Submission to the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Practical Measures to Reduce and Prevent Prison Overcrowding

Megan Capp, Associate, International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR)

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About ICCLR

The International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) is an international institute based in Vancouver, Canada, and a member of the United Nations Crime Prevention and Criminal Justice Programme Network of Institutes. ICCLR promotes the rule of law, human rights, and evidence-informed criminal justice reform through research, policy development, technical assistance, and practical capacity-building initiatives.

Over the past decade, ICCLR has undertaken sustained work exploring the situation of children whose parents are in conflict with the law. This work has included research on the best interests of the child in criminal proceedings, the development of Child Impact Statements and related assessment processes, guidance for justice professionals, and broader efforts to understand how criminal justice decisions affect children and families (Capp & Dandurand, 2024; Castle et al., 2023, 2025; Millar & Dandurand, 2018).

ICCLR's recent reports, including *Considering the Best Interests of the Child in Sentencing and Other Decisions Concerning Parents Facing Criminal Sanctions* (2023) and *Out of the Shadows* (2025), have focused on practical ways to ensure that children are not overlooked in decisions concerning the detention and imprisonment of their parents.

This submission responds primarily to Questions 2, 6, 7, and 8 of the Special Rapporteur's call for input. A complementary submission by the International Coalition for Children with Incarcerated Parents (INCCIP) focuses on the experiences and support needs of children, caregivers, and families affected by parental detention. This submission discusses how criminal justice systems can identify, assess, and consider these impacts when making decisions about arrest, pretrial detention, sentencing, and imprisonment.

Children's Rights and Criminal Justice Decision-Making

Efforts to reduce prison overcrowding often focus on prison populations, detention conditions, institutional capacity, and alternatives to imprisonment. These are important concerns. At the same time, decisions concerning whether a person enters or remains in

custody may have significant implications for children, even though information about those implications is often incomplete or absent from the decision-making process.

The Convention on the Rights of the Child recognizes children as independent rights-holders whose rights, interests, and circumstances deserve consideration in actions concerning them. Children are entitled to have their rights respected without discrimination based on their parents' status or activities (Article 2), and their best interests must be treated as a primary consideration in all actions concerning them (Article 3) (United Nations General Assembly, 1989).

The Committee on the Rights of the Child has further recognized that children may be affected throughout a parent's involvement with the criminal justice system, from arrest and pretrial detention through imprisonment, release, and reintegration (Committee on the Rights of the Child, 2011).

Currently, information about children affected by criminal justice decisions concerning their parents is often incomplete, inconsistently gathered, or absent from decision-making processes despite the potential consequences of those decisions. The challenge is not only a lack of recognition that children matter, but the absence of reliable processes to identify, gather, and present information about their circumstances to decisionmakers (Castle et al., 2023).

Prison overcrowding is broader than inadequate institutional capacity. It is also the cumulative result of decisions about arrest, pretrial detention, sentencing, release, and the availability and use of non-custodial measures. Where relevant caregiving responsibilities and the foreseeable consequences of detention are not identified, decisionmakers may be unable to consider whether a less restrictive response could adequately address public safety, accountability, and the administration of justice. Child-impact information may therefore contribute to more informed and proportionate decisions about the use of detention, addressing one of the processes through which overcrowding is produced.

The Importance of Early Identification

The relationship between children's rights and prison overcrowding begins well before a sentence is imposed. Many decisions that determine whether a person enters or remains in custody occur earlier in the criminal justice process. For children, those decisions can have immediate effects. The arrest or pretrial detention of a parent or primary caregiver can disrupt established caregiving arrangements and introduce uncertainty at a time when families have had little opportunity to prepare. These decisions are often made under significant time pressure and on the basis of limited information about the children who may be affected.

ICCLR's work has highlighted the importance of identifying caregiving responsibilities at the earliest appropriate stage of criminal proceedings (Castle et al., 2023). Decisionmakers

cannot meaningfully consider the implications of detention for children if they do not know that dependent children exist, who provides their care, or how detention might affect them.

This does not mean that parental status should determine outcomes or that detention should never occur where children are involved. Public safety, accountability, victim protection, proportionality, and the administration of justice remain important considerations. The question is whether these decisions are being made with sufficient information to understand their foreseeable consequences for affected children.

In the context of efforts to reduce prison overcrowding, the early identification of caregiving responsibilities may contribute to more informed, rights-based and proportionate decision-making, while also supporting the use of appropriate non-custodial measures where available. This direction is consistent with General Assembly Resolution 63/241 and the Bangkok Rules, both of which call for attention to parental responsibilities and the effects of detention on children, including consideration of non-custodial measures where appropriate (United Nations General Assembly, 2008, 2010).

Bringing Children's Circumstances Before Decisionmakers

A central finding of ICCLR's work on this topic is that children's interests cannot be meaningfully considered if information about their circumstances never reaches the individuals responsible for making criminal justice decisions.

Courts routinely receive information concerning offences, offenders, victims, risks, and sentencing objectives. Information about dependent children, however, is often incomplete, inconsistently presented, or absent altogether.

This gap has prompted ICCLR and its partners to explore practical mechanisms to bring children's circumstances before decisionmakers in ways that are reliable, proportionate, and consistent with due process. These mechanisms may include Child Impact Statements, family impact assessments, social inquiry reports, presentence reports, judicial inquiries, or other procedures appropriate to a particular jurisdiction (Castle et al., 2023; Jahn, 2023).

Their specific form may differ, but their purpose is broadly similar: to provide relevant information about the child, existing caregiving arrangements, available supports, and the likely consequences of different criminal justice decisions.

Decisions concerning arrest, detention, sentencing, or release have consequences that extend beyond the individual before the court. Where children are likely to be affected, decisionmakers should have enough information to understand who those children are, the circumstances in which they live, and how different options may affect them.

This does not mean that children's circumstances determine the outcome of a criminal proceeding, nor does it diminish other legitimate considerations. Rather, it recognizes that

meaningful consideration of children's rights is possible only when their circumstances are visible. Information about dependent children helps decisionmakers understand the broader implications of their decisions and consider whether an alternative response may achieve the purposes of justice while also respecting children's rights and interests.

Implementation Challenges

Several obstacles continue to limit the meaningful incorporation of children's rights considerations into criminal justice decision-making. One challenge is that, for a variety of reasons (Castle et al, 2023), caregiving responsibilities are often identified inconsistently or not at all. Children may therefore remain effectively invisible within criminal proceedings despite being directly affected by the resulting decisions.

A second challenge concerns institutional fragmentation. Criminal justice agencies, child welfare services, health systems, schools, community organizations, and family support services frequently operate within separate systems, each holding only part of the information needed to understand a child's circumstances. Better coordination may therefore be necessary, but it should occur in ways that respect privacy and avoid unnecessary information-sharing.

A third challenge concerns implementation in practice. Recognition of children's rights within international standards does not automatically translate into practical, usable decision-making tools (Committee on the Rights of the Child, 2013). Judges, prosecutors, defence counsel, probation officers, and correctional professionals may require guidance on how children's interests can be identified and considered in ways that remain consistent with established criminal justice principles.

Finally, efforts to gather information about children should be carefully designed. The purpose is not to label or stigmatize children on the basis of a parent's justice involvement, nor extend criminal justice surveillance into family life. Rather, it is to ensure that decisionmakers have the information necessary to understand and respond appropriately to the consequences of their decisions.

Recommendations

We respectfully recommend that the Special Rapporteur encourage States to:

1. Establish procedures to identify dependent children and the caregiving responsibilities of accused or convicted persons at the earliest appropriate stage of criminal proceedings.

2. Ensure that children's best interests are considered in decisions concerning arrest, pretrial detention, sentencing, release, and other measures affecting parental liberty.

3. Promote the development and use of Child Impact Statements, family impact assessments, and other mechanisms capable of bringing relevant information before decisionmakers.

4. Expand access to appropriate non-custodial measures, particularly where the detention of a parent or primary caregiver may have significant implications for dependent children.

5. Develop guidance and training for judges, prosecutors, defence counsel, probation officers, and correctional personnel regarding the practical application of children's rights principles.

6. Support intersectoral coordination to mitigate the impact of parental incarceration while safeguarding privacy and confidentiality.

7. Invest in research and evaluation concerning the effectiveness of approaches designed to integrate children's rights considerations into criminal justice decision-making.

Conclusion

Reducing prison overcrowding is often discussed as a matter of prison policy and prisoners' rights. However, as the accompanying INCCIP submission demonstrates, parental detention also affects children, caregivers, and families in diverse and significant ways. This submission focuses on a different but closely connected aspect: how criminal justice systems can ensure those effects are considered and, when possible, mitigated at every step of the criminal justice process.

When making pre-trial or sentencing decisions, courts cannot meaningfully consider the best interests of a dependent child without credible information about that child and the offender's caregiving responsibilities. Ensuring that relevant information reaches decisionmakers is an important element of a child-rights approach to criminal justice reform.

References

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