



Quaker United Nations Office

Briefing Paper:
Children of Incarcerated Parents
International Standards and Guidance

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April 2015

Prepared for the 13th UN Crime Congress to contribute to discussions in Workshop 1 and the plenary.

Introduction

The risks faced by children of incarcerated parents can be compounded by criminal justice and penal systems that do not take notice of their existence or do not see their rights as relevant considerations. This briefing outlines the current position in regard to international standards pertaining to children of incarcerated parents, bringing together legal instruments, treaty body recommendations and other guidance issued by international bodies. The purpose of this briefing is to promote the recognition of the rights of children of incarcerated parents, to guide States in their domestic consideration of how to ensure the rights of such children and to contribute to improving standards.

Children of Prisoners Have Particular Vulnerabilities and Must be Considered in Criminal Justice Processes

The need for focussed attention to be paid to the specific vulnerabilities of children of prisoners has been receiving increasing international attention. There is now an understanding in both the human rights and the crime prevention and criminal justice bodies that this aspect of criminal justice policy and delivery must take the rights of the child into account.

The African Charter on the Rights and Welfare of the Child makes explicit provision for the children of imprisoned parents in a stand-alone article responding to the specific risks they face.¹ The United Nations Committee on the Rights of the Child recognised such children as being at particular risk in their 2005 General Comment on Implementing Rights in Early Childhood:

Children's rights to development are at serious risk where they are orphaned, abandoned or deprived of family care or where they suffer long term disruptions to relationships or separations (e.g. due to ... parental imprisonment...). These adversities will impact on children differently according to their personal resilience, their age and their circumstances, as well as the availability of wider sources of support and alternative care.²

The European Parliament has recognized that there are multiple impacts on children's enjoyment of their rights for both children separated from a detained parent and children detained with a parent.³

The Salvador Declaration of the 12th UN Crime Congress stressed the need to address the needs of children of prisoners, taking into account their human rights.⁴ The additional provisions pertaining to children of prisoners in the Bangkok Rules, supplementing the Standard Minimum Rules for the Treatment of Prisoners, are indicative of the developments in understanding of this issue.⁵ In particular the Bangkok Rules, although focussed on the treatment of women prisoners contain rules requiring consideration of the best interests of the child.⁶ This is also recognised in the United Nations Model Strategies and Practical Measures on the Elimination of

¹ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999, Art. 30

² The Committee on the Rights of the Child defines early childhood as below the age of 8. Committee on the Rights of the Child, General Comment No. 7 (2005): Implementing Child Rights in Early Childhood, CRC/C/CG/7/Rev.1 of 20 September 2006, para. 31(b)

³ The European Parliament resolution of 27 November 2014 on the 25th anniversary of the UN Convention on the Rights of the Child (2014/2919(RSP), para.13

⁴ Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, para. 26

⁵ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010

⁶ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 2.1

Violence against Children in the Field of Crime Prevention and Criminal Justice which include children of incarcerated parents in the definition of “children in contact with the justice system” and extend the protections outlined in the model strategies to such children.⁷

Overarching Principle: The Best Interests of the Child

The overarching principle is that the best interests of the child should be taken into account in all decisions relating to the detention of someone with child caring responsibilities.⁸ The requirement to take the best interests of the child into account as a primary consideration in all decisions affecting them is enshrined in the Convention on the Rights of the Child.⁹

In the context of children of prisoners or children of those facing possible incarceration, best interests assessments should be incorporated into:

- Actions and decisions at point of arrest
- Decisions regarding whether or not to detain someone before trial
- Decisions about sentencing once convicted, including alternatives to custody and the application of the death penalty
- Decisions about whether a child should go into prison with their carer or remain in prison with their carer
- Decisions about the removal of any State financial or other support from the child or the carer.¹⁰

⁷ United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, contained in E/CN.15/2014/L.12/Rev.1 of 15 May 2015, para. 6(c)

⁸ Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, paras. 69(a) and (d). Human Rights Council Resolution 10/2, Human rights in the administration of justice, in particular juvenile justice, preamble. Committee on the Rights of the Child General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14 of 29 May 2013, paras. 28 and 69. Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, para. 26. Council of Europe, Committee of Ministers, Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, Rule 36.1. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010. Committee on the Rights of the Child, Concluding observations: Thailand, CRC/C/THA/CO/2 of 17 March 2006, para. 48; Committee on the Rights of the Child, Concluding Observations: The Plurinational State of Bolivia, CRC/C/BOL/CO/4 of 16 October 2009, para. 66; Committee on the Rights of the Child, Concluding observations: Philippines, CRC/C/15/Add.259 of 21 September 2005, para. 54; Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 of 22 October 2010, para. 63(c). United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, contained in E/CN.15/2014/L.12/Rev.1 of 15 May 2015, para. 34(l). Human Rights Committee, Concluding observations on the third periodic report of the Plurinational State of Bolivia, CCPR/C/BOL/CO/3 of 6 December 2013, para. 20; Declaration on women’s health in prison: correcting gender inequity in prison health (Kyiv Declaration) World Health Organization Regional Office for Europe & United Nations Office on Drugs and Crime, 2009, para. 4.2

⁹ United Nations Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989, Art. 3(1)

¹⁰ Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Switzerland, CRC/C/CHE/CO/2-4 of 4 February 2015, para. 53; Committee on the Rights of the Child,

The best interests of the child should be carefully and independently considered by competent child health and welfare professionals¹¹ and decisions should be reviewed throughout the relevant period¹² and open to judicial review.¹³

The Committee on the Rights of the Child has emphasised that:

the basic best-interests assessment is a general assessment of all relevant elements of the child's best interests, the weight of each element depending on the others. Not all the elements will be relevant to every case, and different elements can be used in different ways in different cases. The content of each element will necessarily vary from child to child and from case to case, depending on the type of decision and the concrete circumstances, as will the importance of each element in the overall assessment.¹⁴

Furthermore, in these circumstances elements of the best interests assessment will often be in conflict. For example, it is rarely in a child's best interests to be separated from their primary carer and it is rarely in a child's best interest to live in a prison. Therefore "in such situations, the elements will have to be weighted against each other in order to find the solution that is in the best interests of the child or children."¹⁵ Specifically in regard to children of incarcerated

Concluding observations on the combined third to fifth periodic reports of Mauritius, CRC/C/MUS/CO/3-5 of 4 February 2015, para.48; Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Jamaica, CRC/C/JAM/CO/3-4 of 4 February 2015, paras.22-23; Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Iraq, CRC/C/IRQ/CO/2-4 of 4 February 2015, para. 57(c); Committee on the Rights of the Child, Concluding observations on the consolidated third and fourth periodic reports of India, CRC/C/IND/CO/3-4 of 13 June 2014, para. 60; Committee on the Rights of the Child, Concluding observations: Thailand, CRC/C/THA/CO/2 of 17 March 2006, para. 48; Committee on the Rights of the Child, Concluding Observations: The Plurinational State of Bolivia, CRC/C/BOL/CO/4 of 16 October 2009, para. 66; Committee on the Rights of the Child, Concluding observations: Philippines, CRC/C/15/Add.259 of 21 September 2005, para. 54; Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 of 22 October 2010, para. 63(c). United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, contained in E/CN.15/2014/L.12/Rev.1 of 15 May 2015, para. 34(l). Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on "Children of Incarcerated Parents", 30 September 2011, para. 43.

¹¹ Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Uruguay, CRC/C/URY/CO/3-5 of 4 February 2015, para. 42 (c); Committee on the Rights of the Child, Concluding observations: Thailand, CRC/C/THA/CO/2 of 17 March 2006, para. 48; Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 of 22 October 2010, para. 63(c); Committee on the Rights of the Child, Concluding observations: Philippines, CRC/C/15/Add.259 of 21 September 2005, para. 54.

¹² Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Uruguay, CRC/C/URY/CO/3-5 of 4 February 2015, para. 42(c)

¹³ Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Mauritius, CRC/C/MUS/CO/3-5 of 4 February 2015, para. 48; Committee on the Rights of the Child, Concluding observations on the consolidated third and fourth periodic reports of India, CRC/C/IND/CO/3-4 of 13 June 2014, para. 60

¹⁴ Committee on the Rights of the Child General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14 of 29 May 2013, para. 80

¹⁵ Committee on the Rights of the Child General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14 of 29 May 2013, para. 81

parents the Committee on the Rights of the Child has recommended that “procedures and criteria [are developed] to provide guidance to all relevant persons in authority for determining the best interests of the child in every area and for giving it due weight as a primary consideration.”¹⁶ This process of balancing should be made on an individual basis¹⁷ involve consideration of “the overall conditions of the prison context and the particular need for parent-child contact during early childhood”¹⁸ and the potential impacts of any non-custodial alternatives.¹⁹

Given the complexity of these decisions there is a need for international guidance on best interests assessments.²⁰ Such guidance should be developed jointly by the UN Office on Drugs and Crime (UNODC), UNICEF and the Office of the High Commissioner for Human Rights (OHCHR). The guidance should draw on the Committee on the Rights of the Child’s General Comment No.14 and on the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)’s General Comment No.1 on children of incarcerated carers, in particular its five point test for assessing a child’s best interests when sentencing their caregiver.²¹

Children of Incarcerated Parents or Carers: Not Only Children of Incarcerated Mothers

Because the aim is to uphold the rights of the child and to pursue their best interests the standards and protections should apply to children of incarcerated mothers, fathers or alternative carers equally. In recognition of this the recommendations issued by the Committee on the Rights of the Child following their Day of General Discussion on Children of Incarcerated Parents refer to caregivers as well as parents.²² The Human Rights Council resolution on the

¹⁶ Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Jamaica, CRC/C/JAM/CO/3-4 of 4 February 2015, paras.22-23;

¹⁷ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 33

¹⁸ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 37. Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Mauritius, CRC/C/MUS/CO/3-5 of 4 February 2015, para. 48; Committee on the Rights of the Child, Concluding observations on the consolidated third and fourth periodic reports of India, CRC/C/IND/CO/3-4 of 13 June 2014, para. 60

¹⁹ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 30

²⁰ For further analysis of best interests assessments for children of parents facing detention and children of incarcerated parents see Jean Tomkin (Quaker United Nations Office, 2009) Orphans of Justice: In search of the best interests of the child when a parent is imprisoned: A Legal Analysis

²¹ The African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013), adopted by the Committee at its twenty-second Ordinary Session (04 - 08 November, 201), para. 36

²² Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011

rights of the child, adopted after this Day of General Discussion, also refers to sole or primary care-givers.²³

Similarly, the ACERWC, in General Comment No. 1, extends the protections in Article 30 of the African Charter on the Rights and Welfare of the Child to the children of any caregiver facing incarceration “under whose custody a child is placed either under recognized formal arrangements or informal mechanisms available in a given society.”²⁴ The wider application is recognized in the Bangkok Rules which state that “as the focus includes the children of imprisoned mothers, there is a need to recognize the central role of both parents in the lives of children. Accordingly, some of these rules would apply equally to male prisoners and offenders who are fathers.”²⁵

Ensuring the Rights of Children of Incarcerated Parents: Guidance for States

This section of the Briefing Paper contains the developing body of guidance on how States should implement international standards in order to prevent the violation of the rights of children of incarcerated parents and limit the harms they face.

States could avert the negative impacts of parental incarceration by seeking to address the root causes of offending, including by resourcing and supporting targeted programmes to tackle the root causes of offending and provide preventive and early intervention services to families at risk.²⁶

At all stages of a parent or carer’s contact with the criminal justice system States should:

- provide support for children of incarcerated parents, including counselling, psychological treatment, social support²⁷ and protection from increased risk of violence²⁸

²³ Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(a)

²⁴ The African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013), adopted by the Committee at its twenty-second Ordinary Session (04 - 08 November, 201), para. 13.1

²⁵ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Preliminary Observations, para. 12

²⁶ Committee on the Rights of the Child, Concluding observations: Australia, CRC/C/AUS/CO/4 of 28 August 2012, para. 73(b)

²⁷ Committee on the Rights of the Child, Concluding observations: Australia, CRC/C/15/Add.268 of 20 October 2005, para 41; Committee on the Rights of the Child, Concluding observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4 of 20 October 2008, para. 45(d); Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Mauritius, CRC/C/MUS/CO/3-5 of 4 February 2015, para.48

²⁸ United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, contained in E/CN.15/2014/L.12/Rev.1 of 15 May 2015, para. 34(l)

- respect the child’s right to information, including providing timely information about transfers between prisons²⁹
- respect the child’s right to have their views taken into account in decisions affecting them³⁰
- prevent stigmatization and discrimination against children with one or both parents in prison,³¹ including through protection of the child’s right to privacy³²

A) When a parent or carer is arrested

All actors involved in the process and at all its stages (including law enforcement, prison service professionals, and the judiciary) should take into account the rights of the children.³³

Protocols should be developed for law enforcement personnel to follow when a child will be present at the time of arrest of their parent and for informing children not present at time of arrest.³⁴

B) Preventing Separation

Avoid the birth of babies in prison (or by prisoners) through the use of non-custodial alternatives to incarceration for pregnant women.³⁵

²⁹ Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(e). Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 44. Committee on the Rights of the Child, Concluding observations: Australia, CRC/C/AUS/CO/4 of 28 August 2012, para. 73(d)

³⁰ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 41.

³¹ Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(d). Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 33; Committee on the Rights of the Child, Concluding observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4 of 20 October 2008, para. 45(d).

³² Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 36

³³ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 32; United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, contained in E/CN.15/2014/L.12/Rev.1 of 15 May 2015, para. 34(l)

³⁴ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 31

³⁵ Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(a). United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Resolution para. 9, Rule 64. Committee on the Rights of the Child, Concluding observations on the combined third, fourth and fifth periodic reports of Hungary, adopted by the Committee at its sixty-seventh session (1 – 19 September 2014), CRC/C/HUN/CO/3-5 of 14 October 2014, para. 43; Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Iraq, CRC/C/IRQ/CO/2-4 of 4 February 2015, para. 57(a)

Prevent separation through the use of non-custodial alternatives to incarceration for parents and caregivers, including at the pre-trial stage.³⁶ To facilitate this States should “review all judicial and administrative arrangements to prevent imprisonment by providing support services to families at risk and use diversion and other alternative measures”.³⁷

Enable parents and carers to make arrangements for childcare prior to admission to prison, including through suspension of detention.³⁸

C) Children born to prisoners

Provide appropriate pre-natal and post-natal accommodation and care in the prison and ensure that, wherever possible, babies are born in a hospital outside the prison.³⁹ Ensure healthcare for pregnant women in prison is in line with the Kyiv Declaration on Women’s Health in Prison and associated guidance⁴⁰ and the Bangkok Rules.⁴¹

D) Children residing in prison

³⁶ Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(a). United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Resolution para. 9, Rule 64. Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 30. Concluding observations of the Human Rights Committee: Norway, CPR/C/NOR/CO/5 of 25 April 2006, para. 16. Committee on the Rights of the Child, Concluding observations: Burundi, CRC/C/BDI/CO/2 of 19 October 2010, para.63; Committee on the Rights of the Child, Concluding observations: Ethiopia, CRC/C/ETH/CO/3 of 1 November 2006, para. 50; Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 of 22 October 2010, para. 63(b); Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Mauritius, CRC/C/MUS/CO/3-5 of 4 February 2015, para.48; Committee on the Rights of the Child, Concluding observations on the combined third, fourth and fifth periodic reports of Hungary, adopted by the Committee at its sixty-seventh session (1 – 19 September 2014), CRC/C/HUN/CO/3-5 of 14 October 2014, para. 43; Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Iraq, CRC/C/IRQ/CO/2-4 of 4 February 2015, para. 57(a); Committee on the Rights of the Child, Concluding observations on the consolidated third and fourth periodic reports of India, CRC/C/IND/CO/3-4 of 13 June 2014, para. 60

³⁷ Committee on the Rights of the Child, Concluding observations: Australia, CRC/C/AUS/CO/4 of 28 August 2012, para. 73(a)

³⁸ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 2(2)

³⁹ Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 23(1)

⁴⁰ World Health Organization Regional Office for Europe and United Nations Office on Drugs and Crime, Women’s Health in Prison: Correcting Gender Inequity in Prison Health (Copenhagen, 2009)

⁴¹ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010

Develop and implement guidelines on children residing in prison, covering age of the children, the length of stay, contact with the outside world and movement in and outside the prison, with a view to limiting the stay to situations in which it is in the child's best interests.⁴²

Ensure living conditions for children residing in prison with a parent are safe,⁴³ adequate for the child's physical, mental, moral and social development, including access to health and education services.⁴⁴ This should include enabling the caregiver to spend the maximum amount of time possible with their child.⁴⁵ To facilitate this the environment, facilities and services for children in prison should be as close as possible to that outside prison.⁴⁶ Children should be screened by a child health specialist on entry to the prison.⁴⁷

⁴² Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(b). Committee on the Rights of the Child, Concluding observations: Bolivia, CRC/C/15/Add.256 of 11 February 2005, para. 40; Committee on the Rights of the Child, Concluding observations: Iran (Islamic Republic of), CRC/C/15/Add.254 of 31 March 2005, para. 52; Committee on the Rights of the Child, Concluding observations: Mexico, CRC/C/MEX/CO/3 of 8 June 2006, para. 40; Committee on the Rights of the Child, Concluding Observations: The Plurinational State of Bolivia, CRC/C/BOL/CO/4 of 16 October 2009, para. 66; Committee on the Rights of the Child, Concluding observations: Nepal, CRC/C/15/Add.261 of 21 September 2005, para. 52.

⁴³ United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, contained in E/CN.15/2014/L.12/Rev.1 of 15 May 2015, paras. 38(d) and (g)

⁴⁴ Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(b). Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on "Children of Incarcerated Parents", 30 September 2011, para. 34. Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Uruguay, CRC/C/URY/CO/3-5 of 4 February 2015, para. 42(a); Committee on the Rights of the Child, Concluding observations: Burundi, CRC/C/BDI/CO/2 of 19 October 2010, para.63; Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 of 22 October 2010, para. 63(a); Committee on the Rights of the Child, Concluding observations: Philippines, CRC/C/15/Add.259 of 21 September 2005, para. 54; Committee on the Rights of the Child, Concluding observations: Thailand, CRC/C/THA/CO/2 of 17 March 2006, para. 48; Committee on the Rights of the Child, Concluding observations: Bolivia, CRC/C/15/Add.256 of 11 February 2005, para. 40; Committee on the Rights of the Child, Concluding observations: Iran (Islamic Republic of), CRC/C/15/Add.254 of 31 March 2005, para. 52; Committee on the Rights of the Child, Concluding observations: Mexico, CRC/C/MEX/CO/3 of 8 June 2006, para. 40; Committee on the Rights of the Child, Concluding Observations: The Plurinational State of Bolivia, CRC/C/BOL/CO/4 of 16 October 2009, para. 66; Committee on the Rights of the Child, Concluding observations: Nepal, CRC/C/15/Add.261 of 21 September 2005, para. 52; Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Iraq, CRC/C/IRQ/CO/2-4 of 4 February 2015, para. 57(b). United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 9

⁴⁵ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 50

⁴⁶ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 51(2)

⁴⁷ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 9

Ensure that any searching of children is done sensitively and in a way which respects the dignity of the child.⁴⁸

Ensure that children residing in prison can maintain relationships with the parent who is not incarcerated and other family members.⁴⁹

Provide a nursery staffed by qualified professionals to care for infants when they are not in the care of their mothers in the prison.⁵⁰

End the use of disciplinary segregation for parents whose infants reside in prison with them.⁵¹

E) Children separated due to parental incarceration

Ensure that removals from prison, when deemed to be in the best interests of the child, take place with sensitivity and only when all necessary arrangements have been made for alternative care (including through the involvement of consular officials in the case of foreign nationals).⁵²

Ensure that children can maintain a relationship with their incarcerated parent (where this is in the child's best interests), including by supporting children in alternative care to maintain a relationship with their incarcerated parent (or parents).⁵³ Regular visits should be available and

⁴⁸ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 21

⁴⁹ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on "Children of Incarcerated Parents", 30 September 2011, para. 37

⁵⁰ Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 23(2). United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 42

⁵¹ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 22

⁵² United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rules 52(2) and 54(2)

⁵³ Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(c). Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on "Children of Incarcerated Parents", 30 September 2011, paras. 35 and 38. Committee on the Rights of the Child, Concluding observations: Australia, CRC/C/AUS/CO/4 of 28 August 2012, para. 73(c); Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Switzerland, CRC/C/CHE/CO/2-4 of 4 February 2015, para. 53; Committee on the Rights of the Child, Concluding observations on the fifth periodic report of Sweden adopted by the Committee at its 68th session (12 – 30 January 2015), CRC/C/SWE/CO/4 of 4 February, para. 35; Committee on the Rights of the Child, Concluding observations: Bolivia, CRC/C/15/Add.256 of 11 February 2005, para. 40; Committee on the Rights of the Child, Concluding observations: Iran (Islamic Republic of), CRC/C/15/Add.254 of 31 March 2005, para. 52; Committee on the Rights of the Child, Concluding observations: Mexico, CRC/C/MEX/CO/3 of 8 June 2006, para. 40; Committee on the Rights of the Child, Concluding observations: Nepal, CRC/C/15/Add.261 of 21 September 2005, para. 52; Committee on the Rights of the Child, Concluding observations: Philippines, CRC/C/15/Add.259 of 21 September 2005, para. 54; Committee on the Rights of the Child, Concluding Observations: The Plurinational State of Bolivia,

must take place in a manner that respects children’s dignity and privacy.⁵⁴ A policy of holding parents in the closest appropriate facility to their children should be adopted, with support provided to children who have to travel long distances to visit their parents.⁵⁵ Child friendly visiting should be provided, this includes tailoring the timing and environment; locations outside the prison and extended visits should be used where possible.⁵⁶ To enable support for these relationships and to ensure the safety of such children their names, dates of birth, location and guardianship status should be recorded during the parent’s admission to prison.⁵⁷

Prohibition of family contact must not be used as a disciplinary measure.⁵⁸

In addition to visiting, where possible, regular contact through phone, video conferencing and other means should be facilitated.⁵⁹

CRC/C/BOL/CO/4 of 16 October 2009, para. 66; Committee on the Rights of the Child, Concluding observations: Thailand, CRC/C/THA/CO/2 of 17 March 2006, para. 48; Committee on the Rights of the Child, Concluding observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4 of 20 October 2008, para. 45(d); Committee on the Rights of the Child, Concluding observations: Australia, CRC/C/15/Add.268 of 20 October 2005, para 41; Committee on the Rights of the Child, Concluding observations on the combined third, fourth and fifth periodic reports of Hungary, adopted by the Committee at its sixty-seventh session (1 – 19 September 2014), CRC/C/HUN/CO/3-5 of 14 October 2014, para. 43; Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Mauritius, CRC/C/MUS/CO/3-5 of 4 February 2015, para.48. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 52(3)

⁵⁴ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 38. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 21

⁵⁵ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 40. Committee on the Rights of the Child, Concluding observations on the fifth periodic report of Sweden adopted by the Committee at its 68th session (12 – 30 January 2015), CRC/C/SWE/CO/4 of 4 February, para. 35. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rules 4 and 26.

⁵⁶ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 39. Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Switzerland, CRC/C/CHE/CO/2-4 of 4 February 2015, para. 53; Committee on the Rights of the Child, Concluding observations on the fifth periodic report of Sweden adopted by the Committee at its 68th session (12 – 30 January 2015), CRC/C/SWE/CO/4 of 4 February, para. 35. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 28

⁵⁷ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 3

⁵⁸ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 23

⁵⁹ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 46.

Provide and oversee adequate alternative care for children separated by parental imprisonment or removed from prison in line with the UN's Guidelines for the Alternative Care of Children.⁶⁰

F) Children of parents sentenced to death

Not carry out death sentences on mothers who have a child they are caring for.⁶¹

Ensure all children whose mothers have been executed are released into a safe care environment.⁶²

Uphold the child's right to information regarding the location and status of their parent.⁶³

Ensure that children whose parents or parental caregivers are on death row receive adequate information about a pending execution, to enable a last visit or communication with the convicted person.⁶⁴ States should return the body to the family for burial or inform them where the body is located.⁶⁵

G) Release and reunification

Support the reestablishment of family relationships for incarcerated parents prior to release through the use of home leave, open prisons and other measures.⁶⁶

⁶⁰ United Nations Guidelines for the Alternative Care of Children, A/RES/64/142 of 24 February 2010. Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on "Children of Incarcerated Parents", 30 September 2011, para. 42. Human Rights Committee, Concluding observations on the third periodic report of the Plurinational State of Bolivia, CCPR/C/BOL/CO/3 of 6 December 2013, para. 20. Committee on the Rights of the Child, Concluding observations: Bolivia, CRC/C/15/Add.256 of 11 February 2005, para. 40; Committee on the Rights of the Child, Concluding observations: Iran (Islamic Republic of), CRC/C/15/Add.254 of 31 March 2005, para. 52; Committee on the Rights of the Child, Concluding observations: Mexico, CRC/C/MEX/CO/3 of 8 June 2006, para. 40; Committee on the Rights of the Child, Concluding observations: Saudi Arabia, CRC/C/SAU/CO/2 of 17 March 2006, para. 70; Committee on the Rights of the Child, Concluding observations: Nepal, CRC/C/15/Add.261 of 21 September 2005, para. 52; Committee on the Rights of the Child, Concluding Observations: The Plurinational State of Bolivia, CRC/C/BOL/CO/4 of 16 October 2009, para. 66; Committee on the Rights of the Child, Concluding observations: Philippines, CRC/C/15/Add.259 of 21 September 2005, para. 54; Committee on the Rights of the Child, Concluding observations: Thailand, CRC/C/THA/CO/2 of 17 March 2006, para. 48.

⁶¹ Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Iraq, CRC/C/IRQ/CO/2-4 of 4 February 2015, para. 57(c)

⁶² Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 of 22 October 2010, para. 63(d)

⁶³ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on "Children of Incarcerated Parents", 30 September 2011, para. 44

⁶⁴ Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(f).

⁶⁵ Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(f).

⁶⁶ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 45

In order to implement these recommendations States should collect data and undertake research to better understand the domestic situation.⁶⁷ All professionals coming into contact with children of incarcerated parents should be trained to provide support the child may need.⁶⁸ States should seek technical assistance from UNICEF and other UN bodies, among others, to enable the implementation of these recommendations.⁶⁹

Next Steps

The following activities would strengthen these standards and support implementation:

- Adoption of the proposed revisions to the Standard Minimum Rules for the Treatment of Prisoners, which include specific reference to the best interests of the child in decisions regarding when a child should be in prison with a parent;⁷⁰
- Preparation of guidance jointly by UNODC, UNICEF and OHCHR on how to make best interests of the child assessments in relation to sentencing of parents and carers and in relation to decisions regarding children residing in prisons

Recommendations for the Congress

To achieve these recommendations we call on those participating in the Congress to:

- include the rights of children of prisoners in discussions under relevant agenda items and workshops; and
- recommend, in the declaration, the development of guidance on best interests assessments in relation to decisions affecting children of prisoners.

⁶⁷ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 45. Committee on the Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Switzerland, CRC/C/CHE/CO/2-4 of 4 February 2015, para. 53. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 68

⁶⁸ Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on “Children of Incarcerated Parents”, 30 September 2011, para. 47. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) A/Res/65/229 of 21 December 2010, Rule 33(3)

⁶⁹ Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Uruguay, CRC/C/URY/CO/3-5 of 4 February 2015, para. 42(d); (Committee on the Rights of the Child, Concluding observations: Philippines, CRC/C/15/Add.259 of 21 September 2005, para. 54) (Committee on the Rights of the Child, Concluding observations: Sudan, CRC/C/SDN/CO/3-4 of 22 October 2010, para. 63(e)) (Committee on the Rights of the Child, Concluding observations: Thailand, CRC/C/THA/CO/2 of 17 March 2006, para. 48)

⁷⁰ Report on the meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners held in Cape Town, South Africa, from 2 to 5 March 2015, E/CN.15/2015/17 of 9 March 2015



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