



# 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)

**A shared sentence: children of imprisoned parents in Uganda:**  
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(Article 30 of the African Charter on the Rights and Welfare of the Child)

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# Acronyms

<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>ACERWC</b>	African Committee of Experts on the Rights and Welfare of the Child
<b>CFPU</b>	Child and Family Protection Unit
<b>FHRI</b>	Foundation for Human Rights Initiative
<b>NGO</b>	Non-Governmental Organisation
<b>PRI</b>	Penal Reform International
<b>PSWO</b>	Probation and Social Welfare Officer
<b>UPS</b>	Uganda Prison Service

# Foreword

It is estimated that there are over a million people in Africa currently in prison, most of whom are likely to be parents. The children of prisoners across Africa face many violations of their rights when their parents or primary caregivers are arrested and detained. They are confronted with the trauma of separation but also have to contend with subtle and not so subtle stigma and discrimination because of their parent's involvement with the criminal justice system. Children living in prison with their mothers often live in intolerable conditions with inadequate access to nutrition, play and education.

In 2013, the African Committee of Experts on the Rights and Welfare of the Child adopted its first ever General Comment on the rights of children when their parents or primary caregivers are in conflict with the law. The main objectives of this General Comment are to strengthen understanding of Article 30 of the African Charter on the Rights and Welfare of the Child and to give States clear guidance on the legislation, policy and practice necessary to achieve its full implementation.

In order to make the provisions of the General Comment a reality, we need to know what it is happening on the ground in the lives of children of prisoners. These children are so often invisible for law and policy makers, for judges, lawyers, social workers and teachers. I am therefore delighted that FHRI and PRI have conducted this research in Uganda looking at how the General Comment has been implemented so far and highlighting some of the gaps that need to be filled.

An important aspect of this research is that it involved talking directly with children of prisoners about their experiences and hearing, in their own words, how it has affected them and the sort of support they find most helpful. This is invaluable in my view as a way of deepening our understanding of the day to day challenges they face. I hope very much that similar research involving meaningful, ethical and safe participation of children of prisoners can be conducted in other States Parties so that General Comment No.1 will become more widely known and implemented and so this group of children can find their voice and become visible on the agenda of law and policy makers.

**Dr. Clement Julius Mashamba, Tanzania**

Expert and Rapporteur, African Committee of Experts on the Rights and Welfare of the Child

# Introduction

Children whose parents or primary caregivers are in conflict with the law in Africa are an invisible and often highly vulnerable group whose rights and welfare can be gravely affected at every stage of their parent's criminal proceedings and term of imprisonment. The impact of parental arrest and imprisonment on children goes far beyond affecting the relationship between the child and imprisoned parent. It affects 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.<sup>1</sup>

We do not know with any precision how many children in Africa are affected by their parents or primary caregivers coming into conflict with the law. However, the International Centre for Prison Studies estimates that there were just over one million prisoners in Africa (excluding Eritrea and Somalia) in October 2013.<sup>2</sup> In about half of these countries, very large proportions of prisoners – more than 40 per cent – were in pre-trial detention. It is reasonable to assume that the rights of a large number of children are affected by the imprisonment of over a million adults in Africa, the vast majority of whom are likely to be parents/primary caregivers of at least one child and most likely more.

Research by the UN Development Programme and Open Society Justice Initiative conducted in Sierra Leone in 2013 found that 80 per cent of the detainees in pre-trial detention, who participated in their questionnaire, had children and half had four or more children of dependent age.<sup>3</sup> Furthermore, this research found that for every four detainees in pre-trial detention, there were five families who no longer had the support of a breadwinner and that families of pre-trial detainees experienced social stigmatisation as well as serious economic consequences, including falling into debt and having to sell household goods, because of the imprisonment of their family member.<sup>4</sup>

More often than not, children of prisoners fall through the cracks created by lack of clarity in law, policy and procedure as to how to respond to them, inadequate social welfare provision, and low levels of care for children living in prisons with their mothers. Efforts to compensate for these failings have primarily been small-scale and localised rather than much needed substantive and comprehensive changes in governmental procedures and structures which put children's best interests at the centre.

There are a number of relevant international standards governing the treatment of this group of children. The UN Committee on the Rights of the Child held a Day of General Discussion on children of incarcerated parents in 2011<sup>5</sup> and has considered this issue many times during States' reporting processes. For example, they have considered the inadequacy of conditions for babies living in prisons and have recommended that where 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>

The UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders<sup>8</sup> (the Bangkok Rules) recommend that non-custodial measures are preferred for 'a pregnant woman or a child's sole or primary caretaker'.<sup>9</sup> The revised UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), covering minimum standards in all prisons, also include relevant provisions regarding the birth registration of children born in prison, contact for parents with their children, and ensuring that the names of children's ages, location and custody status is recorded on a prisoner's file on admission.<sup>10</sup>

1. See the *Report of the Special Rapporteur on Independence of Judges and Lawyers*, April 2015, A/HRC/29/26, para. 74, for further discussion on this.
2. Institute for Criminal Policy Research (ICPR), *World Prison Population List*, 10th Edition, 2014.
3. Open Society Justice Initiative, *The Socioeconomic Impact of Pre-trial Detention in Sierra Leone*, 2013, p24.
4. *Ibid.*, p32.
5. UN Committee on the Rights of the Child, *Report and recommendations from the Day of General Discussion on Children of Incarcerated Parents*, 30 September 2011. Available at: [www.ohchr.org/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf](http://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf) <accessed 15 October 2015>.
6. UN Committee on the Rights of the Child, *Concluding observations: Thailand*, 17th March 2006, CRC/C/THA/CO/2, para. 48.
7. *Ibid.*, para 4.
8. UN 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.
9. UN Bangkok Rules, Rule 49.
10. The UN Commission on Crime Prevention and Criminal Justice adopted the revised Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) at its 24th Session on 22 May 2015. It is expected that the Rules will be adopted by the UN General Assembly at the end of 2015. See Resolution 'United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)', UN Doc E/CN.15/2015/L.6/Rev.1 at: [http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_24/resolutions/L6\\_Rev1/ECN152015\\_L6Rev1\\_e\\_V1503585.pdf](http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6_Rev1/ECN152015_L6Rev1_e_V1503585.pdf). See PRI's website for more information at: <http://www.penalreform.org/priorities/global-advocacy/standard-minimum-rules/> <accessed 15 October 2015>.

Article 30 of the African Charter on the Rights and Welfare of the Child (ACRWC)<sup>11</sup> 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/primary caregivers are caught up in the criminal justice system. It 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. 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’.

In November 2013, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)<sup>12</sup> adopted General Comment No. 1 on Article 30 of the African Charter entitled ‘Children of Incarcerated and Imprisoned Parents and Primary Caregivers’.<sup>13</sup> Although not legally binding, the General Comment is a very persuasive, authoritative and practical tool which defines States Parties’ obligations to respect, protect and fulfil the rights of this overlooked group of children. The Committee asserts that the provisions of Article 30 do not just apply to mothers but also to fathers and sole or primary caregivers who may be a foster parent or another family member such as a grandparent. This is because large numbers of children in Africa are orphaned or living separately from their parents but may still require the protections guaranteed in Article 30.

The General Comment sets out the following summarised obligations for State Parties.

- Review sentencing procedure so that a non-custodial sentence is always considered when parents/primary caregivers are being sentenced.
- If a parent/primary caregiver is imprisoned then a child must be placed in appropriate alternative care.
- Set up alternative measures to pre-trial detention such as bail and written notices to appear at court.
- In the very exceptional circumstances when non-custodial measures cannot be considered and it is in a child’s best interests to live with their parent/primary caregiver in prison, then special institutions should be established to house them and their treatment must be in line with the Bangkok Rules.
- A death sentence may not be imposed on pregnant women or mothers of young children.
- Parents/primary caregivers must have regular contact with their children provided it is in a child’s best interest. This means that at the point of sentencing to imprisonment, judges should make efforts to place parents/primary caregivers in facilities that are easy for their children to visit.

11. The African Charter on the Rights and Welfare of the Child was adopted by the Assembly of Heads of State and Government of the Organization of African Unity in July 1990, and entered into force in November 1999.

12. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) was established under Article 32 of the African Charter on the Rights and Welfare of the Child (ACRWC). For more information about its mandate, see: <http://acerwc.org/mandate-of-the-committee/> <accessed 15 October 2015>.

13. The full text of General Comment No.1 is available here: <http://acerwc.org/general-comments/> in English, French and Arabic <accessed 15 October 2015>.

# Why is this report needed?

Uganda ratified the ACRWC in 1994, without reservations, and it has been incorporated into Ugandan law by virtue of the Children's Act 1997. It submitted a State Party report in 2007 and was reviewed by the Committee in 2010. The concluding recommendations observed that the State Party report 'doesn't provide information pertaining to the treatments given to incarcerated pregnant mothers and incarcerated mothers of babies and young children and recommends that this information be included in the next reports'.<sup>14</sup>

When parents/primary caregivers are arrested and sent to prison in Uganda, little to nothing is known or recorded about what becomes of their children if they don't accompany their mothers in prison. So there are no precise figures about how many children in Uganda are affected by parental imprisonment nor how it affects them. However, in July 2015 there were 45,314 people in prison, 2,039 of whom were women (up from 1,447 in July 2012).<sup>15</sup> We do not know how many of these 45,000-plus prisoners had children, nor much about their lives, but we do know that in a survey conducted by the Foundation for Human Rights Initiative (FHRI) and Penal Reform International (PRI) in 2014-15, of 194 women prisoners in Uganda (10 per cent of the total women prisoner population), an overwhelming 92 per cent of surveyed women had children and over 86 per cent of these children were under 18 years old. Five per cent of the women surveyed were pregnant.<sup>16</sup> The Ugandan NGO, Wells of Hope, estimates that 200,000 children in Uganda have a parent in prison at any one time.<sup>17</sup>

In light of the limited research available on children of imprisoned parents, and in recognition of the relatively new ACERWC General Comment No 1, FHRI and 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. This research considers the law and policy frameworks in place in Uganda which have an impact on the children of parents in conflict with the law and, as far as possible, also considers how this law and policy is implemented in practice.

The research draws upon a document and data review as well as interviews and focus group discussions with those engaged in working with children of imprisoned parents including lawyers and paralegals, NGOs, prison monitoring bodies, social workers, prison officers and the judiciary during July and August 2015.<sup>18</sup> In addition, interviews were made with a small sample of 15 children of imprisoned parents<sup>19</sup> and 11 mothers in prison. These interviews were qualitative and sought to understand the impact that 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.

<sup>14</sup>. African Committee on the Rights and Welfare of the Child, Recommendations and observations sent to the Government of the Republic of Uganda on the Initial Implementation Report of the ACRWC, November 2010.

<sup>15</sup>. Figures provided by the Uganda Prison Service to FHRI, July 2015.

<sup>16</sup>. Foundation for Human Rights Initiative (FHRI)/Penal Reform International (PRI), *Who are women prisoners? Survey results from Uganda*, July 2015.

<sup>17</sup>. Wells of Hope also estimates that an average of 650,000 will have had a parent being imprisoned at any one time in one year. See *Situation about children of prisoners*. Available at: [www.wellssofhope.org/situation-about-children-of-prisoners.html](http://www.wellssofhope.org/situation-about-children-of-prisoners.html). <accessed on 15 October 2015>.

<sup>18</sup>. Different agencies participated in these interviews including: the Uganda Human Rights Commission, the Legal Aid Service Providers Network, the Uganda Christian Lawyers Fraternity, members of the Judiciary, five members of the Uganda Prison Service and representatives from Family of Africa (an Italian NGO that takes care of children whose mothers/caregivers are in Luzira Women's prison).

<sup>19</sup>. The fifteen children of prisoners interviewed were aged between 10 and 16 years old.

# The criminal justice and child protection systems

## 1. The arrest of parents/primary caregivers

For most children the point at which their parents are arrested by police is the first time they encounter the criminal justice system and if not handled sensitively, children can find it a terrifying and traumatic experience. Children who are not present at the arrest may not know what has happened or will happen to their parent. Parents/primary caregivers may not have sufficient time to make living and care arrangements for their children before they are taken away, leaving children unattended and confused following an arrest.

General Comment No. 1 includes the following recommendations regarding the arrest stage of criminal proceedings.

- 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 [...]. States should create and implement laws/policies to ensure this at all stages of judicial and administrative decision-making during the criminal justice process, including arrest ... (paragraph 23).
- States Parties must put mechanisms in place to minimise arrests of parents/primary caregivers, taking all other considerations into account, such as the crime allegedly committed and alternative methods of securing attendance at court (paragraph 44).
- The process of identifying alternative care for children following the arrest of a parent/primary caregiver should begin ideally immediately following arrest (paragraphs 40 and 44).
- All professionals, including police officers, should be trained to provide children with needed support (paragraph 16).

“ The children were at home when the police came to arrest me. They cried but I comforted them. ”

Mother in prison.<sup>20</sup>



Interviews with mothers in prison revealed that the way in which the arrest was dealt with was very disruptive for their children. One mother explained that when she had been taken to the police by her neighbours, her family, including her three children, were not given any information about her whereabouts.<sup>21</sup> 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.<sup>22</sup>

Uganda has a system of Child and Family Protection Units (CFPU) which are meant to be in every police station with trained officers ready to deal with vulnerable and abused children. A number of respondents interviewed, including judges, lawyers and NGO workers, stated that the police will often try to find relatives or an NGO to care for a child so that they do not have to stay with their parents in police cells. However, there is no clear police procedure for dealing with children of arrested parents, nor many reliable referral systems. As a consequence, children can find themselves left alone at home or abandoned, sometimes with devastating results. In Kampala in 2014, a two-year-old child was left unattended after her mother's arrest for hawking and was subsequently killed in a traffic accident after wandering off on her own next to the court where her mother's hearing was taking place.<sup>23</sup>

20. Interviews by FHRI with mothers in prison, 2015.

21. *Ibid.*

22. Interview by FHRI with daughter of an imprisoned mother, 2015.

23. See: 'KCCA vehicle kills two-year-old-baby at City Hall after mother's arrest', *The Monitor*, 19 November 2014. Available at: [www.monitor.co.ug/News/National/KCCA-vehicle-kills-two-year-old-baby-after-mother-s-arrest/-/688334/2526888/-/rqay03z/-/index.html](http://www.monitor.co.ug/News/National/KCCA-vehicle-kills-two-year-old-baby-after-mother-s-arrest/-/688334/2526888/-/rqay03z/-/index.html) <accessed 15 October 2015>.

## 2. The pre-trial detention of parents/primary caregivers

When parents/primary caregivers are in pre-trial detention, their children may suffer as a result of anxiety about what will happen to their parent/primary caregiver and when a trial will take place, difficulties in retaining contact with the absent parent/primary caregiver, and loss of home and family. The financial pressures on families, due to loss of earnings, can lead children to drop out of school and to engage in work that is harmful to their physical and mental development.<sup>24</sup>

General Comment No. 1 includes the following recommendations regarding the pre-trial detention stage of criminal proceedings.

- 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 [...] States should create and implement laws/policies to ensure this at all stages of judicial and administrative decision-making during the criminal justice process, including [...] pre-trial measures ...(paragraph 23).
- States Parties should take an individualised, qualitative approach to the issue that is nuanced and based on actual information about parents/primary caregivers and children (paragraph 15).
- Having childcare responsibilities may be an indication that defendants are less likely to abscond and therefore that pre-trial detention is less likely to be necessary (paragraph 41).
- Priority consideration should be given to non-custodial pre-trial measures for parents/caregivers, such as posting bail and using summons procedures and written notices to appear at court. These should be subject to the need to protect the public and the child and bear in mind the gravity of the offence. Where protection of the public is not an issue, and subject to the seriousness of the offence, an alternative to pre-trial detention should be applied (paragraphs 24 and 46).<sup>25</sup>
- Criminal cases must be dealt with expeditiously so that parents/primary caregivers do not languish in pre-trial detention and whilst in pre-trial detention children should have regular communication and contact with their parents/primary caregivers (paragraph 43).

Progress has recently been made in reducing the length of time that people are detained pre-trial in Uganda. The Justice Law and Order Sector Report for 2013/14 indicates that the average remand period was 10.5 months for capital cases and two months for petty cases which represents considerable improvement.<sup>26</sup> However, overuse of pre-trial detention is a long-standing and prevalent problem in Uganda and in August 2014, 54 per cent of all prisoners were held on remand.<sup>27</sup> Pre-trial detention facilities in Uganda are generally poorly maintained and overcrowded which can impact on health and safety, and increase their risk of detainees being subjected to torture and other cruel, inhuman and degrading treatment or punishment.<sup>28</sup> These are the same conditions in which children in pre-trial detention with their mother/caregiver are also housed.

The right to bail as an alternative measure to pre-trial detention is provided for in the Constitution.<sup>29</sup> The law on bail requires an accused person to fulfill several conditions before being granted bail, including providing a personal cognizance and admitting at least two substantial sureties. In a society where over 20 per cent of the population live below the poverty line, these conditions can render a significant number of the accused unable to access bail since the majority do not have a fixed place of abode and cannot produce substantial sureties.<sup>30</sup>

**“ District Chain Committees Members carried out several visits to Luzira Prison. Facilities have been inspected, and discussions held with inmates. There are still a number of mothers with young children resident, and the Legal Aid Clinic will follow up on the case of a pregnant woman with a one year old baby. The inmate alleges that she was forced to leave her other children at home alone as her husband is also in detention. ”**

Extract from Justice for Children District Chain Committees News, Jan-June 2013, Justice, Law and Order Sector's Justice for Children project.

24. For further information on the impact of pre-trial detention, see Open Society Justice Initiative et al, *The Socioeconomic Impact of Pre-trial Detention in Sierra Leone*, 2013, pp27-32.1. See also Robertson, *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.

25. This is also emphasised in para. 48 of the UN Guidelines for the Alternative Care of Children, A/RES/64/142, adopted by the UN General Assembly 24 February 2010: 'When the child's sole or main carer may be the subject of deprivation of liberty as a result of preventive detention or sentencing decisions, non-custodial remand measures and sentences should be taken in appropriate cases wherever possible, the best interests of the child being given due consideration'.

26. *JLOS Annual Performance Report 2013/14*, available at: <http://www.jlos.go.ug/old/index.php/2012-09-25-13-11-16/achievements-of-the-sector/2013-2014> <accessed 15 October 2015>.

27. For example, the number of prisoners on remand increased from 18,808 in 2012 to 21,711 in 2013.

28. *Avocats Sans Frontières/International Human Rights Program at the University of Toronto, Presumed Innocent, Behind Bars: The Problem of Pre-trial Detention in Uganda*, 2011.

29. Constitution of the Republic of Uganda, Article 1. 28(6) states that 'where a person is arrested in respect of a criminal offence the person is entitled to apply to court to be released on bail and the court may grant that person bail on such conditions as the court considers reasonable'; Magistrates Courts Act, Section 76.

30. FHRI, *Uganda: The right to a fair trial – Next steps*, Report for the period 30 June 2011 – June 2012, p33.

A lawyer interviewed for this research commented that defendants were given bail at times, but it depended very much on whether they had legal representation and practice ‘varies from the judicial officers or magistrates’.<sup>31</sup> A prison officer interviewed stated that there had been a plan to hold special hearings for mothers with children living in prison and for pregnant women to expedite their cases but that this had not in the end happened: ‘This area is very wanting because some mothers are incarcerated while heavily pregnant and are almost due. Therefore these women should be given more time on bail at least to first give birth.’ Care-giving responsibilities are not systematically taken into account when deciding upon a defendant’s suitability for bail and bail is not always granted consistently or fairly, particularly for those lacking legal representation and the ability to produce sureties. The consequence is that children who are not able to be looked after by formal or informal kinship care or by NGOs may be left alone at home or on the streets whilst their parents remain in pre-trial detention.

### 3. The trial and sentencing of parents/primary caregivers

The ACERWC General Comment No. 1 includes the following recommendations regarding the trial and sentencing stage of criminal proceedings.

- 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 [...] States should create and implement laws/policies to ensure this at all stages of judicial and administrative decision-making during the criminal justice process, including [...] trial and sentencing ... (paragraph 23).
- States Parties should take an individualised, qualitative approach to the issue that is nuanced and based on actual information about parents/primary caregivers and children (paragraph 15).
- A non-custodial sentence should always be considered when sentencing parents or primary caregivers (paragraph 24). This means that States must review their sentencing procedures and reform them accordingly so that:
  - A sentencing court should find out whether a convicted person is a primary caregiver whenever there are indications that this might be so.
  - The court should ascertain the effect of a custodial sentence on the children concerned if such a sentence is being considered.
  - If the appropriate sentence is clearly custodial and the convicted person is a primary caregiver, the court must apply its mind to whether it is necessary to take steps to ensure that the children will be adequately cared for while the caregiver is incarcerated.
- Children should have the opportunity to take part in sentencing procedures against their parent/primary caregiver and if necessary should be able to have a legal representative or guardian to give meaningful effect to their right to participation (paragraph 32).
- If the appropriate sentence is clearly non-custodial, the court must determine the appropriate sentence, bearing in mind the best interests of the child.
- Finally, if there is a range of appropriate sentences, then the court must use the principle of the best interests of the child as an important guide in deciding which sentence to impose (paragraph 36).
- Judicial officers must be equipped to weigh the best interests of the child versus the gravity of the offence and public security when considering the incarceration of a parent or caregiver (paragraph 39).
- The Committee recommends that the UN Guidelines for the Alternative Care of Children are consulted and followed (paragraph 40).

“Prisoners with children accused of petty offences should be given alternatives such as community service, paying fines, and reduced sentences among others.”

Prison officer.<sup>32</sup>

“Justice should at times be fair to the mothers since the children are innocent and thus are not supposed to be in prison.”

Prison officer.<sup>33</sup>

In 2013, the Chief Justice of 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. They are to be welcomed since they provide judicial officers with a specific set of recommendations with regard to the sentencing of primary caregivers, including the following.<sup>34</sup>

- Where it is brought to the attention of the court that an offender is a primary caregiver, the court is required to consider the effect of a custodial sentence on the child if such a sentence is passed.
- The court is also required to consider whether the 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.

31. Interview by FHRI with lawyer, 2015.

32. Prison officer in Uganda interviewed by FHRI, 2015.

33. *Ibid.*

34. Section 49 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.

- The court should strike a fair balance between the circumstances of the caregiver and the circumstances of the case. Where the appropriate sentence is clearly non-custodial, the court should determine the sentence bearing in mind the best interests of the child.
- Where there is a range of sentences available to the court, the court shall use the welfare principle as provided for under section 3 of the Children Act in deciding which sentence to impose. In determining a sentence for an offender who is a primary caregiver, the court shall ensure that the sentence is the least damaging sentence to the interests of the child.

Community service was introduced in Uganda in 2001 to address issues of rehabilitation and prison overcrowding.<sup>35</sup> However, the widespread implementation of community service as an alternative sentence is currently facing challenges. Magistrates tend to view it as a ‘soft’ option which may be frowned upon by victims or the community. Police are charged with compiling information to put before the court to assess suitability for community service. However, they have not yet fully taken this task on, which means magistrates are compelled to sentence in the absence of this information (which should include information about a defendant’s family circumstances and is a good opportunity to notify the court of the impact of any sentence on children).<sup>36</sup>

The Commissioner General for Prisons has expressed concern at the increasing length of sentences being imposed by courts and the corresponding growth in the number of prisoners serving long sentences.<sup>37</sup> The Commissioner General has also stated that ‘[n]on-custodial alternatives are often overlooked in favour of deprivation of liberty even for minor non-violent offences’.<sup>38</sup> Despite the introduction of the Sentencing Guidelines and the judicial sensitisation that has taken place, in practice it is still the case today that primary caregivers and parents are handed custodial sentences, which are often long and chosen over non-custodial sentences, even for minor non-violent offences.<sup>39</sup>

Lawyers interviewed for this research stated that caregiving responsibilities were taken into account as a mitigating factor during sentencing procedures – particularly for women convicted of petty crimes – but that this did not happen systematically and it depended very much on the gender awareness, experience and ‘pro-activity’ of individual judges.<sup>40</sup> There is also no provision or practice for children’s views to be taken into account during any stage of the trial and sentencing proceedings of their parents although they may be represented by older people in some cases.<sup>41</sup>

This failure to consider or consult children of imprisoned parents at all stages of the criminal justice process can result in their rights, needs and best interests being overlooked or damaged by court decisions.

## 4. Appropriate alternative care for children

In any circumstances, where a child’s own family is unable to care for a child, the State has responsibility for ensuring appropriate alternative care that is supervised and regularly reviewed. Such care may be informal, for example, if a child is looked after by relatives or friends, or formal, for example, if a child is placed by an administrative body or judicial authority with a family or in an institution. General Comment No. 1 recommends that:

- children must be adequately cared for while the caregiver is incarcerated and the UN Guidelines for the Alternative Care of Children should be consulted and followed. 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 (paragraph 40);
- the process of identifying alternative care for children following the arrest of a parent/primary caregiver should begin ideally immediately following arrest (paragraphs 40 and 44);
- alternative care provision should be supervised and reviewed regularly (paragraph 40);
- the child should be fully consulted and have his or her views taken into account when making decisions about placements (paragraph 40);
- states should pay special attention to ensuring that children in alternative care because of parental imprisonment can maintain contact with their parents (paragraph 63).

**“The Government of Uganda is committed to ensuring the care and protection of orphans and other vulnerable children and has taken great strides in developing policies and programmes to address the needs of this target group.”**

Hon. Mary Karoro, Minister of Gender, Labour and Social Development, Ministerial Statement, 16th October 2014.

35. PRI, *Alternatives to imprisonment in East Africa: Trends and Challenges*, 2012, p14.

36. PRI, *Alternatives to Imprisonment in East Africa: Trends and Challenges Update for East Africa*, Alternatives to Imprisonment Conference, Dar es Salaam, Tanzania, 7 – 8 November, 2013, 2013.

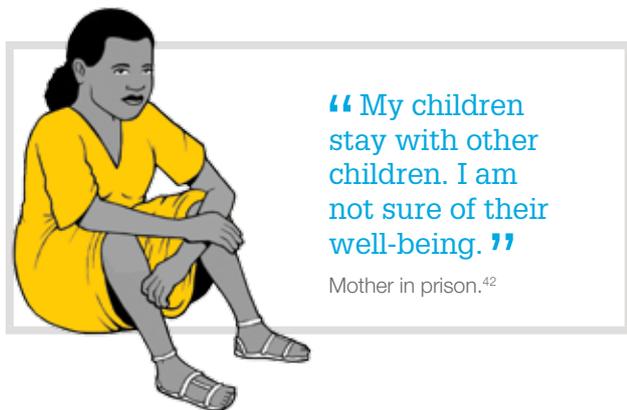
37. *View of Uganda Prisons Service on the performance of the Judiciary*, a paper presented during Annual Judges’ Conference (AJC), Entebbe, 24 February 2015, by Dr J.O.R Byabashajja, Commissioner General of Prisons.

38. *Ibid.*

39. FHRI/PRI, *Who are women prisoners? Survey results from Uganda*, July 2015. Of the 78 convicted women surveyed, 29 (37 per cent), were serving sentences of more than ten years. A small percentage (13 per cent) had sentences of below three years, and 40 per cent were serving sentences of between three and nine years.

40. Interview by FHRI with lawyers, 2015.

41. Interview by FHRI with Justice Lameck Mukasa, August 2015.



The new Sentencing Guidelines in Uganda state 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’.<sup>43</sup> However, it seems in practice that these guidelines are not yet fully implemented.

Uganda’s Children’s Act Cap.59 covers alternative care procedures for all vulnerable or abandoned children which in principle should include the care and protection of children of prisoners. Under this Act, the responsibility for implementation of child protection falls heavily on local government councils in the districts across Uganda. The new Children (Amendment) Bill 2015 also has provisions for children without parental care and child protection mechanisms are established in a number of national policies and strategies such as the National Development Plan and the National Strategic Programme Plan of Interventions for Orphans and Other Vulnerable Children.<sup>44</sup>

The National Framework for Alternative Care was introduced in 2012 to provide actors at different levels with clear guidelines and placement options for children in need of alternative care, and to put in place mechanisms to support existing government structures to carry out their statutory responsibilities for overseeing the care of children in alternative care. It has a strong focus on community-based care as opposed to residential institutions in recognition of a move away from institutionalisation and an increased focus on family strengthening and prevention of family separation. The Government is also developing a cohesive child protection strategy to tackle ongoing coordination challenges.

There is no express requirement that the various institutions charged with dealing with offenders, such as the police, courts, prisons, probation and social welfare departments, intervene with the care of children of imprisoned parents outside of the prison. Equally, there is no specific obligation on other parts of the child protection system in Uganda that serve vulnerable children including schools, Family and Child Protection Units, Family and Children Courts, Probation and Social Welfare Officers (PSWOs), local councils, or the National Council for Children, to inquire about the welfare of these children or ensure their safety and survival once a parent is imprisoned. It is also clear that the budget attributed to the child protection sector is inadequate – just 0.4 per cent of GDP – and the sector lacks skilled staff.<sup>45</sup> Probation and Social Welfare Officers at the district level could play an important role in case management of these children but currently there are only 40 functional PSWOs in 112 districts.<sup>46</sup>

Although only a very small sample of parents and children were interviewed for this research, it is clear from talking with them that there is no proper system in place to ensure that children receive appropriate alternative care when their parents are arrested, placed in pre-trial detention and/or sentenced to a term of imprisonment. The most common scenario is for children to live with their extended family – the Ugandan NGO Wells of Hope supports children of prisoners and has noted that in many cases grandparents play a role in stepping in and raising these children.<sup>47</sup> Research on women prisoners in Uganda found that nearly half of the children of the women surveyed were living with their mother’s family or with their father or father’s family. However, eight per cent of these children were living with their mother in prison and eight per cent of women said that they did not know where their children were living.<sup>48</sup>

Sometimes children are placed in non-governmental institutions that provide a home, education and help to maintain contact between children and their parents by facilitating visits to the prisons. However, there is no formal gate-keeping process and the care of these children is not followed up. A number of children fall through the cracks when there is no formal or informal kinship care or NGO who can take care of them and they have nowhere to go.

42. Interviews by FHRI with mothers in prison, 2015.

43. Section 49(1c) of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.

44. The National Strategic Programme Plan of Interventions for Orphaned and Other Vulnerable Children defines a vulnerable child as one who is suffering and/or is likely to suffer any form of abuse or deprivation and is therefore in need of care and protection.

45. UNICEF, *Situation analysis of children in Uganda*, 2015.

46. Figures given in the *Meeting Report of the Uganda Learning and Consultation Workshop*, The Republic of Uganda, Ministry of Gender, Labour and Social Development & Better Care Network, 12 November 2014.

47. Wells of Hope, *Situation of Children of Prisoners in Uganda*. Available at: [www.wellssofhope.org/situation-about-children-of-prisoners.html](http://www.wellssofhope.org/situation-about-children-of-prisoners.html) <accessed 15 October 2015>.

48. FHRI/PR, *Who are women prisoners? Survey results from Uganda*, July 2015.

Some respondents interviewed for the research were of the view that the Children’s Act and other relevant law and policy should explicitly cover this group of children – both children living in prison and children living on the outside. Justice Lameck Mukasa asserted that: ‘There should be a law to govern such children (the Children’s Act should address this issue)’.<sup>49</sup> It is a problem that children whose parents are in conflict with the law are an invisible group and therefore are not explicitly referred to in Uganda’s law and policy governing children in need of care and protection.

However, child protection systems should function in an integrated manner and protect all children in need of care and protection and Uganda’s new child protection strategy focuses on all children in need and not on specific groups or categories of children. The challenge is not so much invisibility but rather that the child protection system in Uganda does not function comprehensively for any vulnerable child, not just for those whose parents are in prison. The required gate-keeping and case management procedures are simply not in place to respond when a parent is arrested and detained leaving children behind.<sup>51</sup>



49. Interview by Foundation for Human Rights Initiative, 2015.

50. Interviews by FHRI with children of prisoners, 2015.

51. See, for example, the overview of the child protection system provided in Human Rights Watch, ‘Where Do You Want Us to Go?’ *Abuses against Street Children in Uganda*, 2014.

# Children living in prison with their mothers

A difficult issue is whether – and if so, for how long – babies and young children remain in prison with their mothers. Prisons are not suitable environments for them but it can also be against children’s best interests to be separated from their mothers, particularly if they are still breastfeeding. Acting in children’s best interests means that any ante- and post-natal care provided in prison should be equivalent to that available in the outside community. Where babies and young children are in prison, their treatment should be supervised by specialists in social work and child development. They should have access to good nutrition, the opportunity to play and also the chance to experience ordinary life outside prison walls. The UN Guidelines for the Alternative Care of Children state that: ‘best efforts should be made to ensure that children remaining in custody with their parent benefit from adequate care and protection, while guaranteeing their own status as free individuals and access to activities in the community’.<sup>52</sup>

General Comment No. 1 includes the following recommendations regarding the treatment of children living in prison with their mothers.

- A decision for a child to live in prison with his/her mother or primary caregiver must be subject to judicial review. Criteria for taking such a decision should be developed and include consideration of the individual characteristics of the child such as age, sex, level of maturity, quality of relationship with mother/caregiver and the existence of quality alternatives available to the family (paragraph 24).
- Access to services such as education and healthcare cannot be restricted for children who are imprisoned with their parents/primary caregivers since this would amount to a form of discrimination (paragraph 20).
- States should implement the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) which have many relevant provisions, such as ensuring that children living in prison are never treated as prisoners themselves, that they are provided with good quality primary healthcare services, and that the environment provided for their upbringing is as close as possible to that of a child outside prison (paragraphs 28 and 29).
- Establish special alternative institutions for mothers living in prison with their children to cater for the very exceptional circumstances when alternatives to detention cannot be considered and it is in a child’s best interests to remain with their mother or primary caregiver. If a parent or caregiver is imprisoned, then States should ensure that a child is placed in appropriate alternative care. The Committee emphasises that States have the same obligations to respect, protect and fulfil their rights as they do to any other child in their jurisdiction and recommends that National Human Rights Institutions and other independent monitoring bodies are encouraged to monitor the treatment and conditions of children living in prison with their mothers. It is also important that no child remains in prison following the release, execution or death of their parents/primary caregivers (paragraphs 50-55).

The population of women in prison in Uganda has steadily increased over the past three years and, as a result, the total population of children living with their mothers in prison has also increased from 226 in July 2014 to 239 in July 2015. Luzira women’s prison, near Kampala, houses the largest number of children living with their mothers – a total of 40 at the end of July 2015.<sup>53</sup> There are no children living in prison with their fathers or male caregivers.



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

Prison officer.<sup>54</sup>

52. UN Guidelines for the Alternative Care of Children, para 48.

53. Figures provided to FHRI by the Uganda Prison Service.

54. Prison officer in Uganda interviewed by FHRI, 2015.

The Prisons Act 2006 provides for women prisoners to be admitted with their infants<sup>55</sup> and for a female prisoner, pregnant prisoner or nursing prisoner to be provided with special services needed.<sup>56</sup> Whether a child should be placed to live in prison with his or her mother is determined by a number of factors including the age of the child, their breastfeeding needs and the presence and willingness of relatives to take on the child. However, according to prison officials, in most cases many of the women are sent to prison when they are already pregnant,<sup>57</sup> so the child is born while the mother is already serving the sentence. Children born in prison are almost always registered at the local hospital and therefore avoid the issue of having the prison cited as their place of birth.

**“ More funding is needed especially from the government because without the help of NGOs, the funds are not enough. ”**

Prison officer.<sup>58</sup>

The children of women prisoners should be supplied with clothing and other basic necessities until they are 18 months old, at which stage the officer in charge should, on being satisfied that there is a friend or relative of the child able and willing to support the child, hand him or her over to the relative or friend.<sup>59</sup> In cases where there is no relative or friend who is able and willing to provide child support, the Commissioner General may entrust the care of the infant to the welfare or probation authority. However, in practice children often stay in prison up to four years of age due to the absence of a family member or family friend willing to take care of the child.<sup>60</sup>

The issue of children imprisoned with their mother/ caregiver is of growing concern in Uganda.<sup>61</sup> In a country where the prison conditions are very poor and in some cases life-threatening,<sup>62</sup> and where prisoners lack food, medical care and bedding, the fact the children have to live in the same conditions as their imprisoned parents is worrying. Children who live in prison with their mother/ caregiver are particularly vulnerable to violations of their rights to development, healthcare, education and recreation.<sup>63</sup>

For example, in Moroto Prison, several mothers claimed that sometimes their babies go without food and generally live in unhygienic places which are not fit for children.<sup>64</sup> Without proper nutrition, some breastfeeding mothers are unable to produce adequate amounts of milk for their babies.<sup>65</sup> Interviews with prison officials caring for children living in prisons at Luzira prison revealed the most urgent needs of children to be clothing, medical care and nutrition.

One prison officer who cares for children living in prison with their mothers described how ‘these children cannot cope with the prison life due to the different characters exhibited by inmates (schizophrenics, aggressive, and paranoids)’.<sup>66</sup> Although they may have greater access to the imprisoned parent/primary caregiver than they would if they were not living in the prison, it seems that their relationships with non-imprisoned family members, friends and the outside world can be greatly diminished and several officers referred to the importance for children of maintaining links with relatives outside of prison since so many had been abandoned by their wider family.<sup>67</sup>

While the Prisons Act provides for these children to stay in prison with their mother up to 18 months old, at which stage they are to be removed from the prison, putting these provisions into practice is challenging for many reasons. For example, in facilities such as Luzira Prison, it can be difficult for children to be transferred into the care of relatives for various reasons including the failure of fathers to care for their children, child neglect, high levels of poverty amongst prisoners’ families, and the distance from the prison to the original home of the parent.

**“ Children in prison with their mothers miss out on early childhood and family settings – they don’t grow up in a normal life since all they see is yellow uniforms. ”**

Lawyer.<sup>68</sup>



55. Section 59(1) of the Prisons Act, 2006.

56. Section 59(3) of the Prisons Act, 2006.

57. Interview by FHRI with a prison official at Luzira Women’s Prison, 2015.

58. Prison officer in Uganda interviewed by FHRI, 2015.

59. Section 59(4) of the Prisons Act, 2006.

60. FHRI/PRI, *Who are women prisoners? Survey results from Uganda*, July 2015, p 8.

61. Prisons Act Reform, Issues Paper, 2014.

62. US Department of State, Bureau of Democracy, Human Rights and Labor, *2013 Human Rights Report: Uganda*, February 2014.

63. *Report of Special Rapporteur on Independence of Judges and Lawyers*, April 2015. The Special Rapporteur recalled that decisions to allow children to stay with their mothers in prison should always be based on a careful consideration of the best interests of the children that includes an individual analysis of the circumstances of the case. It is also important that the child’s situation should regularly undergo judicial review, as circumstances may change and affect the analysis of the best interests of the child.

64. ‘Prison babies: When children are forced to live in jail’, *Daily Monitor*, 30 September 2013. Available at: [www.monitor.co.ug/arts/culture/Reviews/Prison-babies--When-children-are-forced-to-live-in-jail/-/691232/2012308/-/item/0/-/12jrdxz/-/index.html](http://www.monitor.co.ug/arts/culture/Reviews/Prison-babies--When-children-are-forced-to-live-in-jail/-/691232/2012308/-/item/0/-/12jrdxz/-/index.html) <accessed 15 October 2015>.

65. Interview with Rashid Bunya, FHRI, 2015.

66. Interview with prison officers, FHRI, 2015.

67. Interview with prison officers, FHRI, 2015.

68. Lawyer in Uganda interviewed by FHRI, 2015.

Furthermore, because some women prisoners are imprisoned far from their homes, they are less likely to be visited by their relatives who could have taken the children home, and so other living arrangements have to be organised.<sup>69</sup>

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**“ The children need their relatives in terms of family. The family relations need to be strengthened. ”**

Prison official.<sup>70</sup>

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**“ There is need to maintain family relations since some of these children have been abandoned by their relatives. ”**<sup>68</sup>

Prison official.<sup>71</sup>

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This has led to a number of challenges for the prison service, which is then left to fund and take care of the children, using the limited prisons budget provided by government. It is from this budget, provided for the prisoners' welfare, which the Officers in Charge have to cater for the nutritional, health, clothing and other needs of children in their prison.<sup>72</sup> In 2012 it was reported that the Uganda Prison Service (UPS) was seeking funds to cater for children detained with their mothers due to the absence of a special budget for children.<sup>73</sup> 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'.<sup>74</sup>

The Italian NGO Family of Africa is located near Luzira prison and accommodates children who have been detained with their mothers in prison, but have now left. It offers a number of services including food, clothing, medical care, education, accommodation and facilitating visits between the children and their mother every Sunday. However, these services are unique to Luzira prison. In many other prisons especially in rural areas, which do not have the support from NGOs and other support networks, the fate of the child remains with the prisons.

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**“ The situation of children in the rural/upcountry prisons is different from those living in urban prisons like Luzira; and is much more dire and in need of urgent intervention. More study visits need to be conducted in rural prisons to evaluate the extent of the situation and cause for help and support to be accorded by government. ”**

Interview with Hon. Justice Lameck Mukasa, August 2015.

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69. FHRI interview with the Officer in Charge, Luzira Women's prison, July 2015.

70. Prison officials interviewed by Foundation for Human Rights Initiative, 2015.

71. *Ibid.*

72. Interview by FHRI with prisons officers at Luzira Women's Prison, July 2015.

73. 'Prisons seek funds for children behind bars', New Vision, 11 March 2012, available at: <http://www.newvision.co.ug/news/629544-prisons-seek-funds-for-children-behind-bars.html> <accessed 15 October 2015>.

74. FHRI interview with lawyer, 2015.

# Mothers' stories

## Sarah

Sarah is a single mother of five children (one has died since her arrest). She was arrested at her home quite suddenly which frightened her younger children. Her family is now scattered with the children staying in different homes. Sarah doesn't know how her children are doing nor where she will live on her release.

## Joy

Joy is serving a 15-month sentence and has been in prison for seven months. She was pregnant when she was sentenced. Her husband was at the hearing but has not visited her or her new born baby since and does not communicate with her. Joy says the diet in prison is not good for her child and the child does not get to play freely. She wishes her mother had more money to visit her but transport is expensive. She plans to move in with her mother after serving her sentence.

## Teo

Teo was living with her husband and three children before being imprisoned. The children are now living with their father but are performing poorly at school where they are bullied and they miss her. They know that she is in prison but she doesn't want them to visit anymore because of the poor conditions and the prison scared them on their first visit. The travel costs are also too high. She thinks a payphone at the prison would be helpful. The long time spent on committal has also increased her time away from her children. She looks forward to getting a job and working hard for her children's future.

## Rose

Rose is 31 years old and serving a ten year sentence. She has two children living outside of prison and one living with her. Much as the children are well taken care of by their father, she says that they are bullied at school and their academic performance has deteriorated. She believes that children need to know where their parents are and why, and her children have been told. The children visit every two weeks with their father who is doing well financially and they find the visits enjoyable.

# Children's stories

## Hussein

Hussein is 12. He visits his mother once a week in Luzira women's prison and believes that her imprisonment has had a bad effect on him. He says he is sad and misses her and he had more care when she was at home. Apart from the support from the NGO Family of Africa, Hussein has received no other help. Hussein wishes to be given clothes, better food and shoes. He also wishes to be a doctor, driver or scientist when he grows up.

## Kawoya

Kawoya feels so bad about his mother's imprisonment. He cannot concentrate in class and some of his relatives are no longer close to him. He is, however, glad that as well as Family of Africa, other relatives, including his grandfather, have been able to offer some help in the form of money. However, he would like to receive more school materials from any other well-wishers.

## Aki

Ten-year-old Aki lives at Family of Africa. She does not have any contact with her mother who, after being released from Luzira Women's Prison, disappeared without informing her where she was going. Aki who wishes to become a doctor in future has never met any of her family members except her mother and father.

## Daliaus

Daliaus is ten and feels so sad about his mother's imprisonment. Daliaus is able to visit his mother every Saturday during his holidays. He says he has never been helped by anyone. One of his biggest desires is to be visited by his relatives at Family of Africa where he currently lives. He would like to receive books and toys from any well-wisher.

# Children separated from their imprisoned parents

## 1. Discrimination and stigma

Children of prisoners may face stigmatisation, discrimination and deterioration in their living conditions, their relationships with others and their community, and their physical and mental health. They often suffer from trauma, fear, shame, guilt and low self-esteem and parental imprisonment sometimes damages children's mental health. General Comment No. 1 includes the following recommendations regarding the treatment of children living outside of prison.

- Children whose primary caregivers are involved with the criminal justice system have the same rights as other children and these rights should not be affected because of the status of their parent/primary caregiver (paragraph 19).
- The authorities should take into account the best interest of a child who may be affected when making decisions at all stages of the criminal justice process (paragraph 23).
- States must undertake measures to prevent and eliminate discrimination against children whose parents or primary caregivers are incarcerated (paragraph 21).
- Article 30(1)(f) of the African Charter 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 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 (paragraph 60).

Children whose parents are in prison in Uganda often come from the most disadvantaged and vulnerable backgrounds and may have had direct experience of poverty and unemployment.<sup>75</sup> These children have a wide range of needs including a safe place to live and people to care for them during the absence of their parents/primary caregivers as well as basic needs like food, clothing, medical care and support to be able to visit their parents in prisons. Beyond the material requirements, children have emotional needs which, if left unattended, could affect them in the future. Several of the children interviewed said that they were unhappy, hurt, missed their parents and were sad.<sup>76</sup> When asked what help they would like to have, the children interviewed by FHRI identified a number of needs and a recurring theme was the wish to meet and have relationships with extended family members as well as to continue in education.<sup>77</sup> An NGO social worker described how: 'Some children miss their families and relatives and end up falling sick emotionally yet no solution can be availed for them'.<sup>78</sup> Another NGO social worker commented that: 'They lack parental love for example some fathers never come around to visit or look for their children'.

**“ 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.<sup>79</sup>



<sup>75</sup>. See FHRI /PRI, *Who are women prisoners? Survey results from Uganda*, 2015, which found that women prisoners in Uganda are typically poor (40 per cent of those surveyed said they were poor while 36 were very poor) and from a marginalised sector or background.

<sup>76</sup>. Interviews by FHRI with children of prisoners, 2015.

<sup>77</sup>. Interview by FHRI with children of prisoners, 2015.

<sup>78</sup>. Interview by FHRI with social workers, 2015.

<sup>79</sup>. *Ibid.*

All of the children interviewed experienced discrimination by their communities and social isolation as a result of their parents' involvement with the criminal justice system. A social worker working in Luzira day care centre explained that when the children are taken to school their family history is kept secret so as to avoid incidents of stigmatisation and bullying.<sup>80</sup>

Support for children of prisoners in Uganda is usually provided by NGOs. However, it could be argued that being cared for in this way can contribute to their social isolation. Children who stay at Family of Africa, for example, are in a more acceptable environment because they are living with children with a similar background but proponents of inclusive education have criticised this kind of setting, suggesting that isolating these children does not necessarily protect them and there is a need to make sure that they are taken back to their communities, and to encourage the communities to accept rather than discriminate against them.<sup>81</sup>

## 2. Maintaining contact

Clearly there will be circumstances where it is not in children's interests to retain contact with their imprisoned parents, but in most cases ongoing contact with parents in prison can be a protective factor in children's lives that enables them to cope better.<sup>82</sup> General Comment No. 1 requires that:

- contact between imprisoned parents/primary caregivers and children must be facilitated where it is in a child's best interests (paragraph 63);
- the relevant authorities should establish where a child is living in order that their parent/primary caregiver is sent to a facility within suitable travelling distance of the child's home (paragraph 63);
- when a parent or caregiver is a foreign national they may require additional assistance with maintaining contact with children in their home country through telephone, email or written correspondence (paragraph 63).

Prisoners in Uganda are allowed to receive visits at least twice a week during working hours as the Officer in Charge may direct. Communications between prisoners and their relatives are subject to such restrictions as the officer in charge may think are necessary for the maintenance of discipline and order in the prison, and the prevention of crime.<sup>83</sup> In some cases, contact with family and friends is withdrawn as a disciplinary measure contrary to the Bangkok Rules.<sup>84</sup>

**“ End the practice of women prisoners going to visit their children while dressed up in prison uniforms – the visits should be made more comfortable/appropriate, with a home environment. ”**

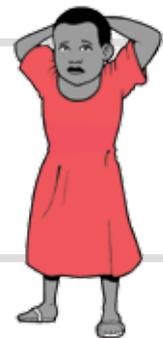
Judge.<sup>85</sup>

When children interviewed for this research were asked why they don't have contact with their parent/primary caregiver, they said that didn't know where their parents were or didn't have anyone to drive them to the prison. Another child said that their 'mother was taken to another prison and she never communicated after that'.<sup>86</sup>

In practice, the number of visits by children is determined by where and with whom the child lives and the extent to which they are willing to facilitate and pay for visits. Research on women prisoners in 2014-15 found that only 13 per cent of women surveyed were visited by their children.<sup>87</sup> Visits can be expensive, time-consuming and stressful but remain vitally important for children. Social workers working with children of imprisoned parents said in interview that children needed a lot more contact: 'Children should visit at least twice a term unlike waiting for the holidays since they need more time with their parents....The holidays are a bit far apart for them; they should take them once in a month because they may have things to tell to their parents who know them better'.<sup>88</sup>

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

Child of prisoner.<sup>89</sup>



80. *Ibid.*

81. Panel discussion on children of imprisoned parents, Kampala Uganda, October 2014.

82. See, for example, Dallaire D H, 'Children with incarcerated mothers: Developmental outcomes, special challenges and recommendations' in *Journal of Applied Developmental Psychology*, 28, 2007, p15-24.

83. Section 78 of the Prisons Act, 2006.

84. Rule 23 of the Bangkok Rules states that '[d]isciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children'.

85. Interview with Judge by FHRI, 2015.

86. Interview with children of imprisoned parents by FHRI, 2015.

87. FHRI/PRI, *Who are women prisoners? Survey results from Uganda*, July 2015.

88. Interview by FHRI with social workers, 2015.

89. Interview by FHRI with children of prisoners, 2015.

The environment for these visits varies but there are no child-friendly facilities in any prison 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'. One NGO social worker said that children needed more time with their mothers to create a bond between the two.<sup>90</sup>

Mothers in prison, interviewed for this research, made several suggestions for how visits from their children could be improved. These included: 'increasing the number of days where visits were allowed (Monday to Friday, instead of Tuesday to Thursday)'; 'having a full time payphone with airtime, since that of welfare is not reliable'; 'counselling from the prison staff; and a play area or a nice room which is not scary'.<sup>91</sup>

“ My mother was taken to another prison and she never communicated with me. ”

Child of prisoner.<sup>92</sup>



<sup>90</sup>. Interview by FHRI with social worker, 2015.

<sup>91</sup>. Interview by FHRI with women prisoners, July 2015.

<sup>92</sup>. Interview by FHRI with children of prisoners, 2015.

# The death penalty

Research has consistently connected a parent's death sentence or execution with major psychological and emotional implications for children and families.<sup>93</sup> These children experience fear and a deep sense of insecurity as they live under the constant threat that their parent could be executed at any moment. General Comment No. 1 includes the following recommendations regarding the use of the death penalty.

- No child should remain in prison following the release, execution or death of their incarcerated parents/mothers (paragraph 55).
- A death sentence shall not be imposed on pregnant women or mothers of young children. States that still retain the death penalty should observe the UN Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty (paragraph 56).

The death penalty is provided for under Article 22(1) of the Constitution of the Republic of Uganda, 1995, but it is not mandatory. Hanging is the preferred mode of execution and is applicable to grave offences such as: murder, treason, defilement, aggravated robbery, and rape (otherwise referred to as capital offences).<sup>94</sup> In Uganda, if a woman convicted of an offence punishable with death is found to be pregnant, her sentence is commuted to life imprisonment instead of death.<sup>95</sup> However, this does not include the mother of young children and therefore requires amendment to comply with Article 30 of the ACRWC. The number of children affected by having a parent sentenced to death is unknown but we do know that in February 2015 there were 229 prisoners on death row (209 men, and 13 women).<sup>96</sup> None of the children or prisoners involved in this research were affected by the death penalty.

<sup>93</sup>. Oliver Robertson and Rachel Brett, *Lightening the Load of the Parental Death Sentence on Children*, June 2013.

<sup>94</sup>. In Uganda, the death penalty is prescribed for 28 offences by three separate statutes. The *Penal Code Act Cap 120* accounts for eight of the offences; the *Anti-Terrorism Act 2002* for three offences; the *Uganda Peoples Defence Forces (UPDF) Act 2005* for 17 offences. In comparison to the rest of East Africa, Uganda has the widest range of crimes punishable by death.

<sup>95</sup>. Section 103 of the Trial on Indictments Act, Section 104: 'Where a woman convicted of an offence punishable with death alleges that she is pregnant, the question whether or not the woman is pregnant shall, be determined by the court.'

<sup>96</sup>. Figures provided to FHRI by UPS, February 2015.

# Rehabilitation and reintegration of parents/caregivers

For parents/primary caregivers, rehabilitation can include many different facets, such as maintaining contact with children during a prison sentence and developing skills that can allow them to provide for their families on their release. General Comment No. 1 includes the following recommendations regarding the rehabilitation and reintegration of parents/primary caregivers.

A host of measures should be used to promote the integration of parents back into the family and society upon completing a custodial sentence including:

- promoting rehabilitation and development of programs during the period of imprisonment or non-custodial sentence schemes;
- ensuring that un-sentenced prisoners have access to these programs;
- providing civic and social education;
- providing social and psychological support with adequate professionals;
- promoting contact with the family and community by:
  - encouraging civil society groups to visit the prison and work with offenders;
  - improving the environment for visitors so that physical contact is permissible;
  - setting up a privilege system including day, weekend and holiday leave;
  - subject to satisfying appropriate criteria; (v) sensitizing families and community in preparation for the reintegration of the person back into society and involve them in rehabilitation and development programs;
- developing half-way houses and other pre-release schemes in partnership with civil society groups; and
- extending the use of open prisons in appropriate circumstances (paragraphs 61 and 62).

The Uganda Prison Service is charged with facilitation of the social rehabilitation and reformation of prisoners through specific training and educational programmes as well as the re-integration of prisoners into their communities.<sup>97</sup> Rehabilitation takes several forms including education, counselling and guidance, rehabilitative sports and games, music, dance and drama.<sup>98</sup> However, these services are not available in all the prisons and in some cases the prisoners do not participate as it may not suit their skills or they do not think it will help them gain employment upon release.

Parents/primary caregivers in prison need to be supported so that they can contribute financially to their families on release. Research with women prisoners in 2014-15 found that vocational skills training was particularly high amongst the support requirements listed by women who participated in the survey and 60 per cent identified that they needed support with finding employment on their release.<sup>99</sup> While vocational training is available in some prisons, there is a need to make it accessible to all prisoners and to increase the scope of training in order to equip them with sustainable skills upon release.

Stigmatisation and having no source of income upon release from prison were cited by 30 per cent of women surveyed who had previously offended as significant obstacles to their reintegration. Very few prisoners who had been imprisoned before had received any support on release<sup>100</sup> although some support is provided by NGOs in Uganda, including Mission of Custody, Africa Prisons Project and Product of Prison. Very little support is provided to prisoners around sensitising families and children in preparation for the reintegration back into society.

97. Section 5(b) of the Prisons Act 2006. In 2014 it was reported that the UPS conducted skills training and education in 161 prisons where 1,959 inmates – men and women – were enrolled in vocational skills training and 2,227 underwent formal education (which was ten per cent of the prison population.)

98. Information about the Uganda Prisons Service Welfare and Rehabilitation Programs is available at <http://www.prisons.go.ug/index.php/programs/rehabilitation-programms2/education> <accessed 15 October 2015>.

99. FHRI/PRI, *Who are women prisoners? Survey results from Uganda*, July 2015.

100. *Ibid.*

# Implementation of ACERWC General Comment No. 1

Implementation of General Comment No. 1 in any context requires a concerted focus on legal and policy measures that respect, protect and fulfil the rights of children of prisoners. It also requires that certain specific tasks are undertaken regarding collection of data and training for those coming into contact with children of prisoners.

## 1. Data collection

This group of highly vulnerable children remains largely invisible in law and policy across Africa and elsewhere.<sup>101</sup> In order to make them more visible it is vital that governments gather consistent information and data about the number of children of prisoners and of their needs. The Revised Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules, Rule 7)<sup>102</sup> state that when a prisoner is first admitted to prison, information should be registered about their family members, including any children and their location and custody status. General Comment No. 1 makes the following recommendations regarding data collection and training.

States Parties should take an individualised, qualitative approach that is nuanced and based on actual information about incarcerated parents/primary caregivers and children, rather than a quantitative, categorical approach based on generalised and simplistic assumptions (paragraph 15).

In order to encourage such an approach, statistics about children of incarcerated parents should be routinely and consistently gathered by relevant agencies to help develop policy and practice in States Parties (paragraph 16).

The Uganda Prison Service collects information about children living in prison with their parents. It also has some information in the prison register, including information about prisoners' families and children, but this is not systematically collected and recorded. Very little information is collected and recorded by protection agencies about children of prisoners living outside of prisons and they remain unidentified and untracked.

## 2. Training

General Comment No. 1 states that professionals working with children at all stages of the criminal justice process, as well as other professionals such as teachers and social workers who may come into contact with children of incarcerated parents, must be trained to appropriately provide any needed support (paragraph 16). Police, judges, lawyers, PSWOs, teachers and others are not provided with specific training on responding to children of imprisoned parents/primary caregivers. However, children being cared for by NGOs do have access to trained social workers.

<sup>101</sup> See, for example, *Children of prisoners: interventions and mitigations to strengthen mental health*, University of Huddersfield, 2013.

<sup>102</sup> The UN Commission on Crime Prevention and Criminal Justice adopted the revised Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) at its 24th Session on 22 May 2015. It is expected that the Rules will be adopted by the UN General Assembly at the end of 2015. See Resolution 'United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)', UN Doc E/CN.15/2015/L.6/Rev.1 at: [http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ\\_Sessions/CCPCJ\\_24/resolutions/L6\\_Rev1/ECN152015\\_L6Rev1\\_e\\_V1503585.pdf](http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6_Rev1/ECN152015_L6Rev1_e_V1503585.pdf). See PRI's website for more information at: <http://www.penalreform.org/priorities/global-advocacy/standard-minimum-rules/> <accessed 15 October 2015>.

# Recommendations

The following recommendations highlight priority areas which should be addressed to respond to the most urgent needs of children of imprisoned parents/primary caregivers in Uganda. It is hoped that these recommendations will inform the ongoing review of the Prisons Act and implementation of the current Children (Amendment) Bill 2015 to bring them into conformity with international standards including General Comment No.1, the UN Bangkok Rules, the UN Guidelines for the Alternative Care of Children and the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules).

## Reduce the use of pre-trial detention for parents/primary caregivers

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 to the defendant's circumstances. Where bail requires regular reporting to authorities, transport to the respective police station or court must be affordable and feasible and should not jeopardise their caretaking responsibilities.

## Ensure implementation of recent Sentencing Guidelines

Further judicial sensitisation is required to ensure full implementation of the Sentencing Guidelines along with monitoring of their use in court. The low quality of legal aid should be addressed, and provision should be extended to all regions of the country to ensure that all defendants can access legal representation at all stages of the criminal justice process so that there is a greater likelihood of their care-giving status being given adequate attention.

## Strengthen the overall child protection framework

There is currently political will and commitment to strengthen alternative care for children but provision for children of prisoners needs to be strengthened within Uganda's child protection architecture. Currently there is no mainstream provision for this group and they fall between different departments such as health, criminal justice and welfare, whilst NGO support is accessible to only a relatively small number of children.

Recommendations include:

- Increase the number of Child and Family Protection Unit Officers to ensure that they are located in every police station and can respond effectively to children from the moment their parents are arrested.
- Strengthen the capacities of the social welfare workforce to create functioning case management and referral mechanisms for children of prisoners.
- Develop an implementation strategy for the Alternative Care Framework and develop and support a clear structure for its implementation that includes adequate resourcing.
- Allocate sufficient budgets to probation and social welfare officers to carry out their work on child protection.

The National Council for Children could be a focal point for the rights of children of prisoners and monitor implementation of the Sentencing Guidelines, as well as law and policy related to their care and protection.

## Improve conditions for children living in prison

Currently the process by which children end up living in prison with their mothers is informal and depends on whether the mother upon arrest is taken with her infant child. Given that there are over 200 children currently in prison with their mothers in Uganda, the process needs to be formalised and subject to judicial review with clear criteria developed that take into account the individual characteristics of the child, such as age, sex, level of maturity, quality of relationship with mother/caregiver, and the existence of quality alternatives available to the family.

The Government must implement the Bangkok Rules to ensure that children living in prison are never treated as prisoners themselves, they are provided with good quality education and primary healthcare services, and that the environment provided for their upbringing is as close as possible to that of a child outside prison.

## Counter discrimination against children of prisoners

To counter discrimination and stigma against these children, teachers should be trained so that schools are able to offer appropriate support. The media should be sensitised as to how their reporting can impact upon children of prisoners and general public awareness-raising should take place about children of prisoners as a group who experience unjust vulnerability and social isolation.

## Ensure contact visits in prisons are child-friendly

It is so important for children to have ongoing contact with parents in prison and child-friendly facilities in prisons can facilitate this process by including provision for play but also for 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 via telephone and letter.

## Improve rehabilitation and reintegration services

A strategy should be developed to improve the rehabilitation and after-care programmes provided to prisoners in preparation for and following their release. Such programmes should include training in marketable and relevant vocational skills and can be conducted in partnership with civil society organisations. Responsible ministries and civil society organisations should develop and implement pre- and post-release reintegration strategies that focus on employment and reunification with families.

## Collect data on children of prisoners

Information about the children of prisoners, both within and outside of prison, needs to be gathered systematically and linked with other databases regarding children in need of care and protection that are currently being developed.

## Training

Information on how to respect the rights of children of prisoners must be incorporated into existing training of police officers, justice officials, health workers and probation and social welfare officers; for example police officers should be trained to minimise the use of arrest when it is known that children will be present.

# Other publications

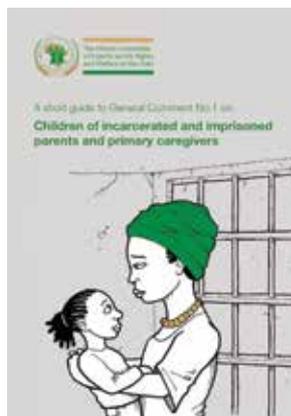
## A short guide to General Comment No.1 Children of incarcerated and imprisoned parents and primary caregivers

The African Committee on the Rights and Welfare of the Child (ACERWC) and PRI have produced an illustrated summary, section by section, of General Comment No.1.

■ ENGLISH ■ FRENCH ■ ARABIC

Available at:

[www.penalreform.org/resources](http://www.penalreform.org/resources)  
[www.acerwc.org](http://www.acerwc.org)



## Who are women prisoners? Survey results from Uganda

This joint research report by FHRI and PRI provides detailed information on the background and needs of women prisoners in Uganda and is based on a survey in 2014 of 194 women prisoners (10 per cent of the total female prison population).

■ ENGLISH

Available at:

[www.penalreform.org/resources](http://www.penalreform.org/resources)  
[www.fhri.or.ug](http://www.fhri.or.ug)



# Notes

# Notes



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“ Every child has his or her own dignity. If a child is to be [...] imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them. ”

Justice Albie Sachs, Constitutional Court of South Africa (retired, 2009)  
in *S v M* [2007] ZACC 18.

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