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

Written statement* submitted by the Friends World Committee for Consultation (Quakers), 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.

[10 February 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Children of incarcerated parents

- 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

Friends World Committee for Consultation (Quakers) welcomes the increasing attention being given by the United Nations to the rights and needs of children faced with the arrest, detention or imprisonment of one or both parents.

In September 2011, the Committee on the Rights of the Child took 'children of incarcerated parents' as the topic for its Day of General Discussion (DGD).² The unprecedented numbers and the interest of the participants demonstrated clearly that this is an issue of global concern, affecting millions of children, on which many are seeking greater knowledge and guidance. 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.

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'.³ 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 of them. For many, the removal and detention of a parent is a negative experience, with implications for their future well being.⁴ 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;

¹ Scotland's Commissioner for Children and Young People, DGD written submission, p1

² The written submissions and other materials relating to the Day of General Discussion are available at <http://www2.ohchr.org/english/bodies/crc/discussion2011.htm>

³ Action for Prisoners' Families, DGD written submission, p4

⁴ Associazione Comunità Papa Giovanni XXIII, DGD written submission, p2

4. Risk of distance from incarcerated parent; and
5. Risk of descent into antisocial behaviour.⁵

More specifically, children may experience impacts including:

- physical and mental health impacts related to separation and other aspects of parental incarceration;⁶
- 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 incarcerated parents.⁷

‘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.’⁸

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 their other 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 Day of General Discussion, 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 in *Collateral Convicts* by Oliver Robertson.⁹ Unfortunately, these steps too often depend on the interest and involvement of individual prison staff or non-governmental organisations (NGOs), rather than institutionalised good policy and practice.¹⁰

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 such children. They include:

⁵ Prison Fellowship International, DGD written submission, p3

⁶ In the UK, these children suffer from serious mental health problems at three times the rate of their peers: Families Outside, DGD written submission, p2

⁷ Ann Skelton, DGD plenary presentation and Families Outside, DGD written submission, p2

⁸ Families Outside, DGD written submission, p2

⁹ Oliver Robertson: *Collateral Convicts: Recommendations and good practice for children of incarcerated parents – Findings from the UN Committee on the Rights of the Child Day of General Discussion 2011* (Quaker UN Office, Geneva).

¹⁰ Gwyneth Boswell and Peter Wedge, DGD written submission, p1

- 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.¹¹
- 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 and 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.¹² Some children may not need or wish to use specialist intervention or support, but all children 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.¹³
- Non-custodial measures should be prioritised when children will be affected, including pre-trial, so as to prevent the negative impact on children of having a parent in prison.¹⁴
- Parents involved in the criminal justice process should not be humiliated in front of their children.¹⁵
- All officials who may come into contact with children of incarcerated parents should receive guidance and training in how to respond to them.¹⁶

Potential good practice

Even though the USA is not a party to the Convention on the Rights of the Child, an example of good practice is the 'Bill of Rights for Children of Incarcerated Parents' developed by children there.

¹¹ Jean Zermatten, Committee on the Rights of the Child member and Chair, oral intervention DGD plenary

¹² ICRC, DGD written submission, p1

¹³ Rebecca Cheung, POPS, DGD oral intervention WG2

¹⁴ Ann Skelton, DGD plenary presentation

¹⁵ EUROCHIPS, personal communication to Oliver Robertson, Quaker UN Office, Geneva

¹⁶ Peter Wedge, University of East Anglia, DGD oral intervention WG2

The rights are:

- 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 labelled because my parent is incarcerated;
- To a lifelong relationship with my parent.¹⁷

Much more information and many further recommendations and examples of potential good practice are available from *Collateral Convicts* by Oliver Robertson, and the Report on the Day of General Discussion by the Committee on the Rights of the Child.

FWCC (Quakers) calls on States to take account of children when a parent comes into conflict with the law by:

- routinely and consistently gathering statistics about children of incarcerated parents to inform the development of policy and practice;
- developing and implementing laws and policies to ensure that the best interests of the child is taken into account whenever a parent comes into contact with the criminal justice system;
- giving priority to non-custodial measures (pre-trial and at sentencing) when dealing with a child's sole or primary carer;
- supporting children in maintaining a relationship with their incarcerated parent unless it is not in their best interests to do so;
- preventing discrimination and stigmatisation of children of incarcerated parents and providing them with the support and assistance they require; and
- providing training to all those within the criminal justice and penal system in the rights and needs of children of arrested and incarcerated parents.

¹⁷ From Family and Corrections Network website, available at:
<http://www.fcnetwork.org/Bill%20of%20Rights/billofrights.pdf> (accessed 23 January 2012)