



# QUNO

Quaker United Nations Office

# Children of incarcerated parents: International standards and guidance

## Overarching principles

The risks faced by children of incarcerated parents can be compounded by criminal justice and penal systems that do not see their rights as relevant considerations.

There is a growing body of international standards and guidance on this issue. Organisations working with children of incarcerated parents can use these standards to check if government or prison policies measure up, and to advocate for improved conditions and visibility of children of incarcerated parents.

The overarching principle is that the best interests of the child should be taken into account in all decisions relating to the detention of someone with child caring responsibilities.

The requirement to take the best interests of the child into account as a primary consideration in all decisions affecting children is enshrined in the UN Convention on the Rights of the Child.

## International standards briefing paper

QUNO's July 2015 briefing paper, *Children of Incarcerated Parents: International Standards and Guidance* provides an in-depth summary of these international standards. This briefing is available to download at [www.quno.org](http://www.quno.org)

## UN Human Rights Council

The rights of children of incarcerated parents have been acknowledged by independent experts of the Human Rights Council and recognised in its resolutions, most fully in the 2012 resolution on the rights of the child which calls on countries to:

- Ensure that the best interests of the child are taken into account in sentencing or pre-trial decision-making relating to a pregnant woman or a child's sole or primary caregiver
- Ensure that the best interests of the child are a primary consideration in decision-making about residence in prison with their mother
- Ensure visits and contact with incarcerated parents, where in the best interests of the child
- Ensure the provision of information on incarcerated parents
- Protect the rights of children of parents sentenced to death or executed, including through visits and provision of information

## The UN Convention on the Rights of Child and the Committee on the Rights of the Child

Adopted in 1989, the UN Convention on the Rights of the Child is a multilateral human rights treaty that promotes the rights of children.

Article 3(1) of the Convention requires that the best interests of the child are taken into account as a primary consideration in all actions concerning children. Article 2(2) of the Convention requires that children are protected from all forms of discrimination, including on the basis of the status of their parents.

The UN Committee on the Rights of the Child is a body of independent experts which monitors the implementation of the Convention. All States which have ratified the Convention are required to submit regular reports on how child rights are being implemented. The Committee then examines each report and shares its concerns and recommendations in the form of 'concluding observations'.

In applying and interpreting the Convention, the Committee has made a number of comments on the rights of children of incarcerated parents. The Committee's 2005 General Comment on implementing rights in early childhood noted parental incarceration as a specifically serious risk to a child's right to development. The Committee's 2013 General Comment on the best interests of the child recommended the availability of alternatives to detention for parents or primary caregivers, and consideration of the impact of sentences on the best interests of the child.

Through its reviews of countries the Committee has developed a body of recommendations, including that States should:

- provide support for the children of incarcerated parents
- respect the child's right to information, including providing timely information about prison transfers
- respect the child's right to have their views taken into account in decisions affecting them
- prevent stigmatization and discrimination against children with one or both parents in prison
- prevent separation of children and their parents or caregivers where possible, including through the use of non-custodial alternatives to incarceration, where this is in the best interests of the child

## Report on 2011 UN Committee on the Rights of the Child Day of General Discussion

The Committee dedicated a Day of General Discussion to the issue of children of incarcerated parents in 2011. A QUNO report on this event, titled *Collateral Convicts: Children of Incarcerated Parents*, is available from our website at: [www.quno.org](http://www.quno.org)

## Practical use of the international standards

In December 2013, the Supreme Court of British Columbia, Canada overturned a decision to close a prison mother and baby unit on the grounds that it violated the rights of both the mothers and their children. In the judgment, the judge quoted directly from one of QUNO Geneva's past publications.

Following this judgment, an international coalition of researchers were involved in the production of guidelines on the provision of mother and baby units in Canadian prisons. These guidelines, drawing on international standards, are intended to set national standards for the treatment of incarcerated women who are pregnant or in custody with children in Canada.

## The Nelson Mandela Rules for the Treatment of Prisoners

The revised UN Standard Minimum Rules for the Treatment of Prisoners, known as 'the Nelson Mandela Rules', were adopted in 2015.

The Nelson Mandela Rules bring these international standards on detention conditions into line with developments in human rights, public health and criminal justice since their initial adoption in 1955.

Two of these Rules provide protections for the rights of children of incarcerated parents:

- Rule 28 requires special provisions in women's prisons for prenatal and postnatal care
- Rule 29 requires that decisions on whether a child will reside in prison with their parent are based on the best interests of the child

## The Bangkok Rules for the Treatment of Women Prisoners

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, known as 'the Bangkok Rules', were adopted in 2010.

Several of these Rules relate to children of incarcerated parents, including:

- Rule 2.2, which concerns the best interests of the child in arrangements for the children of female prisoners
- Rule 23, which forbids the prohibition of family contact as a disciplinary measure
- Rule 49, which stipulates that decisions on whether a child should reside in prison with a parent should be based on the best interests of the child
- Rule 64, which states that non-custodial sentences should be preferred for pregnant women and women with dependent children, where possible and appropriate

## QUNO Geneva contact details

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