

POPS (Partners of Prisoners and Families Support Group) Submission to the Committee on the Rights of the Child

Day of General Discussion - 'Children of Incarcerated Parents'

30th September 2011

In considering child rights issues relating to 'children of incarcerated parents' we must first acknowledge the comprehensive direction in the general field of children's rights already provided under the general auspices of the Convention of the Rights of the Child¹. However it is the view of POPS (Partners of Prisoners and Families Support Group) that despite the clarity of articles relating to the rights of the child around actions taken by 'public or private social welfare institutions, courts of law, administrative authorities or legislative bodies' (UNCRC, Article 3)¹, there remain significant shortfalls in the implementation of policies and practices supporting the rights of children of incarcerated parents within justice systems.

Of particular concern is the lack of policies and procedures relating to a child's rights at the point of parental imprisonment. With the focus at sentencing rarely going beyond the risk posed by the offender, our specific concern relates to the absence of any concrete procedures, particularly within the UK, to protect the right of children to be heard (UNCRC, Article 12)¹ and the right to be protected from abuse or neglect (UNCRC, Article 19)¹.

With children, unlikely or unable (due to their age or circumstances) to attend court, it is too often the case that the existence and identity of children, and the impact of a parent's imprisonment upon them, goes unrecognised by justice systems. Without formal acknowledgement of their existence, prevailing child protection policies can do little to protect and promote the well-being of children who may have been left to the care of unsuitable or, in some cases, absent 'guardians'. Indeed it is our stance that an approach in which the courts assume no responsibility for the identification and welfare of children affected by parental incarceration could contravene the guidance in articles 3, 12 and 19 of the Convention of the Rights of the Child by not ensuring that:

- 1) the best interests of the child are a primary consideration in actions concerning the child (UNCRC, Article 3)¹.
- 2) the child, capable of forming his or her own views, has the right to express those views freely in all manners affecting the child (UNCRC, Article 12)¹.
- 3) that 'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment...' (UNCRC, Article 19)¹.

By committing a person to custody for any period of time without considering their potential parental responsibilities, it is our belief that the 'best interests' of any children affected may be overlooked by the courts. Indeed without formally establishing the existence and whereabouts of offenders' children within the court setting, the court denies that child the right to express their views regarding the adult/s who will assume responsibility for them in their parent/s absence or indeed their current/future place of residence.

¹ United Nations (1989) *Convention on the Rights of the Child*. Retrieved 15th July 2011 from <http://www2.ohchr.org/english/law/pdf/crc.pdf>

In the majority of cases responsibility for the child/ren will fall to an appropriate carer, more often than not the offenders' partner, parents or other family member. However, without the appropriate checks in place, there will remain a significant number of children for whom the imprisonment of their parent places them in an extremely vulnerable position, falling by default into the care of unsuitable peers or unwilling relatives, often as a result of an unexpected or unprepared for custodial sentence.

By virtue of their third party interaction with criminal justice systems, offenders' children appear to fall between the lines. With the remaining parent or kinship carer burdened by stigma and unlikely to disclose contact with the courts to agencies (such as the child's school) and the court unwilling to involve itself directly in a families affairs, a child will often go without the additional support or recognition they urgently require. Whilst understanding the necessity of custodial measures in the punishment of serious criminal activity, it could be argued that if a court places an offender in custody and a child consequently suffers neglect or abuse as a result of a change of circumstances, the court may be in contravention of article 19 where state parties are urged to 'take all appropriate legislative, administrative...measures to protect the child from all forms of...violence...abuse... neglect'².

Of course it is true that POPS' experience in the main is limited to systems within the UK. However it is our understanding that despite the existence of numerous good practice models and 'codes of conduct' it is often the case across the UK, and indeed the rest of Europe, that such guidance, despite its potential impact, goes unrecognised and is rarely implemented. This view is supported by the recently published 'Children of Imprisoned Parents' report³. Whilst keen to identify and promote examples of best practice the report underlines the absence of a consistent approach to the children of incarcerated parents stating that 'while some positive initiatives are in place in individual prisons, those are not mainstreamed throughout the penal institutions, police services and beyond...they remain marginal in the context of the overall criminal justice system'³. The report concludes by proposing a series of recommendations including:

- 'All decisions as to whether an individual should be placed on remand awaiting trial should be taken with a primary consideration of the rights and needs of the children of the arrested person'³.
- 'The child's best interest must be considered when a parent is sentenced, with regard to both the choice of punishment and, if imprisoned, the choice of where the sentence is served so as to ensure the possibilities for face-to-face contact between the child and the parent during the stay in prison'³.

The report goes further to highlight the importance of earlier interventions recommending that:

² United Nations (1989) *Convention on the Rights of the Child*. Article 19.
Retrieved 15th July 2011 from
<http://www2.ohchr.org/english/law/pdf/crc.pdf>

³ The Danish Institute for Human Rights, Bambinisenzasbarre, Ulster University and European Network for Children of Imprisoned Parents (2011) *Children of Imprisoned Parents*.
Retrieved 15th July 2011 from
http://www.familiesoutside.org.uk/content/uploads/2011/05/children_260411_page.pdf

- 'Arresting officers should be under legal obligation to find out whether the arrested person has any children or if they have primary responsibility as carers for any children (in particular if children are not present during arrest). Arresting officers should then ensure that children are taken care of properly and in particular that they are not left on their own following the arrest of a parent'⁴.

POPS would support this position, recognising that a child's rights may be infringed from their earliest contact with criminal justice systems that too often focus solely on the offender at the expense of the family unit.

In light of this POPS also welcome the recent publication of a toolkit by the Child Rights Information Network (CRIN) entitled 'Child-Friendly Justice and Children's Rights'⁵. The toolkit emphasizes the importance of the courts as 'a powerful tool to positively shape children's lives'⁵ and the central importance of this in ensuring 'child-friendly justice'. The concept of 'child-friendly justice' and its emphasis on shifting the manner in which justice systems interact with children, is very welcome, particularly the acknowledgement that children must be met with 'a system that understand and respects both their rights and their unique vulnerability'⁵. However it would appear that within this toolkit as within other arenas the opportunity to explicitly extend the guidance to include the children of incarcerated parents has been missed. Whilst this group may be considered to be encompassed by the spirit of the principles there is a danger that through a lack of specific acknowledgement their rights may remain unaddressed. It is POPS' view that the 'children of incarcerated parents', indeed the children of all parents implicated in justice systems, are a vulnerable group to whom specific consideration should be given, particularly in light of the issues peculiar to them and in relation to their rights.

POPS' consider it essential that the rights of 'children of parents involved in criminal proceedings or incarcerated' are upheld and indeed further explored, in order to fully realise the specific implications of the Convention on the Rights of the Child for State Parties in relation to justice systems and more specifically in the early stages leading up to and including sentencing.

⁴ The Danish Institute for Human Rights, Bambinisenzasbarre, Ulster University and European Network for Children of Imprisoned Parents (2011) *Children of Imprisoned Parents*.

Retrieved 15th July 2011 from
http://www.familiesoutside.org.uk/content/uploads/2011/05/children_260411_page.pdf

⁵ Child Rights Information Network (2011) *Child-Friendly Justice and Children's Rights*.

Retrieved 15th July 2011 from
<http://www.crin.org/docs/Child-Friendly%20Justice%20and%20Children's%20Rights.pdf>

Annex

POPS Recommendations to the Committee on the Rights of the Child (CRC) Day of General Discussion – ‘Children of Incarcerated Parents’, 30th September 2011

Recommendation 1:

POPS recommends that the CRC produce a General Comment relating to articles 12 and 19 to comprehensively address the scope of the articles in relation to the rights of ‘Children of Incarcerated Parents’ and to provide clear guidance as to the implementation of actions pertaining to these rights at sentencing. This should include consultation with relevant stakeholders, including organisations which represent children affected by parental incarceration to directly engage the ‘user-group’.

Recommendation 2:

POPS recommends that the CRC considers establishing an Optional Protocol on the ‘Children of Incarcerated Parents’. Indeed we would propose the scope of the protocol is extended to ‘Children of Parents involved in Criminal Proceedings or Incarcerated’ recognising that a child’s rights may be affected from their earliest point of contact with justice systems. This proposal is based upon the unique issues experienced by children in such circumstances and the lack of understanding around the child’s rights.

Recommendation 3:

POPS recommend to the CRC that a General Comment on articles 12 and 19 should call upon State Parties to infer an obligation upon the courts, and other associated justice agencies, to implement effective procedures which will establish the existence, location and care arrangements for children of parents involved in criminal cases where a custodial sentence has been identified as a potential outcome, prior to sentencing taking place.

Recommendation 4:

POPS would also welcome the preparation of comprehensive guidance around how a child’s right to be heard might be upheld within the context of discussions and decisions relating to their care and residential status following a parent’s incarceration.

Recommendation 5:

POPS would further recommend that the ‘Children of Parents involved in Criminal Proceedings or Incarcerated’ be considered as a key ‘vulnerable’ group when considering the implementation of ‘child-friendly justice’ principles.