



Convention on the Rights of the Child

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Summary record of the 1658th meeting*

Held at the Palais Wilson, Geneva, on Friday, 30 September 2011, at 10 a.m.

Chairperson: Mr. Zermatten

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* No summary records were issued for the 1656th or 1657th meetings.

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The meeting was called to order at 10.05 a.m.

Day of general discussion

The rights of children of incarcerated parents

1. **The Chairperson** said that the incarceration of parents raised several children's rights issues, particularly on the legislative and humanitarian fronts, which in turn raised questions about sentencing policy and practice. Parent-child relations were accorded prime importance in the Convention on the Rights of the Child, and the incarceration of parents infringed a child's right, inter alia, to be brought up by both parents. The issue was whether the courts should not give equal weight to the best interests of the child and to public security and should therefore seek to hand down non-custodial sentences when the fate of children was at stake.
2. **Mr. Khoso** (Society for the Protection of the Rights of the Child of Pakistan) said that the problems which he would outline, although based on the situation in Pakistan, applied to many other countries as well. The best interests of children who accompanied their mothers in prison were neither taken into consideration nor upheld, since that arrangement was not provided for in public policy or the law. Nonetheless, in violation of the Constitution, those children were deprived of their liberty and other fundamental rights. Mothers sometimes had no choice but to take the child with them to prison, however, since no alternative care was provided and they were often abandoned by their relatives.
3. Few studies had been conducted into the effects on children of accompanying their mothers in detention centres. Officially, children could stay with their mothers in prison only up to the age of 6, but sometimes they remained until they were as old as 10 because nobody could be found to take care of them outside of prison. Overcrowding, poor living conditions and inadequate medical attention affected children's health, but the most common problem was the loneliness and isolation that children endured in the unnatural setting of prison life. Because of the social stigma surrounding imprisonment, such children were rarely visited and were often abandoned by their fathers.
4. Educational activities were scarce. Those that were offered were usually provided by NGOs, but often only in the large cities and on a short-term basis. Boys over the age of 6 were supposed to receive schooling in the juvenile sections of prisons, and measures needed to be taken to make sure that they were protected from abuse at the hands of older male prisoners. The organization SOS Children's Villages had set up some alternative care institutions for children over 6 who had nowhere else to go while their mothers were in prison, but, unfortunately, not in every city. Another problem was that children of prisoners were not taken into due consideration in budget allocation procedures.
5. In the light of those problems, he recommended that a legal framework should be developed to protect children from the moment of a parent's arrest and throughout the time that they lived in prison. More female probation officers were required to monitor the conduct of women prisoners who had children with them, and funds should be allocated for legal assistance to poor women prisoners. Trial procedures should be expedited and the probation and bail system strengthened, with special emphasis on the development of non-custodial alternatives for offenders who were parents in order to protect children from social stigma and uphold their rights. In addition, appropriate institutions should be set up near prisons to care for children whose mothers could not look after them in prison or who had been abandoned by their incarcerated parents. The issue of children whose parents had been detained in other countries or under his country's blasphemy laws also needed to be addressed during the general discussion.
6. **Ms. Skelton** (Centre for Child Law, University of Pretoria of South Africa) said that the incarceration of parents had a number of negative psychological and practical effects on

children. The Convention on the Rights of the Child did not specifically address the issue, but article 30 of the African Charter on the Rights and Welfare of the Child provided for special treatment of expectant mothers and mothers of young children who were found guilty of infringing the law. It set out the obligation of authorities to ensure that first consideration was given to non-custodial sentences, that special prison facilities were made available and that the focus was on social rehabilitation.

7. In a groundbreaking case in 2010, the Constitutional Court of South Africa had handed down a judgement in which it had given pre-eminence to the best interests of the child in the sentencing of a single mother of three children who was the family's primary caregiver. The Court had ruled that no child should be treated as a mere extension of his or her parents and that the sins and traumas of fathers and mothers should not be visited on their children. Therefore, instead of having to serve a 6-month prison sentence, the mother had been placed under correctional supervision and sentenced to perform community service and to pay back the victims of her offence. The case had set a precedent whereby all South African courts, where possible, were henceforth required to favour non-custodial sentences if they would serve the best interests of the child. The case had since been cited in both sentencing and bail hearings, which had often resulted in the pronouncement of non-custodial sentences.

8. Regrettably, in a subsequent ruling, the Constitutional Court had narrowed the scope of the precedent to "sole" caregiver rather than "main" caregiver. Nevertheless, the two rulings had affirmed that the best interests of the child should be a central consideration, and the avoidance of remand detention and prison sentences for caregivers, as introduced in South Africa, was a strategy that more countries should be encouraged to use.

9. **Ms. Bordin** (Federal University of São Paulo) said that the number of women in Brazilian prisons was rising, mainly because of their increased involvement in drug trafficking. By law, incarceration units in Brazil had to have special labour and delivery rooms, rooms for mothers to breastfeed their infants, and adequately staffed day-care facilities for children up to the age of 6. Because of overcrowding, however, it was becoming more difficult to provide appropriate environments for children living in prisons. Children aged between 7 and 14 could not remain with their mothers because they had to attend school, which meant that they often ended up living in shelters or with relatives far from where their mothers were incarcerated. At school they often encountered prejudice, and the dropout rate among them was high.

10. There were both positive and negative aspects to children being raised in prison by their mothers. The mother-child bond could be preserved, and women benefited from caring for their babies. Those benefits could be undermined, however, by maternal mental health problems, such as anxiety or depression, which were a major risk factor for emotional or behavioural problems in children. A prison survey had shown that 45 per cent of women prisoners suffered from mental health problems and 26 per cent from severe ones.

11. **The Chairperson** said that two youth representatives who each had a parent in prison would now give a joint presentation on their personal experiences as children of incarcerated parents.

12. **Ms. Knott** and **Mr. Hussein** (Children of Prisoners, Interventions and Mitigations to Strengthen Mental Health (COPING)) said that common questions asked by children who, like they, had a parent in prison included: why the prison staff did not treat them like human beings; why they could not have private visits so that they could talk freely; why there were no support groups for children of incarcerated parents; why there was no financial help for such families; why there had been no one to talk to when the parent was taken away; and why prison staff did not talk to families and get to know them. Children

often worried that their parent would forget them because they were not allowed to visit more than once a month. Small changes could have a big impact; for example, the provision of comfortable visiting areas where families could have more privacy would be an important improvement. The three “I”s of survival as the child of an incarcerated parent were to not remain isolated, to be informed and to inspire change in the system. There were many NGOs in the United Kingdom that offered services for families of inmates.

13. **The Chairperson** said that the meeting would now divide into two working groups: one on babies and children living with or visiting a parent in prison, and the other on children left “outside” when their parent was incarcerated. Summary records of the first working group’s meeting would be prepared. Unfortunately, owing to resource constraints, no detailed written record of the second working group’s deliberations would be kept. A summary of its discussions would, however, be provided before the meeting rose.

The Working Group on Babies and Children Living With or Visiting a Parent

14. **Ms. Lee** (Rapporteur for the Day of General Discussion) recalled that, although article 9 of the Convention did address the situation of children of incarcerated parents, it did not do so in great detail. Therefore, the aim of the working group was to identify best practices in that regard and determine how best to disseminate that information to United Nations agencies, countries and NGOs.

15. **Mr. Agbetse** (International Catholic Child Bureau) said that, although the topic of the general discussion also applied to children of immigrants in detention, it was his understanding that the focus would be on the criminal justice system. He wondered if the establishment of specific legal provisions concerning children of incarcerated parents might be the best way to ensure their protection. A more rehabilitative approach to the sentencing of parents could spare their children the hardships of the prison system.

16. It might be helpful for the authorities to inform trial judges when defendants had children so that provision could be made for their future care. It could be beneficial if rulings included support measures for children who were to live with or visit an incarcerated parent or if non-custodial sentences were considered. Another issue to consider was what the age limit should be for children living in detention centres and what criteria should be used to determine it. He wondered what the parameters for family visits should be. The question could even be posed as to whether visits should be permitted at all, given their often traumatic effect on children. Consideration should be given to measures that detention centres could take to mitigate the traumatic effect on children who visited or lived with an incarcerated parent and to ensure that they enjoyed all their rights, including their right to food, education, health and play. Corrections services should also provide support and reintegration services for children once their parent was released. It would be interesting to know what social reintegration programmes were available in different countries once a parent offender was released and if they included such services as parenting classes and vocational training.

17. What work was civil society doing in that area, and what should its role be in relation to that of the State? Additional data were needed in order to assess the situation and formulate appropriate policy.

18. **Ms. Sloth-Nielsen** (African Committee of Experts on the Rights and Welfare of the Child) said that there had long been concern in Africa about prison conditions there, and in 1996 the African Commission for Human and Peoples Rights had established a special rapporteur on prisons and conditions of detention. There were five main reasons why African children were so harshly affected when they lived with their incarcerated mother. African prisons were generally in terrible disrepair and lacked basic amenities such as sufficient drinking water, adequate ventilation and washing facilities. Cooking was often

done over open fires, and overcrowding was endemic. Infrastructure constraints often made it impossible for different categories of prisoners to be segregated. Second, there was a nearly complete lack of health-care services in African prisons. Children in prisons tended to miss out on immunization campaigns; medicine was often deficient, and mothers reported that their children were often ill. Third, women made up so small a percentage of the total prison population that Governments devoted the scarce resources that they had to improving the more seriously overcrowded prisons for men. Fourth, many African prisons were chronically short of food. Lastly, women tended to be incarcerated for offences such as adultery, non-payment of dowries and prostitution, which often led to their incarceration, along with their children, for indefinite periods.

19. She could make six proposals for improving the lot of children living with an incarcerated parent: to decriminalize acts that were classified as offences only if committed by women; to place priority on devising alternatives to imprisonment; when the severity of the offence made imprisonment necessary, to ensure the speedy identification of alternate caregivers; to encourage courts throughout Africa to apply the jurisprudence established by the South African Constitutional Court concerning consideration of the interests of children when passing sentence on primary caregivers; when there was no alternative to custodial penalties, to provide safe and hygienic specialized prison units that offered early childhood education and social reintegration services; and to discourage the use of international aid funds for building specialized facilities unless community-based alternatives to imprisonment were implemented at the same time.

20. **Mr. Sotirov** (Prison Fellowship International) said that in some cases family visits were restricted during pretrial detention, which in some countries could last several years, as a means of pressuring detainees. That practice bordered on torture, and he hoped that the Committee would challenge member countries that employed it. A project had been undertaken in two major prisons in Bulgaria by Prison Fellowship International to refurbish visiting areas, including children's corners, at a minimal investment. The organization's "Angel Tree" project provided Christmas gifts to children on behalf of their incarcerated parents and organized transport for children to visit their parents in prison. In 2010, 450,000 children in the United States of America, 10,000 in the United Kingdom and 12,000 in the Russian Federation had received a Christmas gift through Angel Tree.

21. **Mr. Raikes** (Huddersfield University and Children of Prisoners, Interventions and Mitigations to Strengthen Mental Health (COPING)), presenting an example of good practice, said that he had evaluated a project at an open women's prison in England under which children up to the age of 18 were allowed to visit their mothers overnight in a special house at the prison. Research revealed that young people found it difficult to discuss important issues with their parent during prison visits. The project had given children the opportunity to spend more time with their mother and allowed the mother and child to engage in everyday activities together. Mother and children were not supervised by prison staff during the visit, and the children involved in the project had reported that the overnight visits had had a positive impact on their mental well-being.

22. **Ms. Shankardass** (Penal Reform and Justice Association of India, and Penal Reform International of the United Kingdom) said that prisons were often a low priority for Governments, especially in South Asia and Eastern Europe, and that even when legislation protecting women and children living in prisons was in force, it was not always fully applied. One of the key problems was the dearth of reliable data on children who were visiting or living with an incarcerated parent. Such children should be recognized as a distinct group for study, and detailed information on them should be collected so that qualitative measures could be implemented to improve their situation. Perhaps international bodies could assist States in gathering such data.

23. **Ms. Huber** (Penal Reform International of the United Kingdom) said that children were also detained, for example, while awaiting deportation, and it was important for the appropriateness of detention and alternatives to it to be fully considered. Her organization was currently discussing the appropriateness of an age limit for the detention of children along with their parents, and the overall perception was that the best interests of the child should be the primary consideration, although an indicative age limit could be useful. She would suggest that the language used in the Committee's recommendation should be gender-neutral, since both fathers and mothers could be incarcerated.

24. **Ms. Salmon** (Action for Prisoners' Families) said that she agreed with Ms. Shankardass's comments on data collection. It was important to have information detailing where the children of incarcerated parents lived. Children often resided at a significant distance from the prison where their parent was held, which could affect the provision of specialized services for such children.

25. The child's right to know and be cared for by his or her parents was often not considered by prisoners or prison services. Prisoners in England and Wales had to request visits if they wanted them, and some parents did not ask to see their children because parting at the end of prison visits caused such distress. Furthermore, prison services tended to view children purely in terms of the security risks that they might pose. There were few facilities available to older children when visiting their parents in prison, and studies had shown that teenagers visited their parents less as they grew older. One example of good practice in that respect was a service in Durham, England, that had made a support worker available to adolescents when visiting their parents.

26. **Ms. Wijemanne** said that she wished to highlight the particular difficulties faced by pregnant women who were used as drug mules and incarcerated in South Asia. Pregnant women who had been sentenced for trafficking drugs were not afforded any special treatment, despite the fact that being born into detention was a violation of the child's rights.

27. **Ms. Philbrick** (European Network for Children of Imprisoned Parents (EUROCHIPS)) said that an example of good practice that was found in a number of countries was the provision of a child-friendly area in the prison visiting room that was staffed by play workers. Training for prison officers was also an important element of good practice, since attitudes often had a greater impact on peoples' experiences than physical environments did. It was also important to ensure that security concerns did not take precedence over children's right to contact with their parent and that efforts were made, even in situations of heightened security, to enable children to exercise that right.

28. She would suggest that the periodic reports submitted to the Committee by States parties should contain an additional section on the rights of children of incarcerated parents.

29. **Mr. van Keirsbilck** (Defence for Children International of Belgium) said that in Belgium there were no special facilities for adolescent parents who had been sentenced to a period of imprisonment. The effect of incarceration on the parent's relationship with his or her child should be carefully considered, as should the effect that hosting a child in prison had on other parents in the same facility who did not have their children with them. He knew of one case where a young woman had been obliged to send her baby to live with its father while she served her prison term because of the difficulties that arose because she was the only mother in that prison to have her child with her.

30. **Mr. Samaké** (Bureau International Catholique de l'Enfance) said that the question of whether children who lived in prison with their mothers were considered a part of the prison population was a crucial one for Governments and for civil society organizations. Careful consideration should be given to the types of situations in which it would and would not be appropriate to allow children to accompany a parent in prison. The founding

of an appropriate legal and judicial framework for children who lived with their parents in prison should be discussed. Within such a framework, it would be helpful for children living in prison to be classified as children at risk, since that would lay an obligation on States to provide for the child's nutritional, health and educational needs.

31. Children's crèche facilities could be introduced in prisons in order to ensure that children living in prison had access to a basic level of leisure facilities. One example of good practice from Côte d'Ivoire was the increasing use of foster care during a parent's detention.

32. **Mr. Fleischner** (Bambini Senza Sbarre) said that he wished to share two examples of good practice from Italy. One special facility, in Milan, had been designed to give children the feeling that they were not in a prison; prisoners and their children were housed in a flat where prison officers did not wear uniforms. Another good practice was the introduction of what were referred to as "yellow spaces", which were child-friendly areas that had been introduced into prison visiting rooms by his organization, Bambini Senza Sbarre, in cooperation with other professionals. The specially designed spaces had been successfully piloted in three prisons in Milan and, having been approved by the Ministry of Justice, were being rolled out across Italy. Another important matter for consideration was training for prison officers who came into contact with children; recent figures from Italy indicated that only a small number of officers had received such training.

33. **Ms. Enroos** (University of Tampere of Finland) said that for many years there had been no official guidelines with regard to children living in prison in Finland. However, changes in legislation had been introduced in 2009 and 2010 in order to place priority on the consideration of the best interests of the child when a decision was to be made as to whether a child should enter prison with his or her parent and to provide for regular monitoring of such children. The only prison facility in Finland that accommodated families was gender-neutral and welcomed children who were living in prison with either their fathers or their mothers.

34. Data collection was crucial in order to ensure that children were institutionally visible, were not treated as if they were prisoners and could be contacted after they had left prison. It was important for age limits for children living in prison to be indicative rather than normative, since each child's case should be considered separately.

35. **Ms. Boswell** (University of East Anglia of the United Kingdom) said that she was currently evaluating a project in England that offered support to the caregivers of children who had a parent in prison. The project offered a communication link between the child's caregiver and the child's incarcerated parent and provided one-on-one support for caregivers. The African Charter on the Rights and Welfare of the Child offered an interesting example of how the courts could approach the sentencing of mothers, and other countries might also begin to consider it the duty of the court to ensure that suitable care arrangements had been made for children whose parents would receive a prison sentence.

36. **Ms. Pierre-Wade** (Permanent Mission of Canada to the United Nations Office and Other International Organizations in Geneva) said that the Correctional Service of Canada had a programme under which children were allowed to live in prison with their mother in a supportive environment that fostered and promoted stability and continuity in the mother-child relationship. Mothers had to meet certain eligibility criteria, and the local child welfare agency assessed whether participation was in the best interests of the child. Children could enter the programme at any time and should be a maximum of 6 years of age in order to be eligible for the part-time programme and 4 years of age for the full-time programme. They were accommodated in houses, which usually had an outside play area enclosed by a low fence, and slept in the same or adjoining room as their mother. Only non-intrusive searches of children were permitted when they entered or left the institution.

Routine health care for the child was normally provided by community agencies outside the institution. Children could visit non-incarcerated family members regularly to maintain their relationships and could attend activities in the community.

37. **Ms. Rossi** (Associazione Comunità Papa Giovanni XXIII of Switzerland) said that the Council of Europe had recommended that non-custodial, community-based sentences should be handed down to offenders who were mothers of young children. Italian law stipulated that mothers should be sentenced to home detention or given other non-custodial sentences, and the Government was currently considering a community-based initiative to accommodate mothers and children in the 254 family homes already existing throughout the country. In addition, a foster care system was in place. Priority should be given to ensuring that children, especially young children, could exercise their right to stay with their natural mother. They also had the right to grow up in a family and social environment and to play with other children. The main recommendations of the workshop should be to develop community-based initiatives and to urge member States to adopt appropriate legislation to that effect, in close cooperation with the judiciary.

38. **Mr. Janussi** (Ministry of the Family and Integration of Luxembourg) said that the prison authorities in Luxembourg arranged visits between children and their incarcerated parents at the parents' request. Consultations were also held with the parent, child and other family members to ascertain the child's wishes. Visits took place outside of the normal prison visiting times in rooms set aside for the purpose. They usually lasted for an hour, but could be up to two hours in length at Christmas, on birthdays or during other festivals. Only the incarcerated parents, the children and social workers and/or teachers were present during the visits. Incarcerated parents were also allowed to participate in activities such as craft workshops with their children, so that they could interact with them in a more natural setting. Discussion groups had been set up for parents in prison to meet and share experiences. Those groups continued to meet after the parents' release in order to lend them support while they rebuilt their family lives.

39. **Ms. Richardson** (Permanent Mission of New Zealand to the United Nations Office and Other International Organizations in Geneva) said that New Zealand legislation had been amended recently to increase the age limit for children living with their incarcerated mother from 9 months to 2 years. They lived in self-care units which replicated real homes, had an outside play area and were a stepping stone between prison and living in the community. Their aim was to foster bonding between the child and the primary caregiver in a safe and supportive environment. Certain criteria had to be met, and the best interests of the child were taken into consideration. It was also hoped that the initiative would help to reduce the likelihood of recidivism. A number of community-based programmes to assist children and prisoners had been launched. Under one scheme, prisoners were encouraged to record themselves reading children's books out loud and to send the recordings to their children, which not only improved prisoners' literacy skills, but also strengthened the parent-child relationship. Under another programme, an interactive website was being constructed for the children of prisoners, their caregivers and the professionals working with them.

40. **Mr. Khoso** (Society for the Protection of the Rights of the Child of Pakistan) said that a number of issues needed to be addressed in Pakistan. Not least among those issues was the inhumane treatment of mothers and children in court proceedings, to which they were transported in vehicles resembling cattle cars, with the mothers usually shackled. There was a lack of minimum standards and checks in place, and, in some instances, women falsely claimed that they had children in an effort to secure certain benefits or more lenient sentences. Moreover, the rights of unborn children were not considered, and pregnant prisoners received poor antenatal and post-natal care. There was no specific budget allocation for incarcerated parents and their children, which was a serious oversight.

Most prisons were run by men, who often used abusive language in front of the children. NGOs tended to work in the short term, and there was consequently a lack of continuity in the services they provided. The focus should be on long-term projects to ensure that children derived the maximum benefit from them.

41. **Ms. Verzivoli** (International Baby Food Action Network of Switzerland) said that the period between birth and 2 years of age was crucial to a child's health and development. Exclusive breastfeeding for the first six months and supplemented breastfeeding until the child reached 2 years of age, as recommended by the World Health Organization, was of critical importance. Her organization supported the principle that imprisonment should be the last resort for primary caregivers, especially mothers. If that were not possible, every effort should be made to guarantee optimal feeding practices for infants and young children in prison and ensure that pregnant women prisoners received adequate antenatal care, including counselling on feeding options so that they could make informed decisions. The use of replacement formula milk should not be imposed just to suit prison routines. If, however, a mother decided to use replacement formula milk, hygienic conditions for preparation and storage must be provided. The optimal duration of breastfeeding should be an important consideration when formulating policies on the incarceration of mothers.

42. **Ms. Bate** (Susila Dharma International of Canada) said that participants should read the electronic submission of Mr. Rashid César, whom she represented. Mr. César worked with women, mothers and children in prisons in Buenos Aires, Argentina, using art-based, creative programmes to build the self-esteem of mothers and young children. He had involved prison guards in the project, many of whom had gone on to become trained in the methods he used, and several of the mothers had themselves become trainers following their release from prison. The approach was based on the principle that raising the self-image of mothers would facilitate their reintegration into society. Efforts should be focused on strengthening women's capacity to care for themselves and their children instead of punishing them with imprisonment.

43. **Ms. Koursoumba** (Commissioner for Children's Rights of Cyprus) said that legislation had been adopted in Cyprus under which pregnant women and mothers with children up to 3 years of age were not to be incarcerated. However, there were reports that the law was being exploited for the sole purpose of securing non-custodial sentences. She had petitioned her Government to open a dialogue on the possibility of extending the provisions of the law to both parents and of increasing the maximum age limit to 8 years of age. Prison conditions in Cyprus were very poor, and she had received a growing number of complaints in 2010 on behalf of children who had been denied the right to visit their father in prison. As a result of her petitions, which had been strongly resisted by the prison authorities on the grounds of security risks, a new measure had been adopted to ensure that children could visit their fathers.

44. **Mr. Adja Oke** (International Children's Bureau of Switzerland) said that he knew from his experience of visiting prisons in Africa that prison was not a proper environment for children. There should be a clear recommendation on the age limit for children in prison, and member States should be encouraged to incorporate that age limit in their domestic legislation. Civil society's attention should be drawn to the need to bridge the gap between the time when a child left prison and the parent's release. NGOs had a role to play, most importantly in protecting the child's right to education. When children left prison, they should automatically be enrolled in school, where they could learn and socialize with other children. In Africa, schools played an important role in meeting the particular needs of children of incarcerated parents.

45. **Ms. Lee** (Rapporteur for the Day of General Discussion) said that issues that might be considered in the afternoon session of the workshop included the establishment of minimum and maximum age limits for children in prisons; methodological improvements

in the compilation of data; the creation of an effective legislative framework to protect the children of incarcerated parents; the determination of which Government departments should be responsible for budget allocations for the children of incarcerated parents; community-based regional initiatives and non-custodial measures; means of addressing violations of the child's right to visit the incarcerated parent based on overly strict security or disciplinary regulations in prisons; and the extent to which court systems implemented the United Nations Standard Minimum Rules for Non-custodial Measures.

The meeting rose at 1 p.m.