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**Human Rights Council**

**Forty-fouth session**

June–July 2020 (TBC)

Agenda item 3

**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

Written statement[[1]](#footnote-2)\* submitted by Friends World Committee for Consultation, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 June 2020]

**Friends World Committee for Consultation Written Statement for the Annual Panel Discussion on Technical Cooperation and Capacity Building: Upholding the Rights of Prisoners**

Friends World Committee for Consultation (Quakers) welcomes the opportunity to discuss the rights of detained populations in the Human Rights Council and wishes to draw attention to a group whose rights and needs remain overlooked: children of incarcerated parents. The rights violations faced by children of incarcerated parents can be compounded by criminal justice systems that do not notice of their existence, or do not see their rights as relevant considerations. This group of children includes those detained with their parent and those separated from them. Though there is a growing understanding in both the UN’s human rights and criminal justice and crime prevention bodies that all aspects of criminal justice systems must take the rights of children into account, we wish to emphasise the fact that the lack of specific, detailed guidance on this group of children leaves a significant gap in the protection of these rights.

Though children of incarcerated parents are referred to in both the Bangkok Rules and the Nelson Mandela rules, a lack of guidance hinders the provision of technical assistance and capacity building in this area. The inclusion of several provisions relating to the rights of this group of children in both sets of rules marked a significant moment in the recognition of their individual needs and rights. Nonetheless, without practicable implementation guidance, these rights will continue to remain elusive to many children in this situation.

The development and publication of a UN Handbook on children of incarcerated parents with input from UN Office on Drugs and Crime, UNICEF and OHCHR would support technical assistance and capacity building.

Our recent International Standards Briefing Paper collates up-to-date developments in this area, outlining the key issues and applicable UN guidance.[[[2]](#footnote-3)]

We draw attention to the Committee on the Rights of the Child’s ongoing input to the protection of the rights of children of incarcerated parents in their Recommendations to States: this significant body of precise recommendations is collated and analysed our paper, and could serve as an outline of key issues for a Handbook. Additionally, the 2019 Global Study on Children Deprived of their Liberty provided a landmark contribution, dedicating a chapter to the situation of Children Living in Prison with their Primary Caregiver.[[[3]](#footnote-4)] This chapter contains 23 recommendations to States, reinforcing many of the recommendations made by the Committee on the Rights of the Child as well as by the regional human rights systems.

Regional human rights systems have continued to provide clear guidance in this area. The African Commission of Experts on the Rights and Welfare of the Child (ACERWC) remains the only human rights treaty with explicit provision for children of incarcerated parents in a stand-alone article relating to the specific risks they face. Furthermore, the ACERWC published its first General Comment, in 2013, on children of incarcerated parents and primary caregivers.[[[4]](#footnote-5)] In 2018, the Council of Europe published a specific recommendation providing detailed guidelines to States on the treatment of children with imprisoned parents.

The overarching principle is that the best interests of the child should be taken into account as a primary consideration in all decisions relating to the detention of someone with caring responsibilities. The requirement to do so is enshrined in the Convention on the Rights of the Child, and elaborated upon in the Committee on the Rights of the Child’s General Comment no.14 of 2013, which makes specific reference to the best interests of children of incarcerated parents.[[[5]](#footnote-6)] In practice, this means that best interests assessments should be incorporated into all stages of a parent’s interaction with criminal justice systems, from the point of arrest, to sentencing decisions.:

Given that the aim is to uphold the rights of the child and protect their best interests, the standards and protections must apply to all children of incarcerated parents and alternative caregivers, regardless of the parent or caregiver’s gender. 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. The Human Rights Council resolution on the rights of the child, adopted after this Day of General Discussion, also refers to sole or primary caregivers.[[[6]](#footnote-7)]

**Complementing the Bangkok Rules - Implementation Guidance for States:**

The following recommendations are core elements of the protection of the rights of children of incarcerated parents, and build upon the relevant provisions of the Bangkok Rules, providing more specific and detailed guidance aimed at facilitating implementation. All are rooted in existing standards and could form the basis of a Handbook to support their full implementation.

It is essential to note that States could avert the negative impacts of the incarceration of a child’s parent or caregiver by seeking to address the root causes of offending, including by resourcing and supporting targeted programmes which tackle the root causes, and provide preventive and early interventions.

***Rule 48, proper care – including healthcare and nutrition - for infants and their parents, including in pregnancy:***

Avoid the birth of infants in prison, or by prisoners, through the use of non-custodial alternatives to incarceration for those who are pregnant.[[[7]](#footnote-8)]

Ensure that where those in prison are pregnant, appropriate antenatal and post-natal care is provided.[[[8]](#footnote-9)]

Babies should, as far as possible, be born in hospitals outside of prison. Where a birth does occur inside a prison or other detention facility, the birth must be registered as quickly as possible and the place of detention must not be listed on the birth certificate as the place of birth.

Infants should be given the opportunity to bond with their parent, immediately after birth and beyond that point, including through skin-to-skin contact and breastfeeding.[[[9]](#footnote-10)]

***Rule 49, best interests of the child in deciding whether a child should reside with their parent in prison:***

Aim to prevent separation by using non-custodial alternatives to detention for parents and caregivers, including at the pretrial stage, as required in Paragraph 9 of the Preamble to the Bangkok Rules.[[[10]](#footnote-11)] The 2019 Global Study on Children Deprived of their Liberty recommends a ‘presumption against a custodial sentence or measure for primary caregivers.’[[[11]](#footnote-12)] Parents and caregivers must be able to make alternative arrangements for childcare prior to their admission to prison.[[[12]](#footnote-13)]

Develop and implement guidelines on children residing in prisons, including on age of the children, the length of stay, contact with the outside world and movement in and outside the prison, with a view to mitigating the potential harm of residing in prison whilst retaining the focus on individual assessment. Such national guidelines are a good opportunity for States to undertake State-to-State capacity building.

***Rule 50, parents residing in prison with their child to spend as much time as possible with that child:***

Enable parents and caregivers to spend the maximum amount of time possible with their child, and to exercise parental responsibility as far as possible, including the preparation of meals, and dressing their children for nursery school attendance. To facilitate this, ensure that the environment, facilities and services for children in prison are as close as possible to that outside prison.

***Rule 51, ensuring that children living in prison experience an environment as close as possible to that outside, and receive ongoing healthcare provision:***

Ensure living conditions for children residing in prison with a parent are safe, and adequate for the

child’s physical, mental, moral and social development, including access to health and education services, and toys and facilities which enable the enjoyment of their right to play. Ensure that children residing in prison have direct access to natural light and open-air spaces. All facilities and services must include disability-specific services, and support which meets the needs of foreign nationals and those who do not speak the State’s official language(s).

Children who are living in prison must be allowed and assisted to maintain an ongoing relationship with other family members outside of prison.

Parents living in prisons with their child must have access to a nursery fully staffed by qualified professionals, to care for their children when not in the care of their parent.

Under no circumstances must the separation of a parent from their child be used as a disciplinary tool in prisons.

***Rule 52, protecting the best interests of the child on a case-by-case basis in decisions about separating them from their parent, and ensuring ongoing communication when separation occurs:***

Wherever possible, ensure that primary caregivers are released from prison at the same time as their child. Where this is not possible, 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). Begin preparation for the separation of a child from their primary giver as soon as possible, in order to best prepare the child and their parent for this potentially traumatic incident.

Where children are separated from their parent due to incarceration, it must be ensured that the child can maintain a relationship with their incarcerated parent (where this is in the child’s best interests), including children in alternative care.

Regular visits must be available, and they must take place in a way which respects the child’s dignity and privacy. This includes the full facilitation of visits for children with disabilities and the guarantee that any security checks carried out on children are undertaken in a child-friendly manner, respecting their dignity and privacy (as required in Rule 21).

Parents should be held in the closest appropriate facility to their children, including for the children of foreign nationals, and support must be provided to children who have to travel long distances to visit their parents.

**Conclusion**

The growing body of guidance outlined above would prove more useful and implementable to States collated and expanded upon in a Handbook which could guide their actions in the area of the protection of children of incarcerated parents. Upholding the rights of children of incarcerated parents can involve complex best interests assessments, for example in decisions regarding whether or not a child should reside in prison – and there is an urgent need for technical assistance and capacity building for decision makers on the factors to be take into account in such decisions.

We urge the Human Rights Council to do more to draw attention to and monitor human rights in the context of criminal justice systems, and we hope that this panel forms a useful starting point for further discussions.

1. \* Issued as received, in the language(s) of submission only. [↑](#footnote-ref-2)
2. Lucy Halton and Laurel Townhead (2020), Children of Incarcerated Parents: International Standards and Guidelines (Quaker United Nations Office, Geneva). [↑](#footnote-ref-3)
3. Manfred Nowak, The United Nations Global Study on Children Deprived of their Liberty (2019). [↑](#footnote-ref-4)
4. The African Committee of Experts on the Rights and Welfare of the Child, *General Comment No.1 on Article 30 of the African Charter on the Rights and Welfare of the Child: Children of incarcerated and imprisoned parents and primary caregivers* (2013). [↑](#footnote-ref-5)
5. 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). [↑](#footnote-ref-6)
6. Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37of 19 April 2012. [↑](#footnote-ref-7)
7. For full sources, see endnote 55 of QUNO’s 2020 paper ‘Children of Incarcerated Parents: International Standards and Guidelines’ <https://quno.org/sites/default/files/resources/QUNO%20-%20Children%20of%20Incarcerated%20Parents%20-%20Intl%20Standards%20and%20Guidelines_02032020.pdf> [↑](#footnote-ref-8)
8. See also Rules 28 and 29 of the Mandela Rules. [↑](#footnote-ref-9)
9. Manfred Nowak, The United Nations Global Study on Children Deprived of their Liberty, Chapter 10, Section 5, para. 15 [↑](#footnote-ref-10)
10. For full sources, see endnote 50 of QUNO’s 2020 paper ‘Children of Incarcerated Parents: International Standards and Guidelines’ <https://quno.org/sites/default/files/resources/QUNO%20-%20Children%20of%20Incarcerated%20Parents%20-%20Intl%20Standards%20and%20Guidelines_02032020.pdf> [↑](#footnote-ref-11)
11. Manfred Nowak, The United Nations Global Study on Children Deprived of their Liberty, Chapter 10, Section 5, para. 6. [↑](#footnote-ref-12)
12. 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); Committee on the Rights of the Child, Concluding Observations: United Kingdom, (2016), para. 54(a). [↑](#footnote-ref-13)