COMMITTEE ON THE RIGHTS OF THE CHILD
30 SEPTEMBER 2011

REPORT AND RECOMMENDATIONS OF THE DAY OF GENERAL DISCUSSION ON "CHILDREN OF INCARCERATED PARENTS"

I. BACKGROUND

1. The annual Days of General Discussion of the Committee on the Rights of the Child seek to foster a deeper understanding of the contents and implications of the Convention as they relate to specific articles or topics. On 30 September 2011, the Committee devoted its Day of General Discussion (DGD) to the topic of: **"Children of incarcerated parents"** and sought to raise awareness about and explore child rights issues related to children of incarcerated parents. It also aimed to provide policy and practical guidance to States and other relevant actors on the respect, promotion and fulfilment of the rights of children in such situations.

2. The discussions focussed specifically on children affected by the deprivation of liberty of their parent(s), in the context of the criminal justice system and their specific rights and needs. Based on the above, the discussions proceeded along two main lines in corresponding Working Groups. The first addressed the rights of "babies and children living with or visiting a parent in prison". The second addressed the rights of "children left outside when their parent is incarcerated". Under those two overarching categories, the main points of discussion addressed included: the impact on children of a parent's involvement with all stages of the criminal justice process, including arrest, investigation, pre-trial measures, trial and sentencing, imprisonment, release and reintegration into the family and community; the general impact of parental imprisonment on a child's life; and coping with a parent in cases involving capital punishment.

II. SUMMARY

3. Mr. Jean Zermatten, Chair of the Committee, opened the Day of General Discussion with an introductory Statement. He highlighted several key areas of concern such as family issues, including the right of the child to be raised by his/her two parents; the right of the child to have his/her view taken into account and his/her right to development and non-discrimination. While emphasising the importance of considering legislative frameworks that could be put in place to ensure that the rights of children in such situations are respected, it was underscored that the inherent dignity of children and their best interests had to be the primary consideration in addressing situations in which their needs were not met. Proceeding from the Chair's introductory Statement, five further Panellists provided presentations to frame the discussions of the DGD.

4. Mr. Abdullah Khoso, National Programme Manager on Juvenile Justice from the Society for the Protection of the Rights of the Child (SPARC), Pakistan, highlighted the difficulties faced in many countries where the rights of babies and children living with their incarcerated parents have neither been taken into consideration nor respected. He went on to elaborate on the realities of overcrowded prisons, poor living conditions and the unavailability of health services and educational facilities resulting in violations of children's rights. The isolation of children, with limited access to the outside world, was also highlighted as a frequent cause of their rights being directly or indirectly violated. He emphasised the need for a legislative framework that would address issues of children at the outset of a situation related to or leading to a parent being incarcerated, including procedures and rules for their protection during the arrest procedure as well as on all issues arising there from. It was further suggested

that alternative care arrangements that meet minimum international standards should be made for abandoned children whose parents are incarcerated. Where such institutions are required to care for the affected child, the importance of it being located in proximity of the prisons to facilitate meetings with the parents is a further important consideration.

5. Ms. Ann Skelton, Director of the Centre for Child Law in South Africa, emphasised the multiple detrimental effects to which children of incarcerated parents are subject. These include the psychological effects of separation, risk of relationship breakdown, risk of the child being taken into care, financial difficulties, children being more vulnerable to neglect and abuses, and difficulties in visiting. Ms. Skelton also elaborated on the legal framework for addressing such situations in South Africa. This included the African Charter on the Rights and Welfare of the Child, with its specific clause on "children in prison with their mothers", and the "M vs State case (2007)[1]" in which the South African Constitutional Court passed a judgment that took into full account the best interests of the child and how the concept should be applied in cases where the child's primary carer is being sentenced, which give rise to competing rights. For example, if a possible imprisonment of the parent would be detrimental to the child, then a court is obliged to give due consideration to possibilities for a non-custodial sentence, while noting that the severity of the offence committed by the parent would be a further determining factor. Such reasoning when it comes to sentencing also values the principle of restorative justice and can help balance the rights of all parties involved, including the children and society at large. Ms. Skelton concluded by emphasising that the best interests of the child should be the central consideration at all stages of the process relating to the incarceration of a parent.

6. Ms. Isabel Altenfelder Santos Bordin, Head of the Social Psychiatry Division of the Federal University of Sao Paulo, Brazil, elaborated on the risk factors for children`s health and the mental health of the incarcerated parent(s). It was emphasised that there are both beneficial and deleterious aspects to children being permitted to reside with their incarcerated parent. Beneficial aspects include the fostering of the mother-child relationship and the reduced likelihood of children being sent to shelters or abandoned. The effects of strict penitentiary rules and frequent interpersonal conflicts involving the parent on the child's development and well-being were some of the deleterious aspects highlighted. It was also emphasised that residing with the incarcerated parent could be beneficial to the child, subject to the living and psycho-socio conditions present. The risks of maternal anxiety and depression are further important factors that must be considered as they can contribute to otherwise avoidable emotional and behavioural problems for children. With regard to living conditions, the availability of a nursery room for breastfeeding, special sections for pregnant women and a day-care centre were cited as examples of best practices.

7. Sian Knott and Raheel Hussein, youth representatives from the United Kingdom and participants in the COPING Project on the mental health of children of prisoners, presented insights from peer-to-peer research conducted among children with incarcerated parents. Ms. Knott highlighted the potential trauma that a child is subject to when sudden and unexpected arrest occurs in the child's presence. She also elaborated on the difficulties faced by children with the uncertainty and lack of information that often follows arrest and/or detention of the child's parent, emphasising the strains caused also by what is often a long waiting period that precedes a meeting with the parent post-arrest. Further elaborating on issues relating to this,

[1] The M vs State case (2007) was on a woman, who was the primary caregiver to three children, had been convicted of a series of frauds and was facing imprisonment. It was ground-breaking as the majority of the court had avoided the narrow thinking that offenders with children should not be (more) mildly sanctioned. Instead, the court focused on the child's rights to parental care and the best interest principles. The woman was sentenced to a period of correctional supervision and the sentence included community service and paying back to victims instead of a custodial sentence which would have negatively affected her child.

Mr. Hussein underscored the particular difficulties with the detention and/or uncertainty that occurs prior to a trial. Both youth representatives emphasised the need for viable changes that would lead to significantly greater respect for the rights of children in such situations. Examples of concrete improvements that could readily be implemented in this regard include: ensuring prison staff are trained on and monitored on the dignified treatment of children during their visit(s) to their parent(s); allowing for privacy, to the greatest extent possible, during such visits; permitting more regular and frequent visits specifically for children of incarcerated parents; providing more child-friendly settings for visits. Concluding, Ms. Knott and Mr. Hussein highlighted the need for measures that address the isolation to which children of incarcerated parents are frequently subjected, as well as absence of information sharing and mutual support networks.

Working group 1 on "Babies and children living with or visiting a parent in prison"

8. Framing the overall considerations in this thematic category, it was emphasised that children of incarcerated parents have the same rights as other children and that these children should not be treated as if they are in conflict with the law as a result of the actions of their parent(s).

9. The discussions proceeded to consider the multiplicity of ways in which children were affected by the detention of their parents. In this context, it also considered the resources that could be used to ensure the respect for and fulfilment of the rights of children of incarcerated parents. In doing so, examples of best practices in taking these into account were also discussed. Further issues discussed included the existence and implementation of legal frameworks designed to deal with the situation of children of incarcerated parents living with the parent in prison.

10. It was reaffirmed that every child has the right to stay and grow up with his/her parent(s). Furthermore, a child has the fundamental right to grow up in a family and social environment conducive to his/her development. Decisions in relation to this should always be made on an individual basis and with due consideration to the best interests of the child(ren) affected.

11. There was also consensus on the importance of considering alternatives to parental detention when considering possible sentences or pre-trial measures, in situations where detention would negatively affect the rights of the incarcerated person's child(ren). The need to give due consideration to all possible alternatives, such as living with other family members or community-based initiatives, prior to placing a child in a detention facility with his/her parent was also underscored. Such alternatives should be stringently assessed on an individual basis and in accordance with the Guidelines for the Alternative Care of Children, while taking into account the best interests of the child, as institutionalised care might not always be a suitable alternative for children.

12. Where the child is residing with the incarcerated parent, it was also emphasised that adequate and sufficient services, such as health care, education, food and playgrounds, should be provided to children at such facilities. Additionally, it was emphasied that context-adapted support should be provided to incarcerated parents to assist them in better fulfilling their role as parents within the constraints of the incarceration situation. It was further emphasised that, where applicable, it is important for a child living in a detention facility to be supported in remaining in contact with the "non-incarcerated" parent and other family members.

13. With regards to babies living with an incarcerated mother, the rights of pregnant women to have adequate prenatal and postnatal care should be addressed. The optimal duration for breastfeeding should also be taken into consideration during sentencing and/or other decisions concerning mothers. The importance of ensuring compliance with the right of children, born in such facilities, to birth registration and nationality was also highlighted.

14. Concerns were also raised with regards to security matters and policies that often undermine the rights of the child. The rights of affected children should be regarded as a relevant factor in determining the security policy concerning incarcerated parents, including with regard to the proportionality of the measures in relation to areas that would affect the interaction with affected children. It was suggested that for this purpose, among others, prison officers should be specifically trained on human rights, including gender sensitivity and the rights of the child. Such training should be institutionalized and conducted regularly. The need for awareness-raising on children's rights to extend beyond correctional facilities and to the judiciary was also emphasised.

15. The issue of a minimum and maximum age limit for a child to live with his/her incarcerated parent was also discussed. There was agreement that determining a fixed age for this was not likely to be viable and could even result in the lowering of the protection standard for children in some States.

16. The need for further detailed consideration and research on the specific difficulties impacting children of parents accused of a capital crime, on death row or executed vis-a-vis the best interests of the children was also highlighted.

17. Concluding, the group reiterated that the overall lack of research on the topic of children of incarcerated parents was regrettable and further resources should be allocated to addressing this.

Working Group 2 on "Children left 'outside' when their parent is incarcerated"

18. The main issues considered by the DGD's second working group included: arrest and pre-trial measures as well as court and sentencing with due regard to the rights of affected children; contact with the incarcerated parent(s); support for children living separated from their incarcerated parent(s); and, release and reintegration related issues.

19. The rights of children of incarcerated parents to information should be taken into full account. This includes addressing the right to contact and/or information also being a right of the child and not merely that of the parent(s), as is often perceived. Children of incarcerated parents, it was stated, both benefit from and have a right to be told the truth about their parent's situation, in an age-appropriate manner.

20. The need for proper recording of the existence and number of children of incarcerated parents was emphasised. This should be done early in the criminal justice process and information shared appropriately to enable appropriate support for the children, with due regard to the children's right to privacy and mindful of the need to avoid discrimination or stigma towards children identified as having incarcerated parents.

21. The frequent neglect of children's rights in the context of arrest and pre-trial situation of a parent was underscored. In this context, it was suggested that law enforcement professionals should be provided with and trained on a child-rights compliant protocol for situations involving the arrest of parent(s) and/or primary care-givers of children. Such a protocol could reduce the risk of the children being subject to significant trauma. Additionally, and echoing the suggestions of Working Group 1 above, the need for mandatory, regular and updated training on children's rights for law enforcement, judiciary and other professionals working with/for children of incarcerated parents was reiterated.

22. Children dependent on a parent in prison should be taken into account whenever decisions are made about the parent, from the point of arrest onwards, including by the judges dealing with

the case. The impact of any proposed sentence on the children should be taken into consideration at point of sentencing. In this process, the right of the child to information about the parents' whereabouts should be respected. Additionally, the provision of information about helplines and available support networks was also highlighted.

23. Issues relating to the accessibility of detention facilities were also discussed. Wherever possible, the related distance and travel costs should not impede children from visiting their incarcerated parent(s), including when a parent is incarcerated in another country. Visiting rights of the child should be taken into account when a parent is sentenced or transferred between prisons. Financial or logistical support should also be provided to families who cannot visit parents because the prison is too far away. The possibilities for considering technology-based remedies to such situations, including telephone and video conferencing to help sustain the relationship between a parent and child during incarceration, were also suggested.

24. Visiting conditions were highlighted as an area of major concern. The need for due consideration and good faith efforts to be made in providing a visit context that was respectful to children's dignity, right to privacy and which is child-friendly and conducive to positive child-parent interaction for children of different ages were emphasised. It was also suggested that the appointment of children's officers and/or children's ambassadors in incarceration facilities could be considered.

25. It was reiterated that the best interests of the child must be the paramount consideration in determining if visits are appropriate- having due regard to situations where this may not be the case, including when the incarcerated parent had committed a violent act or an act of abuse against the child.

26. Other key concerns discussed emphasised that family visits, or their revocation, should not be used as a pressure tool to punish or induce behaviour from the incarcerated parent, for instance in the context of interrogation and investigation. In instances involving capital punishment, the children as well as the families and lawyers of the incarcerated parent should be informed as to the date of execution in advance, be allowed a private final contact visit and have remains returned to them following execution.

27. It was emphasised that when children change home or carer, the relevant provisions of the Guidelines for the Alternative Care of Children should be followed. Particular consideration should be given to children at risk of becoming homeless or living in other situations of similar vulnerability.

28. The impact of parental incarceration on other aspects of a child's life, including education, finances and relationships with others, especially where the parent's offence is known and the children face stigma, were all discussed as additional issues. The difficulties children face following the release of a parent, in rebuilding and redefining their relationship with the released parent, may also require additional support.

III. RECOMMENDATIONS

29. The Committee notes with appreciation the valuable input of all the panelists and participants of its 2011 Day of General Discussion. In pursuance of the objective of providing policy and practical guidance to States and other relevant actors on the respect, promotion and fulfilment of the rights of children in such situations, and taking into account the discussions at the DGD, the Committee recommends the following:

Alternatives to detention

30. **The Committee emphasises that in sentencing parent(s) and primary caregivers, non-custodial sentences should, wherever possible, be issued in lieu of custodial sentences, including in the pre-trial and trial phase. Alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impacts of different sentences on the best interests of the affected child(ren).**

Effects of incarceration of parents on children

31. **The Committee recommends that States parties ensure that the rights of children with a parent in prison are taken into account from the moment of the arrest of their parent(s) and by all actors involved in the process and at all its stages, including law enforcement, prison service professionals, and the judiciary.**

32. **The Committee also calls upon States parties to identify best practices for arrest procedures that are compliant with human rights and the rights of the child. These should serve as the basis for establishing and implementing a protocol for law enforcement in situations where the arrest of a parent(s) occurs in the presence of their child, and for suitably informing and supporting children not present at the arrest.**

Children's right to development and non-discrimination

33. **The Committee emphasises that children of incarcerated parents have the same rights as other children. The Committee further recommends that measures be taken to ensure that children in such situations are protected from stigmatisation. These children have themselves not come into conflict with the law. Every child has the right to be with their parent as well as the right to family life and a social environment conducive to their development. In this context, the Committee recommends that decisions on whether the best interests of the child are better respected by having the child live with the incarcerated parent or outside the detention facility should always be made on an individual basis.**

For Children living with incarcerated parent(s)

34. **The Committee recommends that State parties ensure the provision of sufficient social services at an adequate quality, including, health and educational facilities, to children living with incarcerated parent(s).**

For Children left outside when their parent is incarcerated

35. **The Committee reiterates State parties obligation under the Convention to respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests[2].**

[2] Article 9 (3) Convention on the Rights of the Child

Right to privacy

36. **Recognising the stigmatisation to which children of incarcerated parents are often subject, particularly in the case of more serious offences, and the responsibility of the media in this regard; the Committee recommends that State parties enact and enforce privacy protection legislation that is in full compliance with the rights of children of incarcerated parents.**

Family issues

For Children living with incarcerated parent(s)

37. **The Committee recommends that State parties give due consideration to circumstances in which the best interests of the child may be better fulfilled by having him/her live with the incarcerated parent. In doing so, due consideration to the overall conditions of the incarceration context and particular need for parent-child contact during early childhood should be taken into full account. Furthermore, it is recommended that such decisions be made with the option for judicial review and with full consideration for the best interests of the child. As children have the right to contact with both parents, it is further recommended that in instances where such accommodation within an incarceration context is decided upon, contact with the parent living outside the detention facility and other family members should be facilitated by the State party.**

For Children left outside when their parent is incarcerated

38. **The Committee emphasises that children have the right to regularly visit their parent(s), if this is in their best interests. In this context, the Committee recommends that measures be taken to ensure that the visit context is respectful to the child's dignity and right to privacy.**

39. **The Committee urges States parties to ensure that security matters and policies on incarcerated parents take into account the rights of affected children. In this context, the Committee recommends that State parties ensure the right of children to regularly visit their incarcerated parent(s). It further recommends that, wherever possible, State parties provide for such visits to occur in a child friendly environment, including by allowing visits at times that do not negatively interfere with other elements of the child's life, such as schooling, and for durations conducive to building or maintaining strong relationships. Consideration should also be made to permitting visits to take place outside the detention facility, with a view to facilitating necessary emotional bonding between the child and the incarcerated parent(s) in a child-friendly environment.**

40. **The Committee recommends State parties to take into account the right of the child to visit their parent(s) whenever a parent is sentenced and incarcerated. In doing so, the State party should seek, wherever possible, to situate the incarcerated parent at a facility close to his/her child to facilitate the child's right to visit and contact the parent. Where the incarceration location results in significant distance and/or related travel and subsistence costs, States parties are urged to facilitate and/or subsidise travel and other costs related to the visit.**

Respect for the views of the child

41. **The Committee recommends that States parties and relevant actors take into full account the rights of the child to have his/her view taken into account in all decisions affecting the child.**

Alternative care

42. **In situations where the incarceration or other involvement of a parent with the criminal justice system would result in the child(ren) changing home or carer, temporarily or permanently, the Committee recommends that the Guidelines for the Alternative Care of Children[3] be consulted and followed.**

Finances

43. **Aware that incarceration can remove eligibility for State financial and other support, and that this can have negative impacts on the children of those incarcerated, the Committee recommends to State parties that the removal of support should occur on an individual basis and that the best interests of the child(ren) should be a primary consideration when making such decisions.**

Information sharing

44. **Emphasising that children have the right to information regardless of whether the child was present at the time of the arrest, and that State Parties have the duty to ensure that a request for information or the sharing of information has no adverse consequences for the person(s) concerned while taking into account the best interests of the child; the Committee recommends that State parties provide the parent or, if appropriate, other members of the family with essential information concerning the whereabouts of the incarcerated parent, particularly in situations involving capital punishment, as well as details about available support for the children. It further recommends that such information be provided in a child-friendly manner and in different languages and formats if necessary.**

45. **The Committee recommends that State parties collect and maintain records of the number of children of incarcerated parents, both those accompanying parents into detention and children who remain on the outside during a parent's detention, and make such information available in a format and in such ways as will help the provision of such support as is needed to the children.**

Alternative means of communication

46. **Supplemental to the above mentioned right of the child to visit his/her incarcerated parent, the Committee recommends that State parties facilitate, as far as technically possible, further regular contact between the child and the incarcerated parent(s) through telephone, video-conference and other means of communication and ensure that any associated costs are non-prohibitive.**

Training of professionals

47. **The Committee recommends that professionals working with/ for children at all stages of the criminal justice process, as well as other professionals such as teachers and social workers who may come into contact with children of incarcerated parents, be trained to appropriately provide any needed support to children of incarcerated parents.**

[3] U.N. General Assembly, 64th Session. Guidelines for the Alternative Care of Children (A/RES/64/142). 24 February 2010. Available at: http://www.unicef.org/french/videoaudio/PDFs/100407-UNGA-Res-64-142.en.pdf.

IV. CONCLUSION

48. Reiterating its appreciation to the participants and contributors to its 2011 DGD, the Committee emphasises the need for due consideration to be given to the above recommendations in all situations involving children of incarcerated parents. In addition to the above recommendations, the Committee further re-emphasises the need for all States parties and relevant actors to take into full account and comply with the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders or "Bangkok Rules" adopted by the United Nations General Assembly on 21 December 2010[4].

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[4] UN General Assembly, 65th Session. United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules). 6 October 2010. Available at: http://www.unhcr.org/refworld/docid/4dcbb0ae2.html.