



## Submission to the Committee on the Rights of the Child Day of Discussion on Implementing Child Rights in Early Childhood

### Children of Imprisoned Mothers

*"These children have committed no crime, but the penalty they are required to pay is steep"*<sup>1</sup>

**Introduction:** Around the world, thousands of children face daily problems because their mother is in prison or pre-trial detention. Many imprisoned women are the sole or main carer of minor children. For example, in Brazil, 87 percent of female prisoners have children and 65 percent of these women are single mothers. In 2001, it was estimated that more than two million American children have a parent behind bars.<sup>2</sup> In countries with indigenous populations, indigenous women tend to be disproportionately represented in the prison population, and they, and foreign nationals, and their children may face additional problems.

Far too little attention has been paid to these children of imprisoned mothers and their welfare, let alone their rights.<sup>3</sup> Friends World Committee for Consultation (Quakers) therefore urges the Committee on the Rights of the Child to give specific attention to this category of children during its consideration of 'Implementing child rights in early childhood' with a view to identifying the particular problems and needs these children face and how their rights can be better addressed and secured.

When a mother is imprisoned, her baby and/or young children may go into prison with her or be separated from her and left on the 'outside'. Neither of these situations is satisfactory. As the Special Rapporteur on Prisons and Conditions of Detention in Africa stated:

*Prisons are not a safe place for pregnant women, babies and young children and it is not advisable to separate babies and young children from their mother.*<sup>4</sup>

Even within Europe, State practice varies in fundamental approaches from allowing children into prison with their mother up to the age of six to excluding all children except breastfeeding babies.

**Children in Prison with their mother:** In many countries it is common for babies and young children to go into prison with their mother. In the context of the rights of the child and early childhood development, this raises many issues about the facilities available to ensure the children's mental, emotional and physical development. These questions arise even in the best circumstances, where special mother and baby units are provided. In many prisons the conditions are appalling, and do not provide circumstances for even safe physical development, with overcrowding, inadequate food, clean water, washing and hygiene facilities, etc. Too often male and female prisoners are not even separated, (or not properly separated) with consequent physical and sexual violence or exploitation between prisoners as well as by prison guards.<sup>5</sup> The physical dangers make some of the mental and emotional dangers obvious as well. However, there are also the issues of the children's access to play, to

<sup>1</sup> San Francisco Partnership for Incarcerated Parents: *Children of Incarcerated Parents: A Bill Of Rights* (October 2003)

<sup>2</sup> Center for Children of Incarcerated parents, 2001 Fact Sheet

<sup>3</sup> For more information and the background to this submission, see Rachel Taylor: *Women in Prison and Children of Imprisoned Mothers: A Preliminary Research Paper* (Quaker United Nations Office, Geneva, July 2004)

<sup>4</sup> Chirwa, V: *Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa: Prisons in Malawi (17-28 June 2001)*, p 36

<sup>5</sup> Questions of direct violations of the rights of the child or of the mother, such as torture or ill-treatment also, arise.

education, to social interaction with other children and to an environment beyond the prison. Some research suggests that imprisoned babies suffer a gradual decline in locomotor and cognitive scores after four months, as compared to babies cared for in the community<sup>6</sup>. Furthermore, the mental, emotional and physical state of the mother, also impacts on the children, as does the pre-natal care and circumstances during child-birth in relation to pregnant women prisoners. Finally, if babies and young children are allowed into prison with their mother, but then required to be separated, how can this be done in a way that minimizes the impact of the separation, for example by ensuring that additional opportunities for visiting are put into place prior to the actual separation, to enable the child to settle in to their new home and family.<sup>7</sup>

**Children on the ‘outside’:** Not taking babies and children into prison with their mother raises a different set of problems. It is: *“not a question of choosing between a good option and a bad option, but between two bad options”*<sup>8</sup>. The first question is, of course, who will take care of such children. The father, grandparents or extended family may be able and willing to do so, but children may be separated from each other in order to lighten the burden of care, or they may be taken into State care institutions. What experience is there in seeking to maintain the best links between the children and their mother? How can the mental, emotional, physical and social impact of the mother’s imprisonment be minimized for the children, both directly for them in continuing their daily lives, and also in maintaining their relationship with the mother during imprisonment and following her release (if any). Visiting prisons can be a daunting and frustrating experience for adults. Travelling a long distance, entering a grim building, being searched by a strange adult, to spend a short time with a mother that one cannot even touch may be distressing in the extreme to a young child. This in turn may make the child’s substitute carer less inclined to undertake this arduous task. Furthermore, the new carers may have their own family responsibilities, as well as financial constraints, which put strains on taking in additional children (leading to children being moved from one carer to another) and in particular adding to the financial, time and emotional burdens of taking children to visit their imprisoned mother. Because there are fewer women prisoners (the global average is 4 percent), there are fewer women’s prisons, and therefore women are usually imprisoned further from home than are male prisoners. This makes maintaining family contacts harder, and the imprisoned mother may find it particularly difficult to maintain effective communication with young children by means of telephone calls and letters.

Because of the apparently increasing tendency to send women to prison for lesser, non-violent offences, the woman herself may not anticipate the possibility of imprisonment as the outcome of her trial. She may not, therefore, have made any preparations or provision for her children before being taken into custody. This can cause added distress to both the mother and the children, and indeed may leave children fending for themselves. Some States have a system which permits deferment of the start of the prison term for a short time in order for such a mother to make arrangements for her children.

Whatever arrangements are made for the children, the impact of their mother’s imprisonment affects every aspect of their lives and not only their relationship with their mother. It is similar to bereavement, but with added stigma and often less support, from the new carer, teachers, and others. The impact will, of course, vary according to their age and the surrounding family and community response. What guidance can the Convention and the Committee offer in how to provide the necessary mental, emotional and physical support to children in such circumstances? What are the rights of children in this position?

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<sup>6</sup> Caddle, D: *Age limits for babies in prison: Some lessons from abroad*, Home Office Research, Development and Statistics Directorate, Research Findings No.80 (1998), pg 2.

<sup>7</sup> Prison Services Working Group: *Report of a Review of Principles, Policies and Procedures for Mothers and Babies/ Children in Prison* (July 1999).

<sup>8</sup> Nari, M et al: *Encierro y resistencia en las carceles de mujeres en Argentina*, (paper prepared for delivery at the 2000 meeting of the Latin American Studies Association, Miami, 16-18 March 2000), p 17.

## **Recommendations to the Committee on the Rights of the Child:**

Friends World Committee for Consultation (Quakers) urges the Committee to:

1. Consider how the Convention on the Rights of the Child applies to children in prison (including pre-trial detention) with their mother, and to children of imprisoned mothers not themselves in prison;
2. Request States Parties to provide information on their policy and practice in relation to children of imprisoned mothers, including how the existence of children is identified at the time of arrest or imprisonment, what provision is made to inform and consult children about decisions affecting them and how all the rights of the children are secured in these circumstances;
3. On the basis of such consideration and the information gathered from States Parties to the Convention, consider whether further steps are needed, such as a General Comment, a Day of Discussion, or the development of a Bill of Rights for Children of Imprisoned Mothers. The latter could take as a starting point the San Francisco Partnership for Incarcerated Parents 'Bill of Rights' for children of incarcerated parents, which states:
  1. I have the right to be kept safe and informed at the time of my parent's arrest.
  2. I have the right to be heard when decisions are made about me.
  3. I have the right to be considered when decisions are made about my parent.
  4. I have the right to be well cared for in my parent's absence.
  5. I have the right to speak with, see and touch my parent.
  6. I have the right to support as I struggle with my parent's incarceration.
  7. I have the right not to be judged, blamed or labeled because of my parent's incarceration.
  8. I have the right to a lifelong relationship with my parent.

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