappropriate care situations nor remain in care when family reintegration is in their best interests.

Recommendation: Guidance should be prepared about how to uphold a child's right to be heard when considering their care and residential status following a parent's incarceration.

Recommendation: Case-by-case decision-making should be provided to assure the initial and ongoing necessity and appropriateness of alternative care provision for children of incarcerated parents.

Recommendation: State policies and practices relating to alternative care and termination of parental rights should be assessed for their impact on families temporarily separated by parental incarceration, and any necessary amendments made.

Death penalty

Guiding principle: The impacts of a death sentence or execution on the children of the condemned should be considered and steps taken to ensure their rights and best interests are met.

Recommendation: Children of those accused or convicted of offences carrying the death penalty should have access to their incarcerated relatives throughout the judicial proceedings and detention period, as should other family members and lawyers.

Recommendation: Children, as well as other family members and lawyers, should be kept fully informed of the prisoner's place of imprisonment and, in advance, any transfer. They should be allowed to have regular and private meetings with the prisoner, and contact visits for children should be permitted as a matter of course.

Recommendation: Children of death row prisoners or their non-incarcerated parents or carers should be told, in an age-appropriate way, of the progress of petitions for pardons, reports presented to bodies such as clemency commissions and the reasoning behind the recommendations to these bodies to support or reject petitions.

Recommendation: Children of prisoners should be informed in an age-appropriate manner of the execution date of their parent, well enough in advance to allow for a final visit. Final visits should always be permitted unless this is not in the best interests of the child and should be private and contact visits.

Recommendation: Following execution, families should be permitted to have the prisoner's body for burial and receive all personal effects.

Recommendation: The Committee on the Rights of the Child should consider whether Article 9 of the CRC includes the right to information about a parent's detention on death row, any pending execution and the whereabouts of the body following execution.

Impacts on children

Guiding principle: Parental incarceration can affect all areas of a child's life and the range of impacts should be identified.

Recommendation: Where required, children should receive legal assistance and support, including legal aid, to ensure their best interests are considered.

Support for children

Guiding principle: Children of incarcerated parents should know about and be able to access support appropriate to their situation and needs.

Recommendation: Agencies and services that engage with children of incarcerated parents should develop flexible and repeatable needs assessment tools to help identify the needs of such children.

Recommendation: Agencies and services should coordinate to ensure the best interests of the child are met. Information about children should only be used or shared when in the best interests of the child.

Recommendation: Incarcerated parents should be given information about and enabled to participate in resolving any difficulties relating to their children, provided this is in the best interests of the child.

Recommendation: Information about all the support available for children of incarcerated parents should be mapped, collected and disseminated, including in child-friendly formats.

Recommendation: Support services should be aware of and appropriate for children of different ages, genders, cultural and linguistic backgrounds. Guidance should be prepared on making support services appropriate for children in different situations.

Recommendation: Children should be consulted about the kind of support they want.

School and education

Guiding principle: Schools provide a major opportunity to support children of incarcerated parents and to help meet their needs.

Recommendation: Guidance should be prepared and training provided so that teachers and other adults in schools are aware of the particular needs of children of incarcerated parents and can appropriately support such children in their performance, attendance and behaviour.

Stigma

Guiding principle: Efforts are needed to reduce the stigma attached to having a parent in prison.

Recommendation: Public information policies and, where necessary, education programmes should be developed for civil society, so that children of prisoners are not subject to stigmatisation, social exclusion or discrimination.

Release

Guiding principle: The release of a parent is a major change in the child's life and they will need support to adjust to this before, during and after release.

Recommendation: Children of incarcerated parents should be consulted and their views considered when decisions are made about sentence progression, resettlement and release of incarcerated parents.

Recommendation: Children should be supported and prepared for the release and return of an incarcerated parent before the date of release, in particular by parents and carers. Guidance should be prepared to address the needs of children at these times.

Recommendation: Laws and regulations should be amended so that a history of incarceration does not make ex-prisoners automatically ineligible for state benefits and support, particularly where this also affects their children.

Appendix 2: Babies and children living in prison – age limits and policies around the world

<i>State</i>	<i>Limit for children living in prison</i>	<i>Additonal information</i>	<i>Date information collected</i>
Afghanistan	5 years		2010
Argentina	5 years	Women also able to have children at home	2011
Australia	1-6 years, depending on state	In all states chief executive has considerable discretion to act in child's best interests	2000
Austria	2 years, extendible to 3 years	Extendible by prison director if remaining sentence is less than a year	2011
Bangladesh	4 years, extendible to 6 years	Extendible with permission of superintendent	2003
Belgium	2 years		2000
Brazil	6 months to 7 years, depending on state		2010
Brunei (Daressalem)	3 years		2000
Bulgaria	1 year, extendible to 3 years	Extendible if no suitable outside carers	Undated
Burkina Faso	2 years	Pregnant women may not be executed	2006
Burundi	2 years		Undated
Colombia	3 years		2011
Cambodia	6 years		2011
Canada	4 years full-time, 6 years part-time (federal system)	Part-time living in prison is during holidays and weekends	2011
Chile	2 years		2008
China	Not permitted (3 years in Hong Kong)		2010 (2000 for Hong Kong)
Croatia	3 years		2010
Cuba	1 year (possibly more)	Mothers can breastfeed until 1 year	2010
Democratic Republic of the Congo	1 year		1994
Denmark	3 years	Children may stay with fathers as well as mothers	2007
Ecuador	3 years		2011
Egypt	2 years		2008
Eritrea	No upper limit		Undated
Estonia	4 years extendible to 5 years		2011

Fiji	6 years		2011
Finland	2 years extendible to 3 years	Extendible to 3 years if child's best interests 'indeispensably require it'; children may stay with fathers as well as mothers	2011
France	18 months, extendible to 2 years		2006
Germany	Below school age	Usually leave by 3 years	2011
Ghana	2 years or when weaned	Medical officer determines if child weaned	2011
Greece	2 years		Undated
Hungary	1 year		2011
Iceland	18 months the norm		2011
India	6 years		2008
Indonesia	2 years		2000
Ireland (Republic of)	3 years		Undated
Israel	2 years		2010
Italy	6 years	Pregnant women should not be imprisoned	2011
Japan	1 year		2000
Kenya	4 years		2011
Kiribati	While lactating		2000
Kyrgyzstan	3 years		2008
Latvia	4 years	On release, mothers given two sets of identity papers for the children, one indicating residence in prison and one not	2007
Luxembourg	2 years		2011
Malaysia	3 years		2009
Mauritius	5 years		2009
Mexico	6 years		2008
Mongolia	18 months	Women prisoners who give birth are allowed home for 18 months to care for their babies and then return to prison	2000
Netherlands	4 years	4 years only in open prison; 9 months in closed prisons	2006
New Zealand	2 years		2009
Niger	5 years		2009
Nigeria	18 months		2007
Norway	Not permitted	Policy to be reviewed shortly	2011
Pakistan	6 years		2011

Poland	3 years	Guardianship Council can extend or reduce time limit	2011
Portugal	3 years, extendible to 5 years	5 years allowed only with appropriate prison conditions, consent of other parent and after considering interests of child	2011
Republic of Korea	18 months		2011
Romania	1 year		2010
Russian Federation	Unknown	Women with children up to 4 years old given postponed sentences	2009
Sierra Leone	2 years	Limit is in practice not in law	2010
Singapore	3 years, extendible to 4 years	Extendible with special approval of Minister for Home Affairs	2003
Slovenia	2 years		2011
South Africa	2 years		2010
Spain	6 years	Formerly 3 years, but now 6 in special external mother-child units being developed	2011
Sri Lanka	5 years		2011
Sudan	6 years		Undated
Sweden	1 or 2 years	2 years in open prisons. Children can also stay with fathers	2011
Switzerland	3 years		2011
Tanzania	Until normal lactation period expires		2009
Thailand	3 years		2008
Turkey	6 years	Children under 3 are with mothers in cells, between 3-6 may go to prison kindergartens	2011
Ukraine	3 years	Exceptionally 4	2011
United Arab Emirates	2 years (Dubai only)		2011
United Kingdom	9 or 18 months	Age limit depends on institution, can be extended if in child's best interests	2011
United States of America	Not permitted to 3 years, depending on state	Usually only for mothers who will finish their sentence before the child reaches the age limit	2010
Venezuela	3 years		2008
Viet Nam	2 years		2000
Zambia	4 years		2011

* Sources for this list can be found in the QUNO written submission to the DGD

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Collateral Convicts

In September 2011, the UN Committee on the Rights of the Child held a day-long meeting on children of incarcerated parents. Bringing together experts and practitioners from around the world, this was the first time any part of the UN system had considered prisoners' children in detail and the findings are gathered here. Covering every stage of the criminal justice process, from arrest through to release and reintegration, this paper highlights the principle issues, suggests ideas for good practice and makes detailed recommendations on how the rights and needs of children with parents in prison can best be met in the future.

