



**Shadow Report of
Justice Strategies
to
The International Convention on the
Elimination of all forms of Racial
Discrimination**

*Alleviating the Impact of Parental Incarceration on Indigenous,
African-American and Latino Children*

July 2014

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I. Reporting Organization(s)

Justice Strategies is a nonprofit research organization dedicated to providing analysis and solutions to advocates and policymakers pursuing more humane and cost-effective approaches to criminal justice and immigration reform.

Justice Strategies was launched in 2003 to alter the laws, policies and practices that drive mass incarceration and racial disparity in the U.S. criminal justice and immigration systems. A project of the Tides Center, Inc., Justice Strategies conducts research on sentencing and correctional policy, the political economy of incarceration, and the detention and imprisonment of immigrants. In addition to policy expertise, Justice Strategies offers expert advice in campaign development, and grassroots organizing.

II. Issue Summary

1. The U.S. Bureau of Justice Statistics (BJS) has estimated that by 2007 more than half (53 percent) of the 1.5 million people in U.S. prisons were parents of one or more minor children – translating into more than 1.7 million minor children with an incarcerated parent. This represents an increase of 80 percent since 1991. Nearly one-quarter of these children are age four or younger, and more than a third will become adults while their parent remains behind bars. Moreover, data compiled by BJS shows that the acute problem of racial disparity behind bars is reflected among the children of incarcerated parents. Black children are seven and a half times more likely than white children to have a parent in prison. The rate for Latino children is two and a half times the rate for whites.¹ The estimated risk of parental imprisonment by age 14 for white children born in 1990 is one in 25; for black children born in the same year, it is one in four.² Since “on a per capita basis, American Indians had a rate of prison incarceration about 38% higher than the national rate”³, it is safe to say that American Indian children experience a high rate of separation from their parents because of parental incarceration.

2. Undergirding this striking racial disparity is the sheer number of people behind bars in the U.S. The advent of the modern “war on drugs” and its accompanying “lock ‘em up and throw away the key” crime policies largely explain the evolution of mass incarceration in the U.S. and account for much of the pain caused to children who have lost their parents to long prison sentences.

3. Insufficient attention has been focused on the most direct reform avenues for reducing or eliminating the social and emotional impact of parental incarceration on the child-victims of the drug war: reducing the number of parents who are sentenced to prison in the first place. The primary goal that we should all aspire to is the reduction of the use of prisons to address minor, victimless offenses such as drug offenses. There are countless policies, laws and practices that are being explored, and, increasingly, implemented in various states across the nation. Needless to say, the impetus behind state-based sentencing reforms as they relate to drug crimes are emerging primarily because of the fiscal crisis many states are facing as a result of mass incarceration over the last three decades. That said, by reducing reliance on incarceration in tackling the “drug problem” in the United States – through sentencing reform – there will be a positive impact on reducing the number of parents being separated from

their children for inordinate amounts of time, thereby potentially reducing the negative emotional and psychological impact on children. Aiding parents in combating their addiction outside of prison walls is perhaps the most sensible criminal justice policy in addressing the needs of children who are caught in the cross-fire of the war on drugs.

III. Concluding Observations

It is the first time that this particular issue - considering parental status at a sentencing hearing – is being raised before the Committee. In 2008, the impact of parental incarceration on children and youth of color was raised before the Committee. Unfortunately, the Committee did not make concluding observations about the issue.

IV. U.S. Government Report

It is the first time that this particular issue - considering parental status at a sentencing hearing – is being raised before the Committee. In 2008, the impact of parental incarceration on children and youth of color was raised before the Committee. Unfortunately, the U.S Government did not address the issue in its report.

V. Legal Framework

The application of Articles 1, 2, 5(e)(IV) and 6 of the *International Convention on the Elimination of All Forms of Racial Discrimination* to ensure the full human rights benefits of family integrity for children whose parents are ensnared in the criminal justice system in the United States of America.

VI. The CERD Committee General Comments

1. United Nation A/60/18 Report of the Committee on the Elimination of Racial Discrimination Sixty-sixth session (21 February – 11 March 2005) & Sixty-seventh session (2-19 August 2005). Given the statistics and the child welfare and sentencing policies described above in section II, children of color and their parents who are ensnared in the criminal justice system are more likely to be denied recognition and enjoyment of their fundamental right to maintain family integrity, recognized by the Committee's interpretation of the Convention in General Recommendation XXXI ¶¶ 25, 26, 27, 28, 34, 35, 36, 38(a) and 41.

<file:///C:/Documents%20and%20Settings/Mary/My%20Documents/Downloads/G0544120.pdf>

2. As recognized by the Committee's interpretation of the Convention in General Recommendation No. 34 – Racial discrimination of people of African descent, Seventy-ninth session (8 August-2 September 2011)

<file:///C:/Documents%20and%20Settings/Mary/My%20Documents/Downloads/G1146043.pdf>:

25. Recognizing the particular vulnerability of children of African descent, which may lead to the transmission of poverty from generation to generation, and the inequality affecting people of African descent, adopt special measures to ensure equality in the exercise of their rights, in particular corresponding to the areas that most affect the lives of children.

26. Undertake initiatives specifically aimed at protecting the special rights of the girl child and the rights of boys in vulnerable situations.

VII. Other UN Body Recommendations

The *Convention on the Rights of the Child* Art. 2, 3, 4, 8 and 9.

VIII. Recommended Questions

(1) Given that it is estimated that more than half of the people in U.S. prisons are parents of one or more minor children – translating into more than 2 million minor children with an incarcerated parent, (2) Given that the data compiled by the Bureau of Justice Statistics shows that the acute problem of racial disparity behind bars is reflected among the children of incarcerated parents, (3) Given that Black children are seven and a half times and Latino children are two and a half times more likely than white children to have a parent in prison, and (3a) Given that American Indians experience a rate of prison incarceration about 38% higher than the national rate, it is safe to say that American Indian children experience a high rate of separation from their parents because of parental incarceration, (4) Given that “war on drugs” policies largely explain the evolution of mass incarceration in the U.S. and account for much of the pain caused to children who have lost their parents to long prison sentences, (5) Given that research shows a close yet complex connection between parental incarceration and adverse outcomes for children (including increased likelihood of school failure, increased likelihood of undermining a sense of stability and safety in children, and increased likelihood of developing mental health problems), (6) Given that by reducing reliance on incarceration in tackling the “drug problem” in the United States – through sentencing reform – there will be a positive impact on reducing the number of parents being separated from their children for inordinate amounts of time, thereby potentially reducing the negative emotional and psychological impact on children, and (7) Given that by aiding parents in combating their addiction outside of prison walls is perhaps the most sensible criminal justice policy in addressing the needs of children who are caught in the cross-fire of the war on drugs, ***civil society would like to hear from United States Government when and how does the State Party plan to legislate into law the following two legislative remedies below to address the impact of parental incarceration on children of color?***

IX. Suggested Recommendations

As a member of civil society, Justice Strategies offers the following two suggestions as an opportunity for the United States government to honor and address the psychological, emotional and physical needs of Indigenous, African-American and Latino children who have a parent who may face a possible term of incarceration.

1. At the sentencing hearing of an individual convicted of a non-violent offense (i.e. a drug offense or property offense that is related to an addiction issue) and who is the parent of children and/or other dependents, the court should hear and consider what the impact of incarcerating the parent will be on her or his children or dependents. Federal and state sentencing laws should allow judges to exercise discretion with respect to sentencing a parent to an alternative to a prison term (i.e. probation, drug treatment, an education or job training program).

Example of a legislative scheme in Australia reflecting the above-mentioned:

Australian Consolidated Acts - Crimes Act 1914 -Section 29.25 - 16A 2(p)

http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s16a.html

2. In order to assist judges in assessing the impact of parental incarceration on children and/or other dependents, federal and state governments should have a statutory requirement that Family Impact Statements be submitted to the court for their review before a sentencing determination is completed. Example of a Family Impact Statement in New York State:

http://www.osborneny.org/images/uploads/printMedia/FamilyImpactStatementFactSheet_Osborne.pdf

X **Civil Society Endorsements**



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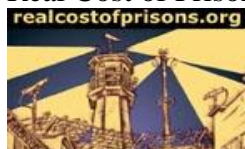
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¹ Lauren E. Glaze & Laura M. Maruschak, U.S. Department of Justice, Bureau of Justice Statistics Special Report, Parents in Prison and Their Minor Children (Aug. 2008) available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf>.

² Christopher Wildeman, *Parental Imprisonment, the Prison Boom, and the Concentration of Childhood Disadvantage*, 46 DEMOGRAPHY 265 (2009).

³ Lawrence A. Greenfeld and Steven K. Smith, "American Indians and Crime," U.S. Department of Justice (1999), <http://bjs.gov/content/pub/pdf/aic.pdf>