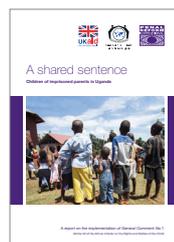


A shared sentence: children of imprisoned parents in Uganda

A report on the implementation of General Comment No.1
(Article 30 of the African Charter on the Rights and Welfare of the Child)

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Daliaus

Daliaus is ten years old. His mother is in prison and his father is absent from his life. He feels sad about his mother and misses her and the rest of his family who don't visit him in the home run by the NGO Family of Africa where he lives. This NGO is his only source of support. He would like to have more books and toys to play with.



Ronald

Ronald is 13 years old and has lived at Family of Africa since 2013. He has no contact at all with his parents both of whom are in prison although sometimes his relatives visit him and offer some support. He explained that in the future he wishes to study very hard so that he is able to get his parents out of prison.¹

These two stories from recent research in Uganda demonstrate how parental imprisonment can affect all aspects of a child's life, from where and with whom they live, to how they cope at school, their relationships with their relatives, and their survival within the community. Article 30 of the African Charter on the Rights and Welfare of the Child is unique within the canon of regional and international human rights law because it highlights directly how the rights of children are affected when their parents or primary caregivers are caught up in the criminal justice system. In November 2013, the African Committee of Experts on the Rights and Welfare of the Child adopted General Comment No. 1, entitled 'Children of Incarcerated and Imprisoned Parents and Primary Caregivers', which elaborated further on the obligations of States to respect, protect and fulfil the rights of these children.²

The Foundation for Human Rights Initiative (FHRI) and Penal Reform International (PRI) began research in Summer 2015 to find out the extent to which Article 30 and General Comment No. 1 have been implemented in Uganda. The research draws upon a document review, as well as interviews and focus group discussions with those engaged in working with children of imprisoned parents

and a small sample of 15 children of imprisoned parents and 11 mothers in prison. These interviews sought to understand the impact that parental involvement in the criminal justice system had had upon children's lives and to understand better what improvements could be made particularly from a child's perspective. The following are some of the key findings and recommendations that emerged from this research.

How many children are affected?

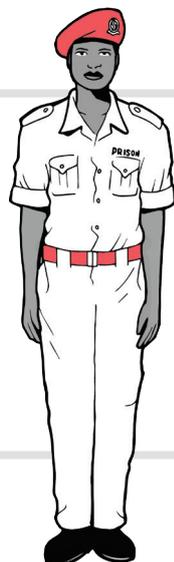
When parents or primary caregivers are arrested and sent to prison in Uganda, little to nothing is known or recorded about what becomes of their children, so there are no precise figures available about how many children are affected. According to the Uganda Prison Service, in July 2015 there were 45,314 people in prison, 2,039 of whom were women.³ It is reasonable to assume that a very large proportion of these prisoners were parents or primary caregivers to at least one child and most likely four or five. The population of children living with their mothers in prison has increased from 226 in July 2014 to 239 in July 2015.⁴

Stigma and discrimination

All of the children interviewed experienced discrimination from their communities and social isolation as a result of their parents' involvement with the criminal justice system; a social worker explained that when these children are taken to school their family history is kept secret so as to avoid incidents of bullying.⁵ A 21-year-old mother said that her relatives, including her young daughter, had received threats from neighbours following her arrest and sentence. Her daughter has also been bullied by children in the neighbourhood and the family can no longer afford to send her to school.⁶ Lack of contact with relatives because of the stigma of parental arrest and detention can be devastating for children. An NGO social worker described how: 'Some children miss their families and relatives and end up falling sick emotionally'; another commented that: 'They lack parental love; for example, some fathers never come around to visit or look for their children'.⁷

“ People’s attitudes towards these women in prison and their children should change. They should know that these children are not criminals. ”

Prison officer.⁸



Recommendation

General Comment No. 1 calls on states to 'undertake measures to prevent and eliminate discrimination against children whose parents or primary caregivers are incarcerated'. In Uganda, such measures should include training teachers so that schools are able to offer appropriate support; sensitisation of the media; and general public awareness-raising about children of prisoners as a group who experience vulnerability and social isolation.

Child protection and alternative care

Parental arrest can be very disruptive for children: a 13-year-old girl who was interviewed said that when her mother was arrested, she and her older siblings were simply left to take care of themselves afterwards.⁹ There is no clear police procedure in Uganda for dealing with children of arrested parents, nor many reliable referral systems in place. General Comment No.1 recommends that priority consideration should be given to non-custodial pre-trial measures for parents or caregivers, such as bail and using summons procedures and written notices to appear at court. Significant progress has been made recently in Uganda in reducing the period of time defendants are held in pre-trial detention. However, it is still very widely used and in August 2014, 54 per cent of all prisoners were held in pre-trial detention.¹⁰ Care-giving responsibilities are not taken into account systematically when deciding upon a defendant's suitability for bail, and bail is not always granted in a consistent manner, particularly for those who lack legal representation and the ability to produce sureties because of poverty.

General Comment No. 1 states that a non-custodial sentence should always be considered when sentencing parents or primary caregivers. In 2013, the Supreme Court of Uganda issued advisory Sentencing Guidelines that are broadly in line with Article 30 and the recommendations of General Comment No. 1 and they are to be really welcomed.¹¹ Lawyers interviewed for this research stated that care-giving responsibilities were taken into account as a mitigating factor during sentencing procedures – particularly for women and for petty crimes – but that this did not happen systematically and it depended very much on the experience and 'proactivity' of individual judges.

General Comment No. 1 states that children must be adequately cared for while the caregiver is incarcerated and that the UN Guidelines for the Alternative Care of Children¹² should be consulted and followed. Uganda's Sentencing Guidelines are clear that the court should address the question of what happens to any children on sentencing and require that any child will be adequately cared for while the caregiver is serving the custodial sentence, 'bearing in mind the importance of maintaining the integrity of family care by protecting innocent children from avoidable harm'.¹³ However, it seems that in practice that these guidelines are not yet fully implemented.

“ The separation is hard on them, but with education and support from relatives and other children it gets better. The children’s future is bright if supported. But it varies from child to child. ”

Social worker.¹⁴



The legal and policy framework for child protection overall in Uganda is extensive but is not working effectively to care for this group of children. The budget allocated to the child protection sector is inadequate (just 0.4% of GDP) and the sector lacks skilled staff.¹⁵

Recommendations

In Uganda courts should take into account the caretaking responsibilities of defendants when determining suitability for bail. This determination should include the possibility that caretaking responsibilities mean that defendants are less likely to abscond. Any surety imposed must be reasonable and proportionate given the defendant’s circumstances, and bail conditions should not jeopardise caretaking responsibilities.

Further judicial sensitisation around the Sentencing Guidelines as well as improved legal aid provision throughout the country will help to ensure that the court considers the effect of a custodial sentence on a child and addresses their care for the duration of the sentence.

The child protection system needs to be strengthened through allocation of sufficient budgets and resources, particularly to Probation and Social Welfare Officers, but also through specific training and awareness-raising on case management of children of imprisoned parents/caregivers. Information about the children of prisoners, within and outside of prison, should be systematically gathered and linked with other databases regarding children in need of care and protection that are being developed.

Care for children living in prison with their mothers

General Comment No. 1 recommends that when a decision is made to allow a child to live in prison with their mother, then this must be subject to judicial review. It also calls for implementation of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)¹⁶ which, amongst other provisions, recommends that children are provided with an environment for their upbringing as close as possible to that of a child outside prison. In Uganda,

children may stay with their mothers in prison up to the age of 18 months, although many stay longer if there is no extended family or NGO to take care of them.¹⁷ Conditions are very poor and interviewed mothers complained of lack of food and inadequate hygiene in particular. Funding for these children is inadequate and one interviewed lawyer highlighted that care for these children ‘is even not embedded in the government budget. It is the good will of the civil society, well-wishers and also the innovativeness of the prisons officers’.¹⁸

Recommendation

Currently the process by which children end up living in prison with their mothers depends on whether or not the mother is arrested along with her young child. The process should be formalised and subject to judicial review with clear criteria developed that take in to account the individual characteristics of the child, such as age, sex, level of maturity, the quality of the relationship with the mother, and the existence of quality alternatives available to the family.

Contact with parents in prison

General Comment No. 1 states that contact between imprisoned parents/caregivers and children must be facilitated where it is in a child’s best interests and the relevant authorities should establish where a child is living in order that their parent/caregiver is sent to a facility within suitable travelling distance of the child’s home. Research on women prisoners in 2014-15 found that only 13 per cent of women surveyed were visited regularly by their children.¹⁹ The environment for these visits varies but there are no child-friendly facilities in any prisons in Uganda. Children have to undergo procedural security checks to enter the prison and their parents are clad in prison uniform which is very intimidating for the children. One mother when interviewed explained that children ‘fear our uniforms ... and think it is scary’. Another mother explained that she doesn’t want her three children to visit because of the poor conditions and because they found the first visit so frightening.²⁰ She also complained of high travel costs and suggested that a payphone would really help her children to stay in touch.²¹

“ My children stay with other children. I am not sure of their well-being. ”

Mother in prison.²²



Recommendation

Children in Uganda need to have child-friendly facilities in prisons that provide play and information and support services for children. The timing and structure of visits should be improved and contact should not be withdrawn as a disciplinary measure. There should be extended access to indirect contact by telephone and letter.

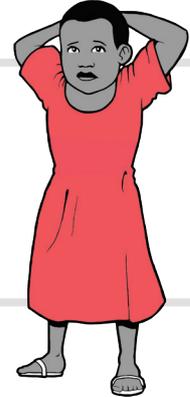
Conclusions

The Sentencing Guidelines in Uganda are a very useful first step towards protecting the rights of these highly vulnerable children. However, there is much more to be done to ensure that they have all of their rights respected, protected and fulfilled – in particular their right to alternative care and protection. They face so much stigma and discrimination and it is vitally important to address this and to raise awareness that these children

are innocent victims who need support in dealing with a very difficult situation. It is hoped that similar research can be conducted in other States Parties so that General Comment No.1 will become more widely known and implemented and this group of children become visible on the agenda of law and policy-makers.

“ I feel so sad when I go a long time without visiting my mother. ”

Child, ten years old, living at the Family of Africa home.²³



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The **Foundation for Human Rights Initiative (FHRI)** is an independent, non-governmental, non-partisan and not-for-profit human rights advocacy organisation with a mission to enhance the knowledge, respect and observance of human rights, promote exchange of best practices through training, education, research, advocacy and strategic partnerships.

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