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**The Right to Privacy for Children of Incarcerated Parents**

The Quaker United Nations Office welcomes the opportunity to submit the following information on the privacy rights of children as requested by the Special Rapporteur on the Right to Privacy pursuant to UN Human Rights Council resolution 37/2.

This submission has a particular focus on the right to privacy for children of incarcerated parents. The right to privacy is a fundamental human right recognised in many human rights instruments including the Convention on the Rights of the Child. Through our work, we have identified a number of issues for the realisation of the right to privacy for children of incarcerated parents.

**Children of Incarcerated Parents**

Children affected by parental incarceration can experience a variety of issues and violations of their human rights. These are far-reaching and well-documented such as mental health impact, effect on childhood development, discrimination and the lack of parental contact.[[1]](#footnote-1) Human rights bodies and instruments have acknowledged the need to protect and promote the rights of children in these situations.[[2]](#footnote-2) While children of incarcerated parents are receiving more attention in human rights law, policies and standards, their particular vulnerabilities need to be explored to ensure full realisation and protection of their human rights.[[3]](#footnote-3) This is particularly true for human rights issues such as the right to privacy which has been identified to be impacting children of incarcerated parents.

This submission has identified three main privacy issues which impact the rights of children of incarcerated parents, which will be discussed in greater detail below.

**The Disclosure and Publication of Information of Incarcerated Parents**

One of the main issues children of incarcerated parents face is stigmatisation as a result of the offences their parents are accused or convicted of particularly in instances of more serious offences. This can be a direct consequence of the release and publication of information related to their parents which allows for the child to identified and consequently sitgmatised.[[4]](#footnote-4) This practice, by the media and other institutions impacts a variety of rights as set out in the Convention on the Rights of the Child, in particular the right to be free from discrimination, the application of the best interest of the child and the right to privacy.[[5]](#footnote-5)

*A Priority Identified by Children of Incarcerated Parents*

A child-led conference that took place in 2019 in the UK aimed to put the perspective and experiences of children of incarcerated parents on the agenda of those who work in the criminal justice system.[[6]](#footnote-6) These children had seven calls to action, the first of which stressed the right to privacy:

There should be a policy where any offenders who have a child under 18 yrs should not have their name or home address printed in the press to protect the children and family from community backlash.[[7]](#footnote-7)

Children that took part in this conference underscored their negative experiences as a result of information being released such as not being able to go home, having to move and feeling at risk or unsafe due to media attention to a parent’s case. On this a child stated:

That’s my home where I live. I should be able to feel safe and content. Why did the address need to be published in the paper to make income for the paper? I was 15 and I had to live in that home because I had nowhere to go. [[8]](#footnote-8)

The children made particular reference to misinformation published by the media and the impact these publications can have on them in terms of stigmatisation.

We couldn’t go home because the newspaper went out with misinformation and my Dad’s name and our address. We had to move from there.[[9]](#footnote-9)

It is clear from the experiences shared by these children, breaches of their right to privacy can have far-reaching consequences.

The Committee on the Rights of the Child noted in their report and Recommendations on the Day of General Discussion on children of incarcerated parents that children in these situations should be protected from discrimination and stigmatisation as they have not been in conflict with the law and should not be treated as such. In particular the Committee urged States to enact laws to govern institutions such as the media in their reporting to protect the privacy rights of children of incarcerated parents.[[10]](#footnote-10) This is also contained in the Council of Europe’s Recommendations concerning children with imprisoned parents in which they state that ‘information provided to, and by, the media should not violate the right to privacy and protection of children and their families’.[[11]](#footnote-11) Further, they noted that the media, among other public institutions, should be provided with good practice examples, and information about the impact of parental imprisonment on children to ensure they are not negatively stereotyped or stigmatised as a result of their parents’ convictions.[[12]](#footnote-12) Protecting the right to privacy for children of incarcerated parents is important to ensure they are not stigmatised and can fully enjoy their rights and freedoms on equal footing with other children.

**Privacy in Contact with Incarcerated Parents**

There are clear human rights standards which establish the right of children to be in contact with and regularly visit their incarcerated parent.[[13]](#footnote-13) Despite this, many children experience privacy issues in relation to contact with their incarcerated parents. For example, written communication such as letters, which identifiably come from prison, which can lead to children of incarcerated parents being stigmatised, contact can be ceased as a result of this stigmatisation or fear of it.[[14]](#footnote-14)

*A Priority Identified by Children of Incarcerated Parents*

In addition, the interference with the right to privacy during visits can impact children greatly. For example, in the Our Time to Be Heard conference, children expressed distress at the lack of privacy during visits and highlighted the importance of more private spaces. On prison visits a child explicitly stated:

They would be better if there was more privacy, other places to go like a garden or outside space.

To add to this, children voiced their concerns around being searched in prisons. For some children entering prison as a visitor, the right to privacy can be violated with the use of intrusive and uncomfortable searches that can impact their psychological well-being.

My first visit was uncomfortable and intimidating when I got searched. The guards were very strict in their tone and grumpy when they told me what to do. The experience was bad enough, let alone how they looked and spoke to us. We haven’t done anything wrong for them to treat us like this which makes us feel like bad people..[[15]](#footnote-15)

Another child detailed the following experience:

When on a visit if you went to a toilet you would think it was the place with the most privacy but the guards will stand inside and watch you it felt very uncomfortable now I go to toilets with locks on. This made me feel like the bad person like a criminal but I knew that I had done nothing wrong. After coming out of the toilet you were searched AGAIN!

Children of Prisoners Europe, in their implementation guide for the Council of Europe recommendation concerning children of incarcerated parents, address this issue by stressing any security checks carried out by prisons must protect the right of privacy for children. They have identified a good practice example in Sweden where prison guards make searches playful by using puppets to distract children during use of detectors.[[16]](#footnote-16) The Committee of the Rights of the Child recommended States to take into consideration the visiting environment to ensure that the child’s dignity and privacy are always upheld.[[17]](#footnote-17)

While not directly related to children, jurisprudence related to the privacy rights of prisoners highlighted prisons have in some instances restricted the use of languages other than the one spoken within the State to ensure prison guards are able to understand the content of visits.[[18]](#footnote-18) The European Court of Human Rights has established that this practice contravenes the right to privacy.[[19]](#footnote-19) Consequently, this is an issue that should be taken into consideration when addressing the right to privacy of children of incarcerated parents to ensure they are able to communicate freely with their parent in a language of their choice. Privacy of children in contact with incarcerated parents is an issue which should be explored in greater detail to ensure that the rights of children are upheld by States.

**Collection and Retention of Information Related to the Child**

An emerging issue in the privacy rights of children of incarcerated parents, is the collection and retention of information by States from children of parents accused, suspected or convicted of association with designated terrorist groups.[[20]](#footnote-20) The collecting and retaining biometric data of children of parents associated with terrorism can cause significant issues in relation to the human rights of children in these situations. Biometric data, in the form of DNA testing and iris scans have been used by States to identify children’s parents for a variety of reasons. However, the invasive nature of this practice directly raises issues for the right to privacy. The collection of biometric data of children in these circumstances should only be carried out in exceptional measures and only if it is in line with the Convention on the Rights of the Child.[[21]](#footnote-21)

Children of parents associated with terrorist groups who have had their information collected and retained in this way are at times treated as security threats in ways that infringe the right of the child to be free from discrimination, and can lead to detention or inclusion on security watch lists.[[22]](#footnote-22) The actions of a parent should not be used to discriminate against a child and principles such as the best interest of the child should be applied to ensure an individual assessment of the child’s situation. This practice, particularly blanket policies on collection and retention of biometric data raise serious concerns around privacy, any data collection and retention in the case of children must be lawful, necessary, proportionate and consistent with the right to privacy of the child. The protection of privacy rights of children in this category is necessary to ensure States uphold their obligations to the Convention on the Rights of the Child.

**Recommendations**

To the Special Rapporteur

* During country visits and in preparation of relevant thematic reports, consult children from variety of backgrounds (utilising an intersectional lens) impacted by parental imprisonment to ensure they have the platform to voice their privacy concerns and enable their full participation in processes issues that impact them.

To the UN Office on Drugs and Crime, UNICEF and the Office of the High Commissioner for Human Rights:

* Develop a handbook on children of incarcerated parents to guide States in upholding the rights of these children, including their right to privacy.

To States

* Ensure that information provided to, and by, the media regarding parents convicted or accused of criminal offences does not violate the right to privacy of their children.
* Ensure that children’s right to privacy is upheld in all contact with incarcerated parents, including written, electronic and telephone correspondence.
* Ensure that children’s right to privacy is upheld in any procedures for visiting their parents in prison.
* Ensure that biometric data is not collected from children of parents suspected, accused or convicted of association with designated terrorist unless it is lawful, necessary, proportionate and fully in line with the rights of the child.

1. Oliver Robertson (Quaker United Nations Office), ‘Collateral Convicts: Children of incarcerated Parents Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion.’ March 2012 Page 2. [↑](#footnote-ref-1)
2. 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; Council of Europe Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents. [↑](#footnote-ref-2)
3. For more detailed information on children of incarcerated parents see: Oliver Robertson (Quaker United Nations Office), ‘Collateral Convicts: Children of incarcerated Parents Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion.’ March 2012 and Lucy Halton and Laurel Townhead (Quakers United Nations Office) ‘Children of incarcerated Parents: International Standards and Guidelines.’ March 2020. [↑](#footnote-ref-3)
4. Kate Philbrick, Liz Ayre and Hannah Lyn (Children of Prisoners Europe) ‘Children of imprisoned parents: European Perspectives on Good Practice’ Second Edition 2014. [↑](#footnote-ref-4)
5. United Nations Convention on the Rights of the Child (1989) Article 2; Article 3 and Article 16. [↑](#footnote-ref-5)
6. ‘Our Time to Be Heard’: A conference by children affected by parental imprisonment. Information available: <https://shonaminson.com/2019/06/18/285/> June 2019. [↑](#footnote-ref-6)
7. ‘Our Time to Be Heard’: A conference by children affected by parental imprisonment’. June 2019. Action 1. [↑](#footnote-ref-7)
8. ‘Our time to Be Heard’: A conference by children affected by parental imprisonment’. Experiences of the Media/questions for journalists. June 2019. [↑](#footnote-ref-8)
9. ‘Our time to Be Heard’ A conference by children affected by parental imprisonment’. Experiences of the Media/questions for journalists. June 2019 [↑](#footnote-ref-9)
10. Committee on the Rights of the Child, Report and Recommendations on the Day of General Discussions on Children of incarcerated parents, 30 September 2011, para..33. [↑](#footnote-ref-10)
11. Council of Europe, Recommendation CM/Rec(2018)5 of Committee of Ministers to member States concerning children with imprisoned parents (4t April 2018) para 56. [↑](#footnote-ref-11)
12. Council of Europe, Recommendation CM/Rec(2018)5 of Committee of Ministers to member States concerning children with imprisoned parents (4t April 2018) para 57 [↑](#footnote-ref-12)
13. United Nations Convention on the Rights of the Child (1989) Article 9(3). [↑](#footnote-ref-13)
14. Oliver Robertson (Quaker United Nations Office), ‘Collateral Convicts: Children of incarcerated Parents Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion.’ March 2012. [↑](#footnote-ref-14)
15. ‘Our Time to Be Heard: A conference by children affected by parental imprisonment.’ On Prison Visits June 2019 [↑](#footnote-ref-15)
16. Children of Prisoners Europe - Implementation Guidance Article 23 [↑](#footnote-ref-16)
17. Committee on the Rights of the Child, Report and Recommendations on the Day of General Discussions on Children of incarcerated parents, 30 September 2011 para,38. [↑](#footnote-ref-17)
18. European Court of Human Rights *Mozer v. the Republic of Moldova and Russia* (2016) [↑](#footnote-ref-18)
19. [↑](#footnote-ref-19)
20. Lucy Halton (Quaker United Nations Office) ‘The collection and use of biometric data in the context of children of parents suspected, accused or convicted of association with designated terrorist groups’. [↑](#footnote-ref-20)
21. United Nations Counter- Terrorism Centre, Handbook on Children Affected by the Foreign Fighter Phenomenon (2019). [↑](#footnote-ref-21)
22. Lucy Halton (Quaker United Nations Office) ‘The collection and use of biometric data in the context of children of parents suspected, accused or convicted of association with designated terrorist groups’ August 2020. [↑](#footnote-ref-22)