

# Beyond the rhetoric

**Maire McCormack discusses the issue of the status of children of prisoners in Scotland.**

'Child centred' is a word that can be thrown around too glibly at times. If the criminal justice system was truly child centred, it would have a child in the middle of its 'mind map', encircled by all of the different opportunities for interface, as victim, witness, offender or someone in a relationship with an offender. This last category is important because it is here that children can be most invisible.

In February 2008, Scotland's Commissioner for Children and Young People (SCCYP) laid before the Scottish Parliament a report called, *Not Seen. Not Heard. Not Guilty: The Rights and Status of the Children of Prisoners in Scotland*. It is suggested that, annually, about 13,500 Scottish children are affected by the imprisonment of a parent, although this is likely to be an underestimate. It is roughly the same as the number of 'looked after' children in Scotland, another vulnerable group but one whose needs and interests receive a lot more attention. As prison numbers rise in Scotland so will the number of children affected.

The report charts the progress of children from the point of arrest of a parent (sometimes in the presence of a child), through the court process and sentencing, visiting arrangements and decisions to release, including release to home detention curfew. It demonstrates the invisibility of children and their rights in the rules and procedures that surround these events, despite the requirement of Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) that their interests be a primary consideration in any decision concerning them, and Article 12's insistence on the need to take account of an affected child's views.

Children's rights to respect for family life, under both the UNCRC and Article 8 of the European Convention on Human Rights are breached by the imprisonment of a parent. In some cases this breach will be held to be both justifiable and proportionate. However, in order to reach that decision, the impact on the child needs to be taken into account. It is for this reason that my report recommended a child impact

assessment at the point of sentence, in every case where a child would be affected by parental imprisonment. A small but significant piece of research published in the report shows that this is not routinely taken into account even in those cases where a social enquiry report is prepared in relation to the offender. In pursuit of this recommendation, the office is hosting a lecture by Justice Albie Sachs from South Africa who successfully championed that cause there. It will take place on 24 June 2009. Enquiries about the lecture can be made to the SCCYP office.

Another very current issue in Scotland is the age of criminal responsibility. The UN Committee on the Rights of the Child has repeatedly recommended that it be raised. The current age of eight is scandalously low, although its impact is mitigated by the fact that most child offenders are dealt with by the welfare-based children's hearing system. SCCYP has been active in advocating change and there are indications that the Scottish Government is considering this sympathetically. ■

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## References

Marshall, K. (2008), *Not Seen. Not Heard. Not Guilty. The Rights and Status of the Children of Prisoners in Scotland*, Edinburgh: SCCYP.

**Scotland's Commissioner for Children and Young People**

is hosting a lecture by

**Justice Albie Sachs**

of the Constitutional Court of South Africa

**On the Rights of the Children of Prisoners**

Wednesday 24th June 2009, 6pm, Edinburgh

The lecture is by invitation only

If you would like to attend the lecture, or if you would like further information please contact Sareta Puri on 0131 558 3733 or email [sareta.puri@sccyp.org.uk](mailto:sareta.puri@sccyp.org.uk)