



Convention on the Rights of the Child

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Summary record of the 1659th meeting

Held at the Palais Wilson, Geneva, on Friday, 30 September 2011, at 3 p.m.

Chairperson: Mr. Zermatten
later: Ms. Lee (Vice-Chairperson)
later: Mr. Zermatten

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The meeting was called to order at 3.10 p.m.

Day of general discussion (*continued*)

Rights of children of incarcerated parents (continued)

1. **The Chairperson** invited the Committee members to split into two working groups, one of which would concentrate on babies and children who lived with a parent in prison or visited them, while the other would look at children left “outside” when one of their parents was incarcerated.
2. *Ms. Lee (Vice-Chairperson) took the Chair.*
3. **The Chairperson** invited the participants to resume the discussion of the first working group,* devoted to babies and children who lived with or visited a parent in prison. She drew attention to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), which had recently been adopted by the General Assembly.
4. **Ms. Giannotta** (Terre des hommes, Italy) said that legislation in Italy on relations between mothers in detention and their children had been amended in 2011. “Protected family houses” of the kind promoted by many NGOs as an alternative to prison were supposed to have been the keystone of the amendment but, in the absence of implementing regulations and an operating budget, they had not yet been established.
5. **Ms. Calle** (Juvenile judge, Milan Appeals Court) said that only about 50 children lived in prison with their mothers in any given year in Italy but that 40,000 children had parents in prison, with whom they maintained a sporadic relationship. The juvenile courts in Italy dealt little with such matters but, where appropriate, could impose alternative sentences to imprisonment, such as house arrest, on mothers until their children had reached the age of 6 years. In practice, however, such provisions were difficult to implement. Although the legislative reform had not been a complete success, it had institutionalized the principle of establishing alternative centres for mothers accompanied by their children.
6. Two recommendations could be made in the light of experience in Italy: States should ensure that they had the means to implement legislation, and fathers should be covered by the same provisions as mothers when the latter were deceased or did not have custody of their children.
7. **Mr. Sands** (Legal adviser, Association for the Prevention of Torture) said that national preventive mechanisms and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were mandated to visit places of deprivation of liberty in order to verify whether or not torture or ill-treatment was inflicted. Greater cooperation between the national preventive mechanisms and the Committee on the Rights of the Child would help improve its understanding of the situation of children.
8. **Mr. Koukoui** (International Catholic Child Bureau, Côte d’Ivoire) drew attention to the issue of the registration of children born in prison. To state the birthplace when registering the birth of such children could penalize them. Failure to register births and the potential statelessness of children born to migrant women in detention, who made up one third of children living with their mothers in detention in Côte d’Ivoire, gave rise to other problems.
9. **Ms. Brett** (FWCC Quakers) said that the issue of the registration and nationality of children born to migrant women in prison and, hence, of support for such children when

* The work of the second working group was not covered in a summary record.

they left prison had been addressed during drafting of the Bangkok Rules but were mentioned only briefly in the final version.

10. With regard to visits, it was highly unlikely in practice that foreign detainees could be visited by their children. The matter required closer study, and particular attention should be paid to the use of information technology to enable detainees to maintain a relationship with their children.

11. She supported the idea of non-custodial sentences for mothers until their children had reached the age of 8 years, which could be taken up in a recommendation by the Committee.

12. The maximum age until which a child could be kept in custody with a parent should be determined on a case-by-case basis, depending on the situation of the child and parent, and the type of prison, in line with the principle of the best interests of the child. Guidelines on the factors to be taken into consideration in that regard would be useful.

13. **Mr. Mulumba** (International Catholic Child Bureau, Democratic Republic of the Congo) said that the situation of pregnant women in prisons should be taken into account in any recommendations.

14. **Ms. Mazzucato** (Catholic University of Milan) said that in Italy many inmates who were migrants or from disadvantaged backgrounds did not reveal that they had children for fear of their removal from their care. Recommendations emerging from the discussion should include one aimed at fostering cooperation and the exchange of information between prison authorities and child welfare services.

15. It should also be demonstrated that respect for the rights of the child, the need for security and the aims of criminal justice were not incompatible. Universities and research institutes should collect data establishing the causal link between good practice with regard to respecting the rights of children of incarcerated parents and efforts to prevent recidivism.

16. A recommendation should also be made on the unique situation of children whose imprisoned parents were members of criminal organizations based on family networks, such as the mafia in Italy.

17. **Ms. Salmon** (Action for Prisoners' Families, England and Wales) said that her association worked with the Ministries of Justice and Finance and the Departments of Education and Health and closely monitored projects and programmes for inmates' families and the training of prison staff. Such cooperation between the institutions was comparatively new and reflected the realization of the role families played in the rehabilitation of inmates upon their release from prison.

18. **Mr. Raikes** (University of Huddersfield, United Kingdom) said that it was sometimes prison staff that proved to be the most hostile to family visits and that it had been proven that employing staff specifically to deal with visits reduced prison security problems.

19. Mothers in detention often did not get on well with welfare officers, who generally did not visit them in prison, which did nothing to smooth the process of their release. Efforts had been made in some detention centres to break that vicious circle by encouraging social workers to visit their facilities and build bonds of trust with the detained mothers.

20. **Mr. Khoso** (Society for the Protection of the Rights of the Child (SPARC), Pakistan) said that funding of services for children who lived in prison with an incarcerated parent should be the responsibility of institutions such as ministries of human rights or social welfare. The rights of the child should be a standard component of curricula in prison staff colleges.

21. With regard to the age until which a child might remain in prison with his or her mother, it would be better to establish a range rather than setting a maximum age. Each State could then specify the age best suited to its own situation because, in some countries, children were left defenceless when no longer allowed to remain with their mothers in prison.
22. **The Chairperson** said that it might well be appropriate to establish an age range as an international standard to which States could refer.
23. **Ms. Dillon** (University of Plymouth, United Kingdom) said that establishing an international standard on the maximum age until which children might live with their parents in detention was less of a priority than the need to register all births.
24. **The Chairperson** said that the status of children whose parents were in prison, especially in the case of children of foreign nationals, needed to be studied.
25. It would also be useful to request the international community to conduct a worldwide study on the situation and number of children living in prison with one of their parents.
26. **Ms. Bates** (Susila Dharma International, Canada) said that efforts should be made to protect the unborn child and safeguard the rights of the pregnant mother. In some countries, future mothers did not know until just before giving birth whether they would do so in prison or in hospital and whether they would be allowed to keep their newborn child with them.
27. **Mr. Fleischner** (Bambini Senza Sbarre, Italy) said that the Ministry of Education should take an active interest in children whose parents were in prison because education was of prime importance in the matter. Children whose parents were in detention needed help and guidance. The truth was frequently kept from children with an incarcerated parent, who were led to believe that the parent in question was in hospital or had left to work abroad.
28. **The Chairperson** said that another area worth looking at could be support provided to women in prison, for example through legal advice and the action of social workers. It would be also interesting to look into ways of reconciling the best interests of the child with prison security requirements relating to visits, to study the issue of support for pregnant women and to consider appropriate training for prison officials.
29. **Ms. Rossi** (Comunità Papa Giovanni XXIII, Geneva) said that the issue of children with disabilities whose parents were held in custody should also be addressed.
30. **Ms. Philbrick** (European Network for children of imprisoned parents (Eurochips)) said that everything possible should be done to dissuade families from lying to children about the imprisonment of their father or mother because lying had a considerable psychological impact on children.
31. **Mr. Koukoui** (International Catholic Child Bureau, Côte d'Ivoire) said that the bureau had managed to halve the number of children staying with their mothers while they were held in custody by persuading them to leave their older children with close relatives or to find them a foster family.
32. **Mr. Mwaba** (Grandissons ensemble – International Catholic Child Bureau (BICE), Democratic Republic of the Congo) said that the prison environment was dangerous, had the potential to lure children into crime and had a major psychological and social impact on them. It would therefore be better for children to be kept away from prisons, and legislators should be urged to draft laws allowing women with preschool-age children to serve their sentences at home.

33. **Mr. Janussi** (Luxembourg) said that it could be argued that a child should be kept with its mother in detention at first, especially if it was born while she was in detention. At 15 to 18 months, the child reached a stage of development that was hardly compatible with the prison environment. He would therefore support a recommendation designed to explore any options that would save children from being kept in prison with their inmate parents and which, at any rate, set the limit at 15 to 18 months. Such issues and the necessary funding should be a matter for whichever ministry was responsible for child protection.
34. **Ms. Sloth-Nielsen** (African Committee of Experts on the Rights and Welfare of the Child) said that as part of a major project being conducted by the Soros Foundation, especially in sub-Saharan Africa, prison population studies carried out showed that the number of people held in pretrial detention was out of proportion to the number of convicts.
35. The ministries responsible for prisons, the conditions of which often failed to meet inmates' basic needs, clearly did not have the necessary resources to fund special units for mothers and their children.
36. Countries that had reformed their justice systems had frequently ignored children's issues. The Committee could draw up a recommendation encouraging all United Nations agencies involved in judicial reform activities to bear in mind the issue of children living with a parent held in detention.
37. **Ms. Wijemanne** said that States should take the necessary steps to ensure that the courts gave priority to cases involving pregnant women or women with young children, in order to prevent them being kept in pretrial detention for protracted periods.
38. **Ms. Meyers** (NGO Group for the Convention on the Rights of the Child) said that it would be very helpful if the Committee addressed the issue of children living with an imprisoned parent in the general comment it was currently preparing on the principle of the best interests of the child. The issue of the child's development and ability to understand the situation when one of his or her parents was serving a prison sentence should also be studied.
39. **Ms. Hutton** (University of Cambridge, United Kingdom) said that, in the United Kingdom, the number of visits detainees could receive was often linked to their behaviour, which flew in the face of children's right to maintain regular personal contact with both parents.
40. **Ms. Huber** (Penal Reform International, United Kingdom) said that the funding of services for children living in prison with a detainee parent should be shared by an institution such as a ministry of human rights, which would monitor the children's situation, and a supervisory body that would have established guidelines or criteria governing the presence of children with their parents in prison. Penal Reform International would like the Committee to make a recommendation that the Bangkok Rules, which had been drafted from a woman's perspective, should be implemented. The Committee might also recommend that donors should provide long-term funding for the projects of NGOs so that they did not find themselves compelled to interrupt them midway because resources had dried up and thus to make repeated appeals for fresh funding.
41. The issue of children living with a parent on death row or who had been sentenced to life imprisonment should be subjects of a study.
42. **Mr. Cardona Llorens** said that, as far as possible, States should be urged to favour non-custodial sentences where the offender had a child under 8 years of age in their care. That basic principle should be applied systematically in the case of pretrial detention.
43. **Ms. Krenn** (SOS Children's Villages International) said that there was every reason to be concerned by the fact that, in many countries around the world, prison regulations

made it difficult for children to visit their parents in prison. Furthermore, when parents were held in a facility located far from their child's place of residence, the cost of travel or the long distances involved posed additional obstacles to the right of children to visit their parents in prison. Such visits were generally not considered a valid reason for absence from school and children were thus subject to disciplinary action by schools.

44. **Ms. Shankardass** (Penal Reform International, United Kingdom) said that the harmful effects of the imprisonment of a parent on children and the family unit should be thoroughly investigated, taking particular account of the length of detention and the child's age. If the Committee concluded that prisons were an unsuitable environment for children, it would have to suggest an alternative – in some parts of the world, living conditions in foster homes were even worse than in prisons.

45. According to a study conducted by Penal Reform International, few judges were truly aware of what prisons were like. Raising the awareness of judicial personnel, the police and prison staff must therefore not be confined to courses of theory but include visits to bring them face to face with the particularly difficult living conditions in prisons.

46. **Ms. Enroos** (University of Tampere, Finland) said that statistics on children in prison with their mothers should be collated not only by research institutes, but also by national bodies, and that children detained with their mothers should also be able to see their fathers. In Finland, matters were further complicated by the fact that, when the mother was in prison, the father often was as well.

The meeting was suspended at 4.25 p.m. and resumed at 4.55 p.m.

47. **Mr. Madi** said that mothers with children of up to 2 years of age should not be sent to prison, since they might still be breastfeeding. He was against setting an upper age limit for children above which their mothers could be imprisoned.

48. **Ms. Shankardass** (Penal Reform International, United Kingdom) also said that it would be inappropriate to set such an age limit. It would, however, be useful to establish, in consultation with child development specialists, guidelines for the care of children whose mothers were in detention, to which the police, judges and prison officials could refer. That would allow them to take fully informed decisions on a case-by-case basis. Consideration should be given to the situation of 8–10-year-olds with disabilities who were sometimes detained with their mothers.

49. **Mr. Janussi** (Luxembourg) said that the incarceration of children with one of their parents must depend on the opportunities offered in a given detention centre for the development of children of that age.

50. **Mr. Khoso** (Society for the Protection of the Rights of the Child (SPARC), Pakistan) said that one recommendation should address the issue of parents held in detention abroad and the role of NGOs in gaining access to them and to detention facilities, as well as looking at institutions that offered alternative forms of childcare.

51. **Ms. Koursoumba** (Commissioner for Children's Rights, Cyprus) said that priority should go to reform of the justice system and to ensuring balance between the public interest and the best interests of the child. It would also be more prudent to speak in terms of the interest of the "person responsible for the child" rather than the interest "of the mother", who might be deceased.

52. **Ms. Boswell** (University of East Anglia, United Kingdom) said that, as far as the need to balance criminal justice priorities with child protection was concerned, inspiration could be drawn from the African Charter on the Rights and Welfare of the Child and its approach to the incarceration of persons with dependent children, whereby the sentencing court was required to provide alternative care arrangements for the child concerned.

53. **Ms. Verzivoli** (International Baby Food Action Network) said that pregnant women and lactating women could not be left out of the equation and that States should be urged to establish a range of services for children inside prisons, including health care and educational playgrounds.

54. **Ms. Brett** (FWCC Quakers) said that everything possible should be done to find alternatives to custodial measures for parents, not just at the sentencing stage, but also during trial proceedings.

55. **Mr. Raikes** (University of Huddersfield, United Kingdom) said that emphasis should be placed on the importance of visits to parents in detention and, in that context, of respect for family privacy and the ability of parents and their children to have physical contact in a way that did not compromise prison security. States should also be urged to ensure that women in conflict with the law were treated properly by social workers.

56. **Mr. Khoso** (Society for the Protection of the Rights of the Child (SPARC), Pakistan) said that particular attention should be paid to children with special needs and to the protection of children throughout judicial proceedings involving their mothers.

57. **Ms. Philbrick** (European Network for children of imprisoned parents (Eurochips)) said that visits to parents in prison must be adapted to the needs of the child.

58. **Ms. Huber** (Penal Reform International, United Kingdom) said that it had been proven that maintaining links between parents in detention and their children helped the parents to reintegrate and rejoin society.

59. Officials responsible for placing someone in detention should enquire immediately whether the person concerned had any dependent children. That principle should apply to all places of detention, not merely prisons.

60. **Ms. Shankardass** (Penal Reform International, United Kingdom) said that public officials involved in the arrest, placement in remand custody and application of sanctions and prison sentences should receive more solid and thorough training in the rights of the child.

61. **Ms. Giannotta** (Terre des hommes, Italy) said that States should be encouraged to combat all forms of discrimination against female migrants in places of detention.

62. **Ms. Hutton** (University of Cambridge, United Kingdom) said that States should ensure that children were involved in decision-making on their placement in alternative care centres when their mothers were imprisoned and should be consulted on how they wished to manage visits to their detained parents.

63. **Ms. Thompson** (Penal Reform International, United Kingdom) said that, with regard to the right to visit parents held in detention, a recommendation should be made compelling States to facilitate children's access to their mothers incarcerated in a different city from that in which the children lived.

The meeting was suspended at 5.30 p.m. and resumed at 5.40 p.m.

64. *Mr. Zermatten resumed the Chair.*

65. **The Chairperson** invited the two rapporteurs to present the preliminary recommendations that had resulted from the deliberations of the working groups.

66. **Ms. Al-Asmar** (Rapporteur for the first working group) said that discussion of the situation of babies and children living with or visiting a parent in prison had been most rewarding and had resulted in several recommendations. The discussion had highlighted the need to focus on non-custodial measures, including during remand or pretrial detention.

The need to take children into account at the time of a person's arrest and to involve them in decision-making had also been underlined.

67. The question of who would be responsible for overseeing such children, and the issue of interministerial coordination, needed to be looked at closely. The participants had also addressed the need for justice reform in order to reconcile the interests of the State, the child and the main caregiver. Justice for women in detention, including improved legal counselling, and the relationship with social workers, had also been discussed.

68. Participants had recommended looking at training for all officials who came into contact with children living in prison, the need to reconcile the demands of criminal justice with child protection and the needs of children with disabilities. Some speakers had stressed the need to combat the social stigma affecting persons in detention and to draw the media's attention to the issue, to refrain from lying to children about the fate of detained parents and to keep them informed of their expected release date, until which time contact between them should be promoted. The need for research and reliable statistical data had been stressed and the appropriateness of setting age limits for a child's life in prison with their parents had been debated. It had been recommended that States parties should be urged to abide by the Bangkok Rules and to review the services available to children in places of detention, particularly in terms of health care, education, food and playgrounds. Lastly, the organization of visits, special treatment for pregnant or lactating women, birth registration, nationality and civil rights had all been discussed.

69. **The Chairperson** said that the Committee would undertake a thorough review of those preliminary recommendations and adopt a final draft in January 2012.

70. **Ms. Herczog** (Rapporteur for the second working group) said that the working group's recommendations on children left "outside" when one of their parents was incarcerated dealt with the care that should be provided to such children before their parents' arrest, during their pretrial detention, trial proceedings and prison term, and, finally, after their release from prison. In general terms, speakers had expressed the need to respect the dignity of children and to combat any discrimination and stigmatization they might suffer, the nature of which depended on the type of offence the parent had committed. In that context, it had been recommended that the best interests of the child and his or her point of view should be taken into account, without adopting a one-size-fits-all approach and with particular attention to the special needs of indigenous and foreign children and those from ethnic minorities.

71. The right to visit incarcerated parents in order to maintain contact between them and their children, and related arrangements had also been discussed, not to mention the associated risk of children being used for illicit purposes, such as smuggling objects into prison.

72. Some good practices had been identified, such as the presence of specialized social workers at the time of arrest to reassure children or shield them from witnessing painful scenes.

73. Participants had also discussed how children whose parents were in prison were perceived, since they themselves sometimes ended up being viewed as criminals. The fact that parents in detention often lost custody of their children had also been the subject of debate.

74. Regarding measures aimed at enabling children to be heard and informed, it had been suggested that children and parents should be involved in the drafting of protocols and guidelines to be followed by the police and judicial officials. The question had also been raised as to who should inform the child of the arrest of his or her parent, and in what manner. It had been agreed that such children should receive information in their own

language, where possible from sources not exclusively tied to prison services. Children whose parents had been sentenced to death should be entitled to make a last visit to their parent, to see the body and to be assured that the parent would receive a proper burial.

75. The participants had stressed the importance of taking children's age into account in order to spare their feelings, and the need to develop rules for the police in cases where the child witnessed the parent's arrest. Family consultation and the assessment of children's needs had also been raised.

76. Discussion had also covered the need for research on the subject, in which children would be involved, and for statistical data from around the world. The urgency of training professionals working with children, especially teachers, as well as judges, prosecutors and the police, had also been discussed.

77. Participants had also stressed the importance of establishing a set of standard minimum rules for the treatment of children whose parents were incarcerated and of carrying out a needs-based assessment for each child. Use should be made of all human rights mechanisms in order to promote the best interests of the child.

78. The separation of parents from their children while the former were in prison and its impact on the latter had been discussed, as had the matter of the financial assistance required to facilitate regular visits and maintain contact between parents and their children. In that regard, the conclusion had been that modern communication technologies, such as videoconferences, should be harnessed, especially where the child and the parent were not in the same country.

79. The financial impact of imprisonment of a parent on other family members, who in such cases often lost their main breadwinner, had been discussed, as had the psychological, vocational and social rehabilitation of detainees after their release from prison. Lastly, the positive as well as negative role of the media, had also been raised.

80. **Ms. Lee**, speaking as Rapporteur for the day of general discussion, thanked the participants and said that the discussion had resulted in a better understanding of the measures required to meet the needs of such children, about whom there was virtually no data. In particular, the importance of non-custodial and other measures designed to foster contact between children and an incarcerated parent had emerged from the discussion. Decision-making in that regard should be guided by the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), adopted in December 2010. The discussion had also highlighted the need to reconcile the public interest with the best interests of the child, which too often took a back seat.

81. **The Chairperson**, after the customary exchange of courtesies, announced that the next day of general discussion would be held in September 2012 and would be devoted to the topic of migrant children.

The meeting rose at 6 p.m.