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## Falling through the Cracks

### **PRI's Submission to the 19th Session of the African Committee of Experts on the Rights and Welfare of the Child concerning the best interests of the child and children of incarcerated parents: Guidance on the implementation of Article 30**

#### **1. Introduction**

*'The sins and traumas of fathers and mothers should not be visited on their children<sup>1</sup>.'*

Children whose parents are detained or imprisoned in Africa are an invisible and often highly vulnerable group whose rights and welfare can be gravely affected at every stage of criminal proceedings. This is the case whether they are detained with or separated from their parents. It is estimated that millions of children worldwide have a parent in prison - tens of thousands are living with imprisoned parents, and many times that number are separated from an imprisoned parent<sup>2</sup>. There are few official figures to draw on simply because hardly anyone is counting. Moreover, the impact on the rights of children affected by the incarceration of a parent remains largely unacknowledged in criminal justice systems; these children often fall through the cracks created by poor social welfare provision, wholly inadequate protection for children living in prisons – almost always with their mothers – and lack of clarity in law, policy and procedure as to how to respond to them acting in their best interests. Efforts to compensate for these failings have primarily been small-scale and localised rather than substantive and comprehensive changes in governmental procedures and structures which put children's best interests at the centre of issues that affect them.

The African Charter on the Rights and Welfare of the Child<sup>3</sup> (ACRWC) has many provisions of direct relevance to these children including the right not to be discriminated against based on the status of their parents (Article 3), the best interests of the child as the primary consideration in actions affecting children (Article 4(1)), the opportunity to be heard in any judicial and administrative proceedings affecting them (Article 4(2)) and the right to survival and development (Article 5). Other Articles of relevance include the rights to be registered immediately after birth (Article 6), to education (Article 11), to health (Article 14), to protection against abuse (Article 16), to the enjoyment of parental care and protection (Article 19), and to special protection and assistance when separated from parents (Article 25).

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<sup>1</sup> Justice Albie Sachs in judgment on *S v M* 2008 (3) SA 232 (CC)

<sup>2</sup> Figures cited in *Proposed Theme For Day Of General Discussion: Children Of Imprisoned Parents*, Quaker UN Office (2010)

<sup>3</sup> African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990) Entered into force Nov. 29, 1999

In addition, Article 30 of the ACRWC lays out a number of provisions ensuring 'special treatment' for pregnant women and mothers who are accused or convicted of criminal offences. It requires that non-custodial sentences always be considered first and that alternatives to detention be established and promoted. In particular, Article 30(1)(f) states: 'the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.' The category of 'mother' could be inferred to include the role of sole or primary caregiver given that large numbers of children in Africa are orphaned or living separated from their parents but may still require the protections guaranteed in Article 30 when their primary caregiver is deprived of their liberty. The UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders<sup>4</sup> (the Bangkok Rules), for example, talk about non-custodial measures being preferred for 'a pregnant woman or a child's sole or primary caretaker<sup>5</sup>.'

The UN Committee on the Rights of the Child has considered this group of children at various stages during States' reporting processes and in Concluding Observations; for example they have considered the inadequacy of the conditions for babies living in prisons and have recommended that: '[W]here the defendant has child caring responsibilities' the principle of the best interests of the child should be 'carefully and independently considered by independent professionals and taken into account in all decisions related to detention, including pre-trial detention and sentencing, and decisions concerning the placement of the child<sup>6</sup>.' The Committee has also made it clear that alternative care for children who are separated from their imprisoned mother should allow the child to 'maintain personal and direct contact with the mother who remains in prison<sup>7</sup>.'

However, Article 30 is unique within the canon of regional and international child rights law because it highlights directly that the rights of children are affected when their primary caregivers are caught up in the criminal justice system. As such it is a vital complement to the provisions contained within the UN Convention on the Rights of the Child (CRC). In short, it provides us with an invaluable tool in defining States Parties' obligations to respect, protect and fulfil the rights of this overlooked group of children.

Penal Reform International (PRI) has long been interested in the rights violations experienced by children whose parents are in conflict with the law and this submission has the following objectives:

- to consider how children's rights are affected when their parents come into conflict with the law;
- to examine States Parties' obligations under Article 30 and other relevant provisions of the ACRWC; and
- to respectfully make some recommendations for the Committee in relation to this issue.

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<sup>4</sup> United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) Approved 21 December 2010, UN General Assembly Resolution A/RES/65/229.

<sup>5</sup> Ibid Rule 49

<sup>6</sup> Concluding Observations, Thailand, 17th March 2006, CRC/C/THA/CO/2, Para. 48.

<sup>7</sup> Thailand, March 2006 (CRC/C/THA/CO/2), para.4

## **2. The rights of children under the ACRWC when their parents are in conflict with the law**

- *At the point of arrest*

Children may be affected by their parent's involvement with the criminal justice system at all stages of proceedings. An arrest which involves removing a parent from the family home may be witnessed by a child and they may subsequently be left without their primary carer. Arrests which may affect a child should be conducted in such a way that their best interests are taken into account. Furthermore, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care when a child is permanently or temporarily deprived of his or her family environment (Article 25), as for example, when their primary carer is deprived of their liberty following arrest. The process of identifying alternative care should begin, ideally, immediately following arrest. Whether such care is appropriate should be decided on a case-by-case basis and grounded in the principle of the best interests of the child<sup>8</sup>. Alternative care provision should be supervised and reviewed regularly. The child should be fully consulted and have his or her views taken into account when making decisions about placements and States Parties would benefit from guidance on this aspect of Article 4. Such care could be informal with existing family, or formal in institutions, foster care or even adoption.

In general, it is difficult to obtain information on alternative care provision in Africa whether in informal or formal alternative care situations<sup>9</sup>. There is limited to no systematic, central data collection or collation and we do not know how many children arrive in informal or formal alternative care as a result of their parents' detention. Anecdotal evidence suggests that children whose mother, father or primary care giver is incarcerated may be taken care of by the remaining parent or their extended family but that the State will rarely play an active role in providing them with 'special protection and assistance' in conformity with their obligations under Article 25 of the ACRWC.

- *When pre-trial detention and sentencing measures are being decided*

Following arrest, a parent may be charged and brought before a court which determines whether or not they will be detained pending trial. Overuse of pre-trial detention is rife throughout Africa owing to many factors including a lack of availability of bail and low levels of legal representation. Lack of alternatives to post-sentence imprisonment, restrictions on parole and delays in appeals also contribute to long post-trial detention periods. As a result parents are kept away from children for unnecessarily long periods of time. Furthermore, most female offenders in Africa are the sole or primary carer for one or more children. Detention for mothers tends to be more directly disruptive to a child's life than paternal incarceration. The impacts on these children and their best interests are therefore in urgent need of further consideration. However, judges rarely consider a mother or father's caring responsibilities when determining pre-trial measures or passing sentence. Nor do they take into account the fact that childcare responsibilities may be an indication that alleged offenders are unlikely to abscond and that pre-trial detention is therefore less likely to be necessary.

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<sup>8</sup> See the UN Guidelines for the Alternative Care of Children at Paras 48 and 82

<sup>9</sup> This was the conclusion of research conducted by UNICEF into alternative care provision in *Southern Africa: Alternative Care For Children In Southern Africa: Progress, Challenges And Future Directions*, UNICEF (2008)

Yet, Article 30 (1) (a) states that when mothers who are expectant and/or have infants and young children, are being considered for pre-trial measures or are being sentenced then a non-custodial sentence 'will always be first considered.'<sup>10</sup> Article 30 (1) (b) requires that States 'establish and promote measures alternative to institutional confinement for the treatment of such mothers.' Such measures might include remand on bail, community service, mediation, restorative justice or a suspended sentence, perhaps until the child is older. The Charter does not contemplate that women who are pregnant or mothers may never be sentenced to imprisonment but it is clear that as a matter of sentencing law and policy, there should a presumption in favour of a non-custodial sentence. This raises some interesting questions concerning how courts can reconcile the principle in Article 4 that 'in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration' with the interests of criminal justice or even public security.

It is interesting to compare Article 30 with the Preamble of the Bangkok Rules which emphasizes that, 'when sentencing or deciding on pre-trial measures for a pregnant woman or a child's sole or primary caretaker, non-custodial measures should be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent.' In 2008, UN General Assembly Resolution 63/241<sup>11</sup> specifically addressed this issue under the heading "Children of persons alleged to have infringed or recognized as having infringed penal law". Paragraph 47(a) provides that States should give priority consideration to non-custodial measures when sentencing or deciding on pre-trial measures for a child's sole or primary carer, subject to the need to protect the public and the child and bearing in mind the gravity of the offence. This paragraph takes into account the child's best interests and the benefit of applying non-custodial sentences to primary carers, while considering the interests and competing rights of relevant stakeholders. It specifically notes that where the protection of the public is not at issue, and subject to the seriousness of the offence, an alternative to imprisonment should be applied.

A model for including consideration of a convicted person's care-giving roles can be found in the South African Constitutional Court case *S v M* (2007)<sup>12</sup>, which ruled on the question: 'When considering whether to impose imprisonment on the primary caregiver of young children, did the courts below pay sufficient attention to the constitutional provision that in all matters concerning children, the children's interests shall be paramount?' The judgment identified a 5-point method:

- i. The sentencing court should find out whether a convicted person is a primary caregiver whenever there are indications that this might be so.
- ii. The court should also ascertain the effect on the children of a custodial sentence if such a sentence is being considered.
- iii. If the appropriate sentence is clearly custodial and the convicted person is a primary caregiver, the court must apply its mind to

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<sup>10</sup> Although the phrase 'non-custodial sentence' is used in Article 30 (1) (a) which suggest this only applies to convicted mothers and/or pregnant women at the point of sentencing it is clear from Article (1) that this provision also applies to mothers and/or pregnant women 'who have been accused' and may be facing detention pre-trial.

<sup>11</sup> UN General Assembly, Resolution: Rights of the Child, A/RES/63/241

<sup>12</sup> *S v M* 2008 (3) SA 232 (CC). This case concerned a woman, who was the primary caregiver to three children, and who had been convicted of a series of frauds and was facing imprisonment. The woman was sentenced to a period of correctional supervision and the sentence included community service and paying back to victims instead of a custodial sentence which would have negatively affected her child.

whether it is necessary to take steps to ensure that the children will be adequately cared for while the caregiver is incarcerated.

- iv. If the appropriate sentence is clearly noncustodial, the court must determine the appropriate sentence, bearing in mind the interests of the children.
- v. Finally, if there is a range of appropriate sentences, then the court must use the paramountcy principle concerning the interests of the child as an important guide in deciding which sentence to impose.

Subsequently, the 2011 case of *MS v S*<sup>13</sup> narrowed the scope of this provision, limiting it to single primary caregivers only. This represented a move away from the case-by-case approach of the earlier judgment and limits eligibility for having the impact of parental offending be considered to children in particular categories only (i.e. those with just one care-giving parent).

- *When a defendant is pregnant*

Article 30 (1) provides for special treatment for both expectant mothers and mothers of 'infants and young children' who are accused of, or have been found guilty of committing a criminal offence. Extending protection to pregnant mothers is an important contribution to the child's future health which may be compromised by the mother's experience of detention and by lack of facilities for prisoners to give birth in a safe and healthy environment.

**Experience of pregnant prisoners in Uganda**

"In Uganda, female prisoners who were pregnant or had given birth in prison reported that prenatal care was frequently unavailable or inadequate. Christine, six months pregnant at Fort Portal Women's Prison, said she had asked daily to see a doctor for the pain she was experiencing and blood in her urine but had been refused. Lydia, six months pregnant, had received no prenatal care for the month and a half she had been in prison. Women at Luzira Women's Prison receive prenatal services at the staff clinic, the only prison-based facility offering delivery services; but even there, female prisoners claimed that care was inadequate. Postnatal care is minimal: One prisoner said she was forced to return to the prison two hours after giving birth at a hospital."

*Hard Life in Ugandan Prisons, Human Rights Watch (2011)*

- *When a child is separated from a parent who is in detention*

There are a host of challenges which a child might be confronted with when a parent is incarcerated whether they remain in a family environment or are placed in alternative care. Children may be more vulnerable to violence, abuse, neglect and exploitation and face challenges in accessing health and education services. Furthermore, children may experience discrimination as a result of their parent's status. Under the CRC they also have a right to know where their parents are being held (Article 9 (4) CRC).

Article 30 (1) (f) requires that States have a prison system which has as its essential aim the 'reformation, the integration of the mother to the family and social rehabilitation.' This has implications for law, policy and training on how to deal with children of parents who have been arrested and imprisoned particularly regarding how children can contact the parent and be contacted by them, and follow-up by social welfare services to ensure children 'outside' have their rights protected and are not subject to social exclusion or discrimination. The Indian state of West Bengal, for example, has a law that states that if a detained person has dependent children studying in school or college, the State

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<sup>13</sup> *MS v S* 2011 (2) SACR 88 (CC)

government will help pay for the child to continue going to school. The West Bengal Prison Directorate also encourages schools and institutions to allocate a part of their funding for the welfare and advancement of children of prisoners<sup>14</sup>.

Where imprisonment is unavoidable, access of children to their parent is critical provided it is in their best interests and does not raise protection concerns. The UN Guidelines for the Alternative Care of Children provide that States 'should pay special attention to ensuring that children in alternative care because of parental imprisonment...have the opportunity to maintain contact with their parents and receive any necessary counselling and support in that regard<sup>15</sup>.' However, prison buildings and regimes are often remote and inaccessible for children visiting detained or imprisoned parents. This is a particular challenge for detained mothers since many countries have a limited number of facilities for female detainees. This can mean that children have to travel very long distances from their home to visit their mother which incurs financial costs and can also take up school time. If a decision is taken to imprison a parent or other primary caregiver then the relevant authorities should first establish where the child is living in order to have the parent sent to a facility within suitable travelling distance of the child's home. Furthermore, consideration should be given to circumstances where the parent is a foreign national who may require assistance in maintaining contact with children in their home country through telephone, email or written correspondence.

**Importance of contact with parents in detention in Namibia**

"Samuel was only a year old when his father was detained. While at the prison, he savours every moment he has with him. Before the visit he tells what he wants to confide to his father, 'I came fourth out of my class of 40. I know my father will be proud of me. There are big boys at school who beat me up or make me feel scared. I want to tell my father because I do not know what to do about them.' During the visit he holds the telephone receiver tight, and does not want to be disturbed by anyone."

*Boy from Namibia talking to ICRC - Extracted from submission by ICRC to the UN Committee on the Rights of the Child, Day of General Discussion (2011)*

- *At the moment of release*

A prisoner's caretaking responsibilities should also be taken into account at the point of determination on early and temporary release. This is recognised in the Bangkok Rules, Rule 63 of which states: 'Decisions regarding early conditional release (parole) shall favourably take into account women prisoners' caretaking responsibilities, as well as their specific social reintegration needs'. However, consideration of the impact on children and their best interests are often ignored, and children's input is not sought. Actively involving children in considerations about the progression of a parent's sentence and preparations for release, such as through sentence planning when it exists, would be one way of doing this.

- *When it is in a child's best interests to remain in prison with their primary caregiver*

*"The likelihood is that they may become misfits in society, e.g. after release, they would not realise what to do if they came across a cat or a dog. The children may also leave*

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<sup>14</sup> HAQ Centre for Child Rights, written submission to the Day of General Discussion On "Children Of Incarcerated Parents", UN CRC Committee (2011) cited in Robertson, O *Collateral Convicts: Children of incarcerated parents Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011*, Quaker UN Office (2012)

<sup>15</sup> UN Guidelines for the Alternative Care of Children at Para 82.

*prison with a stigma attached to them for the rest of their lives. This would have an immense negative psychological effect when they enter mainstream education."*

Justice Imam Ali, PRI Board member and Judge

Article 30 (d) says that States must ensure 'a mother shall not be imprisoned with her child.' This reflects the importance placed in the Charter for children to grow up in a 'family environment in an atmosphere of happiness, love and understanding.' This provision also reinforces the obligation on States Parties to provide alternatives to pre and post trial custody for caregivers and/or pregnant women. Article 19 states that 'the child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determined in accordance with the appropriate law, that such separation is in the best interest of the child.'

However, there may be circumstances when it is in the best interests of the child for them to be imprisoned with their mothers or primary caregivers. Rule 49 of the Bangkok Rules for example states that 'Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the child.' Nearly all States Parties to the ACRWC have some provision for babies and young children to remain in prison with their mothers usually with an age cut off point ranging from around two to four. This aspect of Article 30 requires clarity, taking into account the various actors who are responsible for making this decision (such as judges, social workers, parents, family members and prison officials); as well as how the child's best interests could be assessed and taken into account. Clarity is also required as to the criteria that might be used by States to determine the limited circumstances when a child might live with his or her mother in prison. This should take into account all possible alternatives to a child being placed in a detention facility, such as living with other family members or community-based initiatives. Such alternatives should be stringently assessed on an individual basis and in accordance with the Guidelines for the Alternative Care of Children.

Article 30 (1) (c) calls on States to establish 'special alternative institutions' for holding mothers. Many States Parties do not allocate sufficient resources to prison upgrades such that special alternative institutions which protect the rights of children could be established. Such institutions should only be considered as a last resort where alternatives to detention cannot be considered and it is in a child's best interests to remain with their mother or primary caregiver.

"The condition with a child in the prison is very hard, food for a child is of a poor quality and milk is available very rarely".

Mother living in prison with her baby in Tanzania, extracted from Inspection Report for Children in Detention Facilities in Tanzania, Commission Human Rights and Good Governance (2011)

Children living in prison should never be treated as prisoners themselves. They should not be subjected to disciplinary punishments. In principle they should be free to leave the prison and participate in outside activities, in compliance with security considerations. Mechanisms should be in place to protect children from all forms of physical and psychological abuse in prisons. The Bangkok Rules state that punishment

by close confinement or segregation should not be applied to pregnant women, women with infants and breastfeeding mothers in prison. Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children. On admission to prison the number and personal details of children accompanying their mothers should be recorded. If a baby is born whilst his or her mother is in prison then their birth must be registered in accordance with Article 6 of the ACRWC. During the time which they spend in prison, children should be provided with good quality primary health care services on an ongoing basis and their development should be monitored by a prison psychologist and specialists in child development (e.g. on regular visits from community healthcare services). The environment provided for the child's upbringing should be as close as possible to that of a child outside prison, with a nursery staffed by specialists who can take care of the child while separated from his or her mother. When children who accompany incarcerated parents to prison can no longer be accommodated there (for example, where they reach the maximum age allowed in law or regulation), alternative arrangements must be made that consider and reflect the child's best interests.

**Lack of food for pregnant women and children living with their mothers in prison in Zambia**

In Zambia, where reports of malnutrition are common among prisoners and food provided to prisoners consists entirely of maize meal and either beans or tiny, dried fish, there is no special diet for pregnant or nursing women. Despite a Zambian legal provision that, subject to the commissioner's conditions, "the infant child of a woman prisoner may be received into the prison with its mother and may be supplied with clothing and necessaries at public expense," and may stay up until age four, there is no food at all allocated to children under age four who live with their mothers in prisons; they are expected to share out of the portion of the mother. In situations where women are unable to breastfeed, the prison does not offer infant formula.

*Unjust and Unhealthy: HIV, TB, and Abuse in Zambian Prisons - Human Rights Watch (2010)*

- *The death penalty and pregnant women and mothers of young children*

Article 30 (1) (e) provides that States must ensure that a death sentence shall not be imposed on pregnant women or mothers of young children. This is reiterated in the Protocol on the Rights of Women in Africa in Article 4 (1) (j). Article 30 provides States with clear direction on law prohibiting such sentences. Almost every country in the world prohibits the death penalty for a pregnant woman. However, some States Parties to the ACRWC delay execution until shortly after the birth in violation of Article 30 (1) (e); for example, the grace period in Egypt is two months. In Benin, the Democratic Republic of Congo, Madagascar, Mauritania, Niger and Tunisia the death sentence is delayed for an undefined period after childbirth<sup>16</sup>. Botswana, Cameroon, Congo, Egypt, Ethiopia, Gambia, Ghana, Lesotho, Madagascar, Malawi, Mauritania, Nigeria, Tanzania, Uganda, Zambia, and Zimbabwe have not passed domestic legislation prohibiting the imposition of a death sentence on mothers of young children<sup>17</sup>.

### **3. Recommendations for the African Committee of Experts on the Rights and Welfare of the Child**

Promoting and protecting the rights of children whose parents are in conflict with the law requires a coordinated response by all relevant agencies and a culture change which

<sup>16</sup> Death Penalty Worldwide <http://www.deathpenaltyworldwide.org/women.cfm> [accessed 16 March 2012]

<sup>17</sup> Ibid

elevates their rights and status so that they are no longer the invisible victims of the criminal justice system. According to Article 42 of the ACRWC and under Rule 73 of the Committee's Rules of Procedure, the Committee has the mandate to 'prepare general comments on the basis of the Articles and provisions of the Children's Charter with a view to promoting its further obligation and assisting States Parties in fulfilling their reporting obligations.' To our knowledge, Article 30 has not yet been the subject of extensive analysis either by the Committee itself or within academia or civil society. This is despite the fact that many States struggle to implement Article 30 fully.

PRI respectfully suggests that a General Comment addressing this neglected area that provides States Parties with clear and comprehensive guidance on Article 30 will assist to drive improvements in implementation. Such a General Comment could build on the outcomes of the recent Day of General Discussion held by the UN Committee on the Rights of the Child<sup>18</sup>. It could also draw on the Bangkok Rules and the UN Guidelines for the Alternative Care of Children. Within the African human rights system there are many instruments relevant for such a General Comment<sup>19</sup> including the outcome declaration from the recent Kampala Conference on 'Deprivation of Children's Liberty as a Last Resort.'

In this context, the Committee may wish to consider the following:

- Children whose parents are involved with the criminal justice system have equal rights to all other children under the ACRWC and these rights should not be affected because of the status of their parent.
- The best interests of the child must be the primary consideration in relation to all actions that may affect children whose parents are in conflict with the law, whether directly or indirectly, in accordance with Article 4. States should create and implement laws/policies to ensure this occurs at all stages of judicial and administrative decision-making during the criminal justice process, including arrest, investigation, pre-trial measures, trial and sentencing, imprisonment, release and reintegration into the family and community.
- Efforts should be made to avoid sending parents or the primary carer of children to pre-trial detention or imposing a sentence of imprisonment. This means a person's caring responsibilities must be identified prior to deciding on pre-trial measures, passing sentence or determination on early and temporary release. It also means that viable alternatives to detention must be developed where they are lacking.
- In situations where children are or may be placed in alternative care, the UN Guidelines for the Alternative Care of Children should be followed at all stages.
- Provided it is in children's best interests, efforts should be made to ensure contact with the detained parent.
- If as a last resort, children are detained with their caregivers, then guidance is required to ensure that their rights are not violated whilst living in prison:
  - in all situations affecting children living in prison, before, during and after their time in prison, their best interests must be a primary consideration.

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<sup>18</sup> Report and Recommendations of the Day Of General Discussion on "Children Of Incarcerated Parents", UN CRC Committee (2011) <http://www2.ohchr.org/english/bodies/crc/docs/discussion/2011CRCDGDRReport.pdf> [Accessed 20 March 2012]

<sup>19</sup> See for example, Kampala (Uganda) Declaration on Prison Conditions in Africa (1996); Arusha Declaration on Good Prison Practice (1999); Kampala Declaration on Prison Health in Africa (1999); Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2001); Ouagadougou (Burkina Faso) Declaration on Accelerating Prison and Penal Reform in Africa (2002); Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) (2002); and the Lilongwe (Malawi) Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004)

- children living in prison are not prisoners and should not be treated as such. Policy and practice should ensure that they are not disadvantaged because they live in prison.
- Independent monitoring mechanisms for children in detention such as National Human Rights Institutions can play an important role in protecting them.
- There should be effective co-ordination mechanisms within government between relevant ministries and departments which have responsibility for implementing Article 30 including the ministries of justice, interior, social welfare, health, education etc.
- Statistics about children of incarcerated parents should be routinely and consistently gathered by relevant agencies to help develop policy and practice.

Finally, PRI would like to assure the Committee that it is ready and willing, in collaboration with others, to assist with developing a General Comment in any way it can.

March 2012

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## **ANNEXE ONE - Selection of Bangkok Rules relating to children of incarcerated parents**

Rule 2.2 Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.

Rule 22 Punishment by close confinement or disciplinary segregation shall not be applied to pregnant women, women with infants and breastfeeding mothers in prison. & Rule 23 Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.

Rule 33.3 Where children are allowed to stay with their mothers in prison, awareness-raising on child development and basic training on the health care of children shall also be provided to prison staff, in order for them to respond appropriately in times of need and emergencies.

Rule 42.2 The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities. & 42.3 Particular efforts shall be made to provide appropriate programmes for pregnant women, nursing mothers and women with children in prison.

Rule 48.1 Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers. & 48.2 Women prisoners shall not be discouraged from breastfeeding their children, unless there are specific health reasons to do so.

Rule 49 Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children.  
Children in prison with their mothers shall never be treated as prisoners.

Rule 50 Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children & Rule 51.1 Children living with their mothers in prison shall be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services. & 51.2 The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.

Rule 52.1 Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws. & 52.2 The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials. & 52.3 After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible

opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.

Rule 57 The provisions of the Tokyo Rules shall guide the development and implementation of appropriate responses to women offenders. Gender-specific options for diversionary measures and pre-trial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.

Rule 60 Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services.

Rule 63 Decisions regarding early conditional release (parole) shall favourably take into account women prisoners' caretaking responsibilities, as well as their specific social reintegration needs.