

SUBMISSION BY FRIENDS WORLD COMMITTEE FOR CONSULTATION (QUAKERS)

COMMITTEE ON THE RIGHTS OF THE CHILD DAY OF DISCUSSION 2005

CHILDREN DEPRIVED OF PARENTAL CARE

Working Group 1: States' role in preventing and regulating separation:

Parental imprisonment deprives a child of parental care

The Convention on the Rights of the Child contains a number of articles addressing the rights of the child to family life and not to be separated from their family. In particular, Article 9 specifies that “a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”

Friends World Committee for Consultation (Quakers) calls on the Committee to give consideration to States' role and obligations in preventing and regulating separation of children and their parents when a parent is imprisoned (either in pre-trial detention or after sentence).

1. Background

1.1 Parental imprisonment deprives a child of parental care:

Imprisonment, in particular of a woman, often deprives a child of parental care.¹ Women prisoners are more likely than men prisoners to have been the sole or primary carer for young children prior to imprisonment. For example:

- in Brazil's largest women's prison, 87 percent of women prisoners are mothers;²

¹ This submission refers particularly to the situation where it is the mother who is detained or imprisoned because of the particular impact of maternal separation on babies and children. Research undertaken by the Quaker UN Office, Geneva, identifies the high proportion of detained/imprisoned women who are mothers of minor children, and the fact that when the father is imprisoned it is more usual for the mother to take care of the children than vice versa. See Rachel Taylor: Women in Prison and Children of Imprisoned Mothers: Preliminary Research Paper (Quaker UN Office, Geneva, July 2004).

- in the United States, 80 percent of women prisoners are mothers, with three-quarters having children under 18 years of age;³
- in the Russian Federation, 80 percent of convicted women are mothers;⁴
- in the United Kingdom, 66 percent of women prisoners are mothers, 55 percent have at least one child under 16 years of age, and 34 percent were single parents before going into prison;⁵
- in Lebanon, 49 percent of female inmates have children under 16, including 13 percent with children under 10 plus a further 19 percent with children under 5 years of age;⁶
- in Rwanda, 45 percent of female prisoners have children under 16 years of age, including 15 percent with children under 10 plus a further 10 percent with children under 5 years of age.⁷

When fathers are imprisoned, typically the mother cares (or continues to care) for the children. In contrast, when a mother is imprisoned, there is a high likelihood of family break-up. However, it is important to also consider the impact of paternal imprisonment, in particular the situation where the father is the sole or main carer of the child or children.

A study of the children of imprisoned parents in New York, for example, showed that:

- 88.8 percent of children of imprisoned fathers lived with their mother or stepparent;
- 0.7 percent of children of imprisoned fathers went into state care;
- 20.4 percent of children of imprisoned mothers lived with their father or stepparent;
- 18.1 percent of children of imprisoned mothers went into a foster home or state agency.⁸

Research in the United Kingdom with children of imprisoned mothers found that only 5 percent were able to remain in their own home during their mother's prison sentence.⁹ A study in Missouri, USA, encapsulates the significance of the difference through the responses from teenagers who themselves had had a parent incarcerated that:

- The major impact of having a mother incarcerated was that children had to move in with someone else; whereas
- The major impact of having a father incarcerated was that the child either had no relationship or a bad relationship with the father.¹⁰

2 Estimate of local prisoners' rights Non-Governmental Organisations quoted in Howard, C: *Main issues facing Brazil's women prisoners* (unpublished, 2003).

3 Owen, B: "Understanding Women in Prison" in Ross, Jeffrey and Richards, Stephen (eds) (2003) *Convict Criminology* (Thomson Wadsworth), pp. 231-246, p. 244.

4 Alpern, L: Women and the System of Criminal Justice in Russia: 2000-2002, at <http://www.mhg.ru/english/1F4FF6D> (accessed 5 July 2005).

5 Statistics on Women and the Criminal Justice System: A Home Office publication under Section 95 of the Criminal Justice Act 1991 (2002), pp. 35, 37.

6 Information provided to the Quaker UN Office, Geneva, by the Permanent Mission of Lebanon, Geneva, February 2005.

7 Information provided to the Quaker UN Office, Geneva, by the Rwandan Ministry of Internal Security, November 2004.

8 Human Rights Watch (2002) *Collateral Casualties: Children of incarcerated drug offenders in New York*, p. 6.

9 Gampell, L (2003) Submission in response to the Green Paper Consultation 'Every Child Matters' (Action for Prisoners' Families) p. 4.

¹⁰ Anne Dannerbeck, "Differences between Delinquent Youth with and without a Parental History of Incarceration" (University of Missouri-Columbia, School of Social Work, Final Report on the Project). Similarly in the UK, it is

When their mother is imprisoned, it is not unusual for children to be moved around between different carers and, to ease the burden on the new carers, to be separated from their brothers and sisters.

Further, when a child's mother is imprisoned, this often causes long-term or permanent dislocation of their family environment. On release, women face practical obstacles to re-gaining custody of their children, such as obtaining suitable housing. One study in the United Kingdom found that "half the mothers nearing release were not expecting to return to their previous accommodation, almost four out of 10 had lost their homes and there was an increase in the number expecting to be homeless".¹¹ In another, 10 percent of mothers interviewed who had lived with their children before being in prison did not expect to do so after release.¹²

A mother's imprisonment seriously disrupts the lives of her children in all circumstances, and results in large numbers of children being institutionalised. This leads to cycles of institutionalization. The Wedderburn report on women's imprisonment in the United Kingdom noted, "more than a quarter of the women [prisoners] themselves had been in care as a child".¹³

1.2 The effects of imprisonment of the mother on a child's development:

Research indicates that the children of incarcerated mothers, in particular, suffer immediate and enduring adverse effects on their relationships with their peers, irreparable harm to their relationship with their mother, and may be at a greater risk of future incarceration themselves.¹⁴

Stanley and Byrne noted the following behaviours exhibited by children with incarcerated parents:

...physical health problems, hostile and aggressive behaviour, use of drugs or alcohol, truancy, running away from home, disciplinary problems, withdrawal, fearfulness, bedwetting, poor school performance, excessive crying, nightmare, problems in relationships with others, anxiety and depression and attention problems.¹⁵

estimated that the living arrangements of at least 8,000 children each year are disrupted by the imprisonment of their mother. (Action for Prisoners' Families: Submission in response to the Green paper Consultation *Every Child Matters*, December 2003)

¹¹ Wedderburn, D. (2000) *The Report of the Committee on Women's Imprisonment: Justice for Women: The Need for Reform* (Prison Reform Trust) p. 9.

¹² Caddle, D and Crisp, D (1997) *Mothers in Prison*, Home Office Research, Development and Statistics Directorate, Research Findings No.38, p. 4.

¹³ Wedderburn, D, *The Report of the Committee on Women's Imprisonment: Justice for Women: The Need for Reform* (Prison Reform Trust, 2000) p10.

¹⁴ Human Rights Watch: *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* (1996) p20, referring to an unpublished doctoral study conducted at Brandeis University which estimated that the children of inmates were five to six times more likely than their peers to be incarcerated.

¹⁵ Stanley, E and Byrne, S: *Mothers in Prison: Coping with Separation from Children*, paper presented at the Women in Corrections: Staff and Clients Conference, Adelaide, 31 October – 1 November 2000, p2.

A case study concerning the two year-old son of an imprisoned woman illustrates some of these issues:

[My son] didn't sleep, he just cried all night he kept asking where mummy was and couldn't understand why mummy's car was there but mummy wasn't. Apparently he went off his food for the week, didn't eat for a week, they took him to the doctors to see if they could give him anything to help him, but he just kept crying. Apparently, he was walking around with a photo of me, saying "mummy back soon, mummy back soon."¹⁶

Whilst the type and severity of problem experienced by individual children varies, the extent of the problem is widespread. A 1994 survey of 1,766 women prisoners in the United Kingdom reported that:

Following imprisonment problems with their children's behaviour were reported by 44 percent of the mothers and 30 percent said their children had become withdrawn. (Such problems were more common amongst older children, those who had been separated from their siblings or placed in care.) This confirms other research ... which found that the children of women prisoners tended to have quite serious emotional and behavioural problems whereas the children of male prisoners tended to have relatively minor problems.¹⁷

2. Convention on the Rights of the Child and other legal provisions

2.1 Preventing the institutionalisation of children and discouraging unnecessary separation of children from their parents:

Although Article 9(4) of the Convention on the Rights of the Child foresees the possibility of separation of child and parent(s) resulting from action initiated by a State, such as detention or imprisonment, it only directly addresses the question of access to information concerning the whereabouts of the person concerned.

The decision to imprison a parent is of its nature an action that concerns any minor children that the person may have. Article 3(1) of the Convention establishes the key principle that the best interests of the child shall be a primary consideration in any decision concerning them. The Committee has stressed that every legislative, administrative and judicial body or institution is required to apply the principle of the best interests of the child by systematically considering how children's rights and interests are or will be affected by their decisions and actions.

More specifically, in accordance with Article 9(1), the State should only separate a child from its parents on a case by case basis and where it is in the best interests of the child. Further, Article

¹⁶ Nellis, M: *Kids Are The Issue: Sentence deferral and the use of custody for women offenders*. Report by a member of the Ecumenical Group on Women in Prison, submitted to the Home Office (January 2001) p3 – 4.

¹⁷ Caddle, D and Crisp, D: *Mothers in Prison*, Home Office Research, Development and Statistics Directorate, Research Findings No.38 (1997) p2.

18 stipulates that States “shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.”

The Committee might usefully examine what obligations on the part of the State follow from this in circumstances where the detention of a child’s parent is being considered.

As outlined above, these questions are particularly relevant where the State is considering sentencing a mother to imprisonment, given the likelihood that imprisonment of the mother causes the child to be deprived of parental care. Further, the Universal Declaration of Human Rights requires that motherhood be given special protection and assistance.

In many countries, babies and young children can or do accompany their mother into prison or pre-trial detention.¹⁸ However, the Convention on the Rights of the Child specifies in Article 37(b) that “detention or imprisonment of a child ... shall be used only as a measure of last resort”. This raises questions about the babies and young children accompanying their mother into detention or imprisonment.

If it is accepted that it is not appropriate to separate parents and children except when it is in the best interests of the child, nor to detain or imprison a child except as a measure of last resort, the Committee might give greater consideration to promoting the use of non-custodial sentencing of parents, particularly mothers.

In relation to pre-trial detention, the Committee might wish to consider exploring with States alternatives to pre-trial detention of mothers of babies and dependent children, including how, when and by whom the existence of such children is ascertained and taken into account in considering whether pre-trial detention is necessary. Identifying States that pursue alternatives to pre-trial detention of mothers and drawing from their experience would be useful. Article 30 of the African Charter on the Rights and Welfare of the Child is on the subject of “Children of Imprisoned Mothers” and specifically provides that States Parties shall ensure that a non-custodial sentence will always be first considered when sentencing expectant mothers and mothers of infants and young children, and establish and promote measures alternative to institutional confinement for such mothers.¹⁹

Restorative justice provides such measures, by bringing together victims, offenders and the community both inside and outside the framework of the formal court setting. It offers flexible alternatives that can take into account a wider range of issues than can be considered in court. The Bangkok Declaration, issued by the United Nations Congress on Crime Prevention and Criminal Justice in April 2005, drew the attention of States to the benefits of restorative justice, including its use as an alternative to prosecution, “thereby avoiding the possible adverse effects of imprisonment”.

18 See Marlene Alejos: *Babies and Young Children Residing in Prisons* (Quaker UN Office, Geneva, May 2005).

19 The Council of Europe Parliamentary Assembly Recommendation 1469 (2000), later adopted by the Committee of Ministers (Decision CM 2001/15), recommends of the use of imprisonment of mothers with babies or young children as a last resort and encourages the use of community-based penalties instead.

In relation to the sentencing after conviction of mothers of babies and dependent children, again the question arises of how the best interests of affected children are taken into account in considering whether a custodial sentence should be given. Protecting the best interests of the child might entail giving an alternative sentence, such as a community order or probation; or, as is the case in some countries, deferring imprisonment until the child is no longer dependent,²⁰ and/or suspending the sentence. Again, it would be valuable if the Committee were to explore the experience of States who have such provisions - how they work in practice, and to what types of crimes, or in what circumstances, they are or are not applied.

The particular situation of children of foreign national women – that is, whose mothers are in another country at the time of their arrest/detention – needs also to be considered. How can the child’s rights under the Convention on the Rights of the Child be protected and promoted in these circumstances?

2.2 Ensuring the realisation of a child’s rights when their parent is imprisoned:

If, nevertheless, the decision is made to hold the mother in pre-trial detention or to sentence her to imprisonment, then other specific obligations embodied in the Convention need to be taken into consideration, including Article 9(3) “the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests”; and Article 12, the right of the child to be heard in matters affecting them and in particular in any judicial and administrative proceedings affecting them.

More broadly, when a child is deprived of parental care by the imprisonment of their parent, the exercise and fulfilment of all their basic rights under the Convention is often undermined, including their right to survival and development (Article 6); their right to be protected from all forms of violence (Article 19); their right to enjoy the highest attainable standard of health (Article 24); and their right to a standard of living adequate for their physical, mental, spiritual, moral and social development and to conditions of living necessary for their development (Article 27).

Such children are entitled to special protection and assistance by the State when they are temporarily or permanently deprived of their family environment (Article 20). Further, they must not face discrimination on the basis of their parent’s status (Article 2(2)). As the Committee has stated, this non-discrimination obligation “requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures.”²¹

²⁰ For example, according to the International Centre for Prison Studies, “Human Rights Approach ...”, the Russian penal code allows for mothers who are convicted of a less serious offence, that is, one for which a prison sentence of five years or less may be imposed, to have their sentence deferred until their youngest child reaches the age of eight. At that stage the sentence will be reviewed to determine whether it should be implemented. A key factor in reaching that decision will be whether the woman has committed another crime.

²¹ General Comment 5 of the Committee on the Rights of the Child (2003), *General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, CRC/GC/2003/5, para 12.

The Committee might usefully consider what steps States should take to ensure the realisation of a child's rights in circumstances where they are deprived of parental care because their parent is imprisoned.

3. Recommendations

The Committee on the Rights of the Child should:

1. Remind States Parties of their obligations under the Convention in relation to the child or children when making any decision to detain a parent (either pre-trial or after sentence), including their obligation to consider the best interests of the child;
2. Urge States to consider alternatives to pre-trial detention for mothers of babies and dependent children, including clarifying how, when and by whom the existence of such children is ascertained and taken into account in considering whether pre-trial detention is necessary;
3. Require States to systematically collect age and gender disaggregated data on babies and dependent children of all persons held in detention or in prison, including those of foreign nationals detained or imprisoned outside their normal country of residence;
4. Urge States to consider alternatives to imprisonment for mothers of babies and dependent children (and for fathers at least in the case where the father is the sole or primary carer of the child or children), including in particular restorative justice processes, as well as community orders, probation and suspended sentences;
5. Consider how these situations particularly affect children of foreign national women, who are in a country other than the one in which their mother is or would be detained/imprisoned; and
6. Identify States where the best interests of babies/children are explicitly considered in relation to decisions made as to pre-trial detention and/or imprisonment, and draw from their experience to develop recommendations for other States to include in Concluding Observations and/or a General Comment, or the proposed Guidelines.

The Quaker UN Office, Geneva, is undertaking research on Women in Prison and the Children of Imprisoned Mothers as part of a joint project with the Quaker Council for European Affairs (Brussels), Quaker Peace and Social Witness (UK) and the Friends World Committee for Consultation (Quakers) representation to the UN Commission on Crime Prevention and Criminal Justice (Vienna) and the UN Crime Congresses.