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Friends World Committee for Consultation (Quakers), an international non-governmental organisation in General Consultative Status with ECOSOC, welcomes the opportunity to submit the following information in response to the OHCHR request for information for the report on 'Protection of the family and the contribution of families in realizing the right to an adequate standard of living', mandated by UN Human Rights Council resolution 29/22 on protection of the family.

Parental incarceration and executions can violate the rights of children to a family environment and an adequate standard of living. The children of incarcerated parents, and of parents sentenced to death or executed, face a variety of additional risks as a result of criminal justice and penal systems within which their rights are not fully taken into account.

Recognition of the rights of children of incarcerated parents

The need for attention to be paid to the rights of these children has been directly acknowledged by a number of international human rights bodies and instruments.¹ The rights of a child to a family environment, to survival and development, to the maintenance of parental relationships and to an adequate standard of living are enshrined in the Convention of the Rights of the Child.² These rights are reaffirmed in the text of resolution 29/22 calling for this report.³ Where these rights are violated, this can undermine the goals of the UN 2030 Sustainable Development agenda where these aim to combat poverty, ensure health and wellbeing, and promote peaceful and inclusive societies.⁴

Specific risks associated with parental incarceration

Parental incarceration may affect each individual child's wellbeing in different ways. For decision-making in all cases, the best interests of the child should be taken into account as a primary consideration at all stages,⁵ including at sentencing.⁶

One of the most immediate impacts on the standard of living of a child is the financial effect of parental incarceration, which can push already poor families further into poverty and debt.⁷ This may be due to loss of income, or removal of benefits which the parent was eligible for. In some cases, other family members may need to stop working to care for the children of an incarcerated parent, or the children themselves may need to stop their education in order to replace their parent's lost income. There may be costs of legal representation in ensuring that the best interests of the child are taken into account.

¹ Including African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), Art. 30; The African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013). Committee on the Rights of the Child, General Comment No. 7 (2005) Implementing child rights in early childhood, CRC/C/CG/7/Rev.1 of 20 September 2006, para. 31(b); Human Rights Council resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69.

² Art. 20(1) recognises the right of "a child temporarily or permanently deprived of his or her family environment" to special protection and assistance from the State. Art. 6(2) states that states should "ensure to the maximum extent possible the survival and development of the child." Art. 9(3) outlines "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". Art. 27(1) recognises "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development",² while Article 27(3) recognises the responsibility of States Parties to "take appropriate measures to assist parents and others responsible for the child to implement this right" and, in case of need, to "provide material assistance and support programmes." United Nations Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989,

³ Human Rights Council resolution on the Protection of the Family, A/HRC/RES/29/22 of 22 July 2015, para. 10.

⁴ Transforming Our World: 2030 Agenda for Sustainable Development, General Assembly resolution 70/1 of 25 September 2015.

⁵ United Nations Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989, Art. 3(1).

⁶ Human Rights Council Resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, paras. 69(a) and (d). Human Rights Council Resolution 10/2, Human rights in the administration of justice, in particular juvenile justice, preamble. Committee on the Rights of the Child General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14 of 29 May 2013, paras. 28 and 69. United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, contained in E/CN.15/2014/L.12/Rev.1 of 15 May 2015, para. 34(1). See Quaker United Nations Office (2015) [Briefing Paper on International Standards and Guidance on Children of Incarcerated Parents](#) for further references including concluding observations of the Committee on the Rights of the Child.

⁷ As resolution 29/22 notes, single-headed households are particularly vulnerable to poverty and social exclusion. Human Rights Council resolution on the Protection of the Family, A/HRC/RES/29/22 of 22 July 2015, para. 13.

The physical and mental health and wellbeing of children can be impacted by the incarceration of a parent, with potential negative impacts on the child's development. Physical health effects can include sleeping problems and bed-wetting, as well as self-medication with drugs and alcohol. Affected children also face distinct psychological repercussions⁸ and greater risk of mental health issues such as depression, anxiety, anger and hyperactivity.⁹ The children of incarcerated parents can face stigma, discrimination and shame because of what their parent has been alleged or convicted of doing. Such social stigma and discrimination can compound impacts on mental health and emotional wellbeing, while institutional stigma can lead to barriers to accessing public services, including healthcare and education.

The 2012 Quaker United Nations Office publication [Collateral Convicts: Children of incarcerated parents](#) provides a more detailed explanation of the risks faced by the children of incarcerated parents.

Separation from a parent/parents due to incarceration

Where it is in their best interests, children have a right to a relationship with their parents. In cases where children are separated from a parent due to parental incarceration, they may face constraints on their ability to maintain parental relationships and to enjoy the right to a family environment. Where an incarcerated parent is a foreign national incarcerated away from their country of origin, this may further limit the ability of their children to enjoy the right to a family environment and maintain a parental relationship.¹⁰ There may be further costs imposed where long distance travel is required in order to visit a place of detention, particularly in cases where the a parent is imprisoned far away from their family.¹¹

Children residing in prison with a parent

In some cases, it may be determined that it is in the best interests of the child to reside in prison with a parent. Problems faced by such children include psychosocial problems and difficulties in accessing education and healthcare.¹² The African Committee of Experts on the Rights and Welfare of the Child has acknowledged that children residing in prison with a parent often experience serious violations of their rights to survival, protection and development arising from their living conditions.¹³ Depending on the visitation and communication provisions instituted by the facility, children residing in prison with a parent may face constraints on the maintenance of relationships with a parent, siblings, or relatives residing outside the institution.¹⁴

The impact of the death penalty

The children of parents sentenced to death or executed face further risks which can exacerbate the negative impacts on their standard of living and their ability to enjoy the right to a family environment and parental relationships.¹⁵ Existing research has documented major psychological and emotional implications for the children of a parent sentenced to death or executed. Compounding the impacts already experienced while a parent is incarcerated on death row, the execution of a parent means not only the permanent loss of that parent's income, but the permanent loss of the ability of the child to enjoy a parental relationship with that parent. There can be greater stigma and shame associated with those sentenced to death or executed, which can extend to their children, and where prisoners on death row face more stringent visitation or contact conditions, this may act as a constraint on parental relationships.

The 2013 Quaker United Nations Office publication [Lightening the Load of the Parental Death Penalty on Children](#) provides further detail on the impacts on children whose parents are sentenced to death or executed.

⁸ As the African Charter acknowledges, "the psychological repercussions can be analogous to those resulting from other forms of loss, such as death or divorce, although some repercussions are distinct." The African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013), para. 4.

⁹ COPING project results: Jones, A, et al., (2013) *Children of Prisoners: Interventions and mitigations to strengthen mental health*, University of Huddersfield: Huddersfield, p47.

¹⁰ The African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013), para. 25.

¹¹ Children of Prisoners Europe (2014) [Children of Imprisoned Parents: European Perspectives on Good Practice](#), p93.

¹² For examples Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of Uruguay, CRC/C/URY/CO/3-5 of 4 February 2015, para. 42(a)

¹³ The African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013), para. 27.

¹⁴ Committee on the Rights of the Child, Report and recommendations of the Day of General Discussion on 'Children of Incarcerated Parents', 30 September 2011, para. 37.

¹⁵ Concluding observations on the second periodic report of the United Arab Emirates, CRC/C/ARE/CO/2 of 2 October 2015, para. 52(a); Summary of the panel discussion on the human rights of children of parents sentenced to the death penalty or executed, Report of the United Nations High Commissioner for Human Rights, A/HRC/25/33 of 18 December 2013.

Examples of good practice

- *Child's best interests taken into account when sentencing their caregiver:* The South African Constitutional Court rule in 2007 that 'all South African courts [must] give specific consideration of the impact on the best interests of the child when sentencing a primary caregiver. If the possible imprisonment will be detrimental to the child, then the scales must tip in favour of a non-custodial sentence, unless the case [is] so serious that that would be entirely inappropriate.' The judgment set out a five step consideration to assist courts in making these decisions (this is the basis of the test laid out in the ACERW General Comment 1).¹⁶
- *Prevention of separation:* Some countries allow parents meeting specific criteria to serve their sentences at home in order to continue to care for their children.¹⁷
- *Continued family relationships and environment (children residing in prison):* Spain developed External Mother Units to enable children up to 3 years old to live with their incarcerated mothers in a non-prison environment. The Units have outdoor play areas and separate 'apartments' for each family that include cooking, eating, sleeping and relaxation areas.¹⁸
- *Maintaining a relationship with an incarcerated parent:* In Italy, an NGO called Bambinisenzabarre has worked in partnership with the Ministry of Justice and the Children's Ombudsman to develop a protocol on the rights of children of incarcerated parents, and are instituting a 'Yellow Space' model for prison visiting which allow children to meet with parents in an environment which facilitates the maintenance of family relationships.¹⁹
- *Compensating the loss of income to reduce the financial impact on children:* In Brazil, there are specific legislative provisions to provide a monthly financial allowance to the children of incarcerated parents, in order to contribute to addressing the resulting loss of income.²⁰
- *Ensuring education for children of incarcerated parents:* In Pakistan, an NGO called Legal Aid Office (LAO) has established a school for the children residing in prison with a parent in Karachi, where educational opportunities were previously extremely limited.²¹

Recommendations for States

- Ensure that the best interests of the child are taken into account in all policy and decision-making affecting the children of incarcerated parents and children of parents sentenced to death or executed, at all stages of the criminal justice process. Consider, where appropriate, the use of alternatives to incarceration, where this would be in the best interests of the child.
- Ensure that, where it is in the best interests of the child, children can maintain a relationship with their incarcerated parent or parents, including through ensuring rights to visitation and contact.²²
- Ensure that the children residing in prison with a parent are provided with the equivalent services made available to children not living in prison.²³ Put in place measures to prevent stigmatisation and discrimination against children of incarcerated parents.²⁴
- Provide assistance to the children of parents incarcerated in another country, in order to allow the maintenance of contact and potentially visitation, and put in place measures which allow incarcerated foreign nationals who are parents to maintain contact with children residing in another country.²⁵
- In criminal justice systems where the death penalty is retained, ensure that this sentence is not mandatory for any crime, in order to allow the consideration of the best interests of the child at sentencing.²⁶
- Where a parent is facing the death penalty or a death sentence is handed down, ensure that children are provided with information about the possibility of execution of their parent,²⁷ and to ensure that information is not withheld without explanation.

¹⁶ South Africa: Constitutional Court *S v M* (CCT53/06) [2007] ZACC 18 (26 September 2007), paragraph 36.

¹⁷ E.g. Argentina and Germany, see Quaker United Nations Office (2012) *Collateral Convicts: Children of incarcerated parents*, p.15.

¹⁸ Quaker United Nations Office (2012) *Collateral Convicts: Children of incarcerated parents*, pp.21-22.

¹⁹ Children of Prisoners Europe (2014) *Children of Imprisoned Parents: European perspectives on good practice*, p95-6, 181.

²⁰ CWS and Gurises Unidos (2013) *Invisible No More: Children of incarcerated parents in Latin America and the Caribbean*, p25.

²¹ 'Children behind bars: Books and hope for Karachi Central Jail's "silent victims"', *Dawn Pakistan*, 25 August 2015.

²² Committee on the Rights of the Child, Report and Recommendations of the Day of General Discussion on "Children of Incarcerated Parents", 30 September 2011, para. 37.

²³ The African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013), para. 20.

²⁴ Human Rights Council resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(d).

²⁵ The African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013), para. 25.

²⁶ The African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 30 of the African Charter on the Rights and Welfare of the Child, ACERWC/GC/01 (2013), para.23.

²⁷ Human Rights Council resolution 30/5 on the question of the Death Penalty, A/HRC/RES/30/5 of 12 October 2015, para. 4; Human Rights Council resolution 22/11 on panel on the human rights of children of parents sentenced to death or executed, A/HRC/RES/22/11 of 10 April 2013, para. 2; Human Rights Council resolution 19/37 on the Rights of the Child, A/HRC/RES/19/37 of 19 April 2012, para. 69(f).