

Children of Imprisoned Parents*

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1. INTRODUCTION

Children of prisoners in general do not enjoy any special rights. Children's needs are not considered when a parent is sent to prison. When that happens the child's life might be turned upside down. Although they have done nothing wrong, they are punished too. Parenthood of people who are arrested or stand trial is not a big issue in criminal law. Also in prison inmates' legal position their family ties are scarcely recognised. For the public at large prisoners in the first place are lawbreakers. It is difficult to picture them as mothers and fathers who might want to care for their children. So, the children are in a way double victims: they miss their imprisoned parent and they are confronted with stigma, social rejection and shame. This is not always the case, the exception for example is the child of the political prisoner, his or her parent is seen as a hero one should be proud of. However the number of political prisoners is very small relative to the larger prison population.¹

Children of imprisoned parents are not easy to classify as a group. Their situations differ in various countries and across cultures.² If there is, also in international perspective, any attention on the topic, it has been concentrated on imprisoned mothers with babies. It is important to realise that most involved children are older of age. And most of the imprisoned parents are fathers. Worldwide, women are a small minority of the prison population, most of the time only about 5%. The gender issue has to be taken into account, most of the imprisoned mothers being (former) primary caretakers and very often single mothers. Especially in the women's custodial population is also a big number of ethnic minorities. In England, for example, in Holloway, the biggest prison for women in Western Europe, they have 50% black young women, although the population outside is 5%.³ The children of imprisoned mothers often are split up and sometimes even left 'home alone.' Children of imprisoned fathers most of the time stay at home with their mothers, but in difficult and often poor circumstances.⁴ Complicating factors such as migration problems, parents who are addicted to drugs and alcohol, or parents who are violent or abusive are often present. These problems may occur more often in the lives of children of imprisoned parents than 'normally,' but they certainly do not occur per definition. It is very important to take that into account and judge each situation as such.

Legally the position of children of imprisoned parents is quite opposite to, for example, the children of divorced parents, although from the perspective of the child in both cases he or she has nothing to do with the cause of separation. In family law, however, family life and the bond between parents and children is protected to a large extent. I believe in criminal law the state interference in family life (by arresting and punishing the parent) obliges the state to create provisions and facilities to limit the damage of this interference and of the separation caused by it. To put it in a positive way, the authorities must respect the family and private life of parents and children, even if a parent has committed a criminal offence. Principles of proportionality and subsidiarity must play a role in every stage of the criminal process each time decisions need to be taken with respect for their great implications for family life. Relevant factors to be considered are the actual care and the interests of the child, and apart from these of course the gravity of the offence and the general safety of society.

The legal base of this accountability of the state can be found in several human rights treaties, and in the framework of the Convention on the Rights of the Child (CRC), especially in Articles 3, 9 and 12. Article 3(1) reads:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 9 commits states to 'ensure that a child shall not be separated from his or her parents against their will.' According to Article 12, children should be free to express their views in all matters affecting them, and those views should be 'given due

* The text of this chapter was finalised in July 2001.

¹ R. SHAW, 'Imprisoned fathers and the orphans of justice,' in: R. SHAW, *Prisoner's Children; What are the Issues?* Routledge, London, New York, 1992, 41-49.

² There are no reliable figures about their numbers. In 1996, it was estimated that in Europe about 800,000 children were separated from their imprisoned parent each year (European Action Research Committee on Children of Imprisoned Parents, *Children of Imprisoned Parents; Family Ties and Separation*, Report on the situation in eight European countries, Paris, 1996, 3-8). In Brown's study of the United Kingdom a number is mentioned of 100,000 children separated from an imprisoned father and of 8,000 separated from an imprisoned mother (K. BROWN, *No-one's Ever Asked Me; Young People with a Prisoner in the Family*, Federation of Prisoners' Families Support Groups, Young People's Project, London, 2001, 1).

³ S. CASALE at the Jerusalem 2000 Conference on *Rehabilitation of Women Offenders: Mothers with Children* (proceedings are forthcoming).

⁴ R. WOLLESWINKEL, *Gevangen in moederschap; Gedetineerde vrouwen en het recht op family life*, Gouda Quint, Deventer, 1997, 296-297; C. VAN NIJNATTEN, *Detention and Development; Perspectives of Children of Prisoners*, Forum Verlag Godesberg, Mönchengladbach, 1998, 70-71; E. CHRISTENSEN, 'Imprisoned parents and their families: What can we do to minimise harmful effects to the children?' *Journal of Child Centred Practice* 2001, 84-85.

weight in accordance with the age and maturity of the child.’ The underlying idea is that children have a right to be heard and to have their views taken seriously, including any judicial or administrative proceedings affecting them. In case of criminal charges against a parent, the state has to operate within (at first sight) conflicting obligations. In view of the best interests of the child, the state, the parents and the child (*Trias pedagogica*) seem to have a common interest in the development of institutions, facilities and services for the care of children (Article 18(2) CRC). The Convention on the Rights of the Child in general and in specific articles obligates states to support parents in the caring and raising of their children by making adequate provisions. Within the framework of the CRC, children of imprisoned parents must not be discriminated against because of the status of their parent (Article 2), and their own culture must be respected (Article 30). It is not yet clear whether and to what extent parents and children may directly invoke these treaty provisions before national courts. Treaty provisions that have direct effect, such as Article 8 of the European Convention on Human Rights (ECHR), may be tightened with the aid of provisions in the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women (CEDAW).⁵ The authorities have a duty (positive obligation, *see* Article 8 ECHR) to optimise care relations. In fact a case of a former imprisoned mother was in this respect an important event in the case law on Article 8 of the European Court on Human Rights.⁶ Optimum care relations are in general a prerequisite for emancipation in a broader, social sense. As Brems notes in this book: ‘Contextual interpretation is facilitated by “elastic” language in the Convention.’⁷ In individual cases I would plea for a contextual approach to prisoners families. In such an approach state interference must be tested against the existing family life, against the interests of the child and the protection of motherhood, or as the case may be, the role of the care provider, without this resulting in negative stereotyping (*see* Article 5 CEDAW). In my doctoral thesis I made proposals for such a contextual approach during all stages in the criminal process in The Netherlands.⁸

This also fits into at least one purpose of punishment: the rehabilitation and reintegration of the delinquent, which cannot be realised without taking into account one’s family life, like other social and economic conditions.⁹ Or, as was noted in a report of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe, ‘in view of the adverse effects of imprisonment at social and family levels, which run counter to the aims of rehabilitation and reintegration (...).’¹⁰

Although it is difficult to define the children of imprisoned parents as a group, in this chapter I will put forward some collective interests. But I will first focus on the meaning of the legal concept ‘the best interests of the child’ to make it feasible. Then I will describe the situation of children who could stay in prison with the mother (babies and pre-schoolers). In the following paragraph the situation of children outside the prison comes up, while one or both parents are in. Afterwards I will try to translate some collective interests of children of imprisoned parents into the P-categories of the Convention on the Rights of the Child, specifically on Provision and Participation, in a way they could be implemented on a national or local level. In the end, special attention will be paid to the founding of the European Action Research Committee on Children of Imprisoned Parents (EUROCHIPS).

2. BEST INTERESTS OF THE CHILD

In Europe, Article 8 ECHR has been used quite often in family cases. It has become clear that family life and private life need to be distinguished. The rights of the child and ‘the best interests’ of the child have not been examined exhaustively in the context of Article 8 ECHR.¹¹ In Western societies the unlinking of marriage, sexuality and procreation and the growing number of divorces have had a major impact on the family. In some countries the increased participation of women in the labour market played a role too. Although in many cases the child rearing function proves to be too small a basis for the preservation of a family, in general the family is still seen as the ideal environment for raising a child. There has been very little research attention on the impact of non-Western cultures on the concept of ‘family life.’ Increased mobility and migration, however, do appear to influence ‘family life.’ Research on and assistance to families (or children) still seem to be based on traditional middle-class family ideals, and on views on the developmental psychology of young children. The view on identity formation seems to be rather important in the interpretation of children’s rights. This psycho-developmental view tends to be rather deterministic, focusing on a goal like becoming ‘a normal, healthy adult,’ whatever that may be. In the children’s rights movement this adults’ perspective has been criticised and replaced by a more autonomous view of the child from the moment of birth. A kind of compromise has been found in a developmental approach.¹² As Campbell¹³ says:

⁵ C.J. FORDER, ‘In het gezinsleven: “Different but equal”,’ in: A.W. HERINGA; J. HES; L. LIJNZAAD, *Het Vrouwenverdrag: Een beeld van een verdrag ...*, Maklu, Antwerpen, Apeldoorn, 1994, 239-253.

⁶ ECHR 22-6-1989, *Erikson v. Sweden*, Series A, Vol. 156. It can be discussed whether in this case the interests of the child properly were taken into account. See for instance the five (partly) dissenting opinions.

⁷ E. BREMS, ‘Children’s Rights and Universality,’ *supra*, Chapter 2, para. 3.

⁸ R. WOLLESWINKEL, *Gevangen in moederschap; Gedetineerde vrouwen en het recht op family life*, Gouda Quint, Deventer, 1997, 283-331.

⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR), Rule 37, Rule 60, Rule 92.

¹⁰ Report *Social and Family Effects of Detention* of the Social, Health and Family Affairs Committee, Parliamentary Assembly of the Council of Europe (15 May 1997, Doc. 7816), 2.

¹¹ G.J. VAN WIJK, ‘De houding van het Europese Hof voor de Rechten van de Mens bij kindbeschermingsmaatregelen: Respect voor de rechten van het kind?’ *NJCM-Bulletin* 2000, no. 2, 659-665.

¹² ‘Development is not solely an intrapersonal mechanism but rather an interactional one. Children are active agents in their own psychological growth and need the active participation and support from the environment, particularly in the resolution of conflicts. Certain periods are crucial in the acquisition of cognitive skills and affective competencies. Moreover, conflicts and crisis are necessary for successful development. Children need to be challenged to reach higher levels of reasoning, and to individuate.’ (C. VAN NIJNATTEN,

'In the case of children (that is, in law "minors") it is helpful to distinguish between their interests as persons (which they have in common with all persons), as children (which they have as immature and dependent persons), as juveniles (which they develop as they approach maturity) and as future adults (which relate to their future interests as adults). This analysis enables us to refine the principle that "the best interests" of the child should determine how they are treated by parents, state, and others, and may lead us to give rather more emphasis to the rights of the child rather than those of the future adult.'

Brems refers to 'the rights reflecting children's current interests as children':¹⁴

'On the one hand these reflect the special vulnerability of children and their need for protection. On the other hand there are the concerns children frequently put forward themselves, such as time and facilities to play.'

Children's rights should be regarded not only from a (restricted) psychological family view, but just as much from a social, economic and communitarian (cultural) view. This fits into the holistic approach of human rights in the Convention on the Rights of the Child.¹⁵ All rights are complementary to each other and essential for the full and harmonious development of the personality, and inherent to the human dignity of the child. Looking at children not only as depending upon their parents or on professional assistance, gives also room for exploring survival and empowerment strategies of themselves and their peer group. The best interests of the child, according to Eekelaar, can be defined as:¹⁶

'Basic interests, for example to physical, emotional and intellectual care; developmental interests, to enter adulthood as far as possible without disadvantage; autonomy interests, especially the freedom to choose a lifestyle of their own.'

And he adds:¹⁷

'It would be logically possible to have framed the Convention on the Rights of the Child as a list of duties owed by adults to children. But that would have revealed a negative, suspicious, view of human nature; it would have seen people as servile, responding best to restraint and control. The strength of rights formulation is its recognition of humans as individuals worthy of development and fulfilment. This is not an appeal to narrow self-interest. On the contrary, it recognises the insight that people can contribute positively to others only when they are respected and fulfilled. And to recognise people as having rights from the moment of their birth continuously into adulthood could turn out, politically, to be the most radical step of all.'

From this point of view the interests of children of imprisoned parents can be considered more precisely in the scheme of the three P's: Provision, Participation and Protection, with the fourth P, Prevention, as a kind of general underlying notion.

3. CHILDREN INSIDE PRISON

Sometimes care-dependant children stay with their mother in prison. The limit of ages and also of the maximum stay differs from country to country. And also the provisions on behalf of the children are various.¹⁸ Not only the prison culture differs between countries, also values on motherhood, family life and raising children are diverse. This diversity is reflected in the variety of arrangements and provisions.

It is often recommended, also in an international context, that a pregnant woman be able to deliver her baby in a hospital outside the prison (without handcuffs!). The place of birth will be a regular hospital. Afterwards there should be good facilities for a longer stay of a baby in prison with its mother as long as it needs the physical care of its mother. These facilities differ in various countries. Sometimes the mother and child department looks like a kind of hospital, where for example, the warders are wearing white uniforms, like I saw in Italy. In other situations the mothers try to make a little home for themselves and their children (they often have to share cells), where they even cook some small meals, like I saw in Israel. In other more 'progressive' prisons, the children stay with their mothers during the evening and the night, while they go to a nursery in or outside the prison during daytime, while the mother is working.

In the 10th General Report the Committee for the Prevention of Torture (CPT) made general recommendations on the ante- and post-natal care:¹⁹

Detention and Development; Perspectives of Children of Prisoners, Forum Verlag Godesberg, Mönchengladbach, 1998, 34-35.)

¹³ T.D. CAMPBELL, 'The rights of the minor: as person, as child, as juvenile, as future adult,' *International Journal of Law and the Family* 1992, no. 6, 1-18.

¹⁴ E. BREMS, 'Children's Rights and Universality,' *supra*, Chapter 2, para. 2.2 *i.f.*

¹⁵ E.M. MIJNAREND, 'De betekenis van het (...) Kinderrechtenverdrag voor Nederland,' *Ars Aequi* 2000, no. 2, 87; Committee on the Rights of the Child, General Comment No. 1 on Article 29(1), CRC/GC/2001/1.

¹⁶ J. EEKELAAR, 'The importance of thinking that children have rights,' *International Journal of Law and the Family*, 1992, no. 6, 230-231.

¹⁷ EEKELAAR, *ibid.*, 234.

¹⁸ European Action Research Committee on Children of Imprisoned Parents, *Children of Imprisoned Parents; Family Ties and Separation*, Report on the situation in eight European countries, Paris, 1996.

¹⁹ CPT/Inf.(2000)13 (EN), *Women Deprived of their Liberty*. The Committee noted that any standards which it may be developing in this field should be seen as being complementary to those set out in other international instruments, including the European Convention on Human Rights, The United Nations Convention on the Rights of the Child, the United Nations Convention on the Elimination of All Forms of

'Every effort should be made to meet the specific dietary needs of pregnant women prisoners, who should be offered a high protein diet, rich in fresh fruit and vegetables.

It is axiomatic that babies should not be born in prison, and the usual practice in Council of Europe member States seems to be, at an appropriate moment, to transfer pregnant women prisoners to outside hospitals. Nevertheless from time to time, the CPT encounters examples of pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations and/or delivery. Such an approach is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment. Other means of meeting security needs can and should be found.

Many women in prison are primary carers for children or others, whose welfare may be adversely affected by their imprisonment. One particularly problematic issue in this context is whether – and if so, for how long – it should be possible for babies and young children to remain in prison with their mothers. This is a difficult question to answer given that, on the one hand, prisons clearly do not provide an appropriate environment for babies and young children, while on the other hand, the forcible separation of mothers and infants is highly undesirable.

In the view of the CPT, the governing principle in all cases must be the welfare of the child. This implies in particular that any ante- and post-natal care provided in custody should be equivalent to that available in the outside community. Where babies and young children are held in custodial settings, their treatment should be supervised by specialists in social work and child development. The goal should be to produce a child-centred environment, free from the visible trappings of incarceration, such as uniforms and jangling keys. Arrangements should also be made to ensure that the movement and cognitive skills of babies held in prison develop normally. In particular, they should have adequate play and exercise facilities within the prison and, wherever possible, the opportunity to leave the establishment and experience ordinary life outside its walls. Facilitating child-minding by family members outside the establishment can also help to ensure that the burden of child-rearing is shared (for example by the child's father). Where this is not possible, consideration should be given to providing access to crèche-type facilities. Such arrangements can enable women prisoners to participate in work and other activities inside the prison to a greater extent than might otherwise be possible.⁷

The length of the stay sometimes depends on the care facilities outside the prison. The stay is also often linked with a normal period of breast-feeding, which also differs from culture to culture.²⁰ To give some examples:²¹ in Sweden, babies are rarely accepted in prison, but they can be accommodated for up to a year and the average stay is three months. In Germany, there are six closed prisons which allow children up to three years old, and two open prisons which allow children up to the age of six. The open unit at Frankfurt-Preungesheim is located outside the prison walls, reflecting a policy of distancing the mother-child unit from the rest of the prison. Each mother has her own apartment comprising a bedroom/living room, a kitchen and a bathroom. In The Netherlands, children may stay until their fourth birthday in the half open prison Ter Peel. The mother-child unit is located in a separate house, but within the prison area, for four mothers and four children. In the five closed prisons children can stay up to nine months. In Iceland, only very young babies who are breast feeding or who have special needs may stay in prison. Portugal and Switzerland allow children up to three years, Finland up to two years, to stay in prison. Denmark allows male and female prisoners to have their children with them if they are to be released by the time the child is three, but in practice few children are ever held in prison. In England and Wales, three closed prisons have places for 34 babies, and one open prison has places for 20 babies. Children may stay until they are 18 months old in the open prison and in one closed prison, otherwise the limit is nine months.

In western countries, from a psychological view, the period of a stay in prison of a child with its mother is often justified by the attachment theory, although in a rather modern view the young child does not necessarily have to get attached to its own biological mother. So, if there is an adequate alternative (like the father, the grandmother, or a foster parent), a child could stay outside the prison where its mother is detained.²² But in Italy, for instance, the mother-child attachment in a home environment is considered so important that mothers with children under the age of three are not imprisoned but put under house arrest. Until the child is ten years old they follow an alternative (work) programme outside prison.²³ There seems to be a paradox, since it is suggested that the non-imprisonment also is justified by the argument that most imprisoned mothers were foreigners and Roma women.²⁴

Discrimination Against Women and the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. The Committee for the Prevention of Torture is based on a treaty signed by forty countries in Europe, including for example the Federal Republic of Russia, Iceland, Turkey and Georgia.

²⁰ In The Netherlands, some gipsy-women kept their children in prison during the seventies. They fed their children for a rather long time (at that moment the child was one and a half years). Since that time the authorities decided that a period of nine months should be sufficient. This also became the rule for the maximum stay of a child in a closed prison.

²¹ See European Action Research Committee on Children of imprisoned parents, *ibid.*, and the Appendix of the Report *Mothers and Babies in Prison* of the Social, Health and Family Affairs Committee, Parliamentary Assembly of the Council of Europe (9 June 2000, Doc. 8762).

²² See for instance the Advice of the Child Protection Board in The Netherlands (Lb99RvdK/439, 20 January 2000), VAN NIJNATTEN, *o.c.*, 17-35.

²³ Recent Italian Law 1998, 165, Article 4 reads as follows: A sentence of imprisonment for a period not exceeding four years, even if it constitutes the remaining part of a longer sentence, as well as a penalty of arrest, may be served in the offender's place of abode or other private residence, or in a public place of treatment, assistance or reception, when the offender in question is: a pregnant woman or mother of children under 10 years of age living with her; a father with parental authority (care and control) of children under 10 years of age living with him when the mother is deceased or entirely incapable of looking after the children. (In: G. BIONDI, *Infants in Prison*, Delfi Editore, Milan, 1995, 156-157.)

²⁴ H. ZEEDIJK, 'Geen moeders met kinderen achter tralies in Italië,' *Opzij* 2001, no. 4, 64. The negative effects of house arrest should not be underestimated, such as the isolation of the whole family by time and spacial boundaries. (R. WOLLESWINKEL, 'Gevangene van het systeem

Research on the effects of co-detention of young children with their mothers does not show clear evidence for developmental or other damage to the child compared to other children. Most of all, it is not easy to find a reliable control group. And observations alone are questionable. Sometimes interpretations of detainees' children's behaviour is falsified like 'children being obsessed by keys,' which might be quite normal for a child of two years old. Especially in the case of pre-school children, mothers signal that their children have trouble in behaving themselves in the outside world, as in the traffic or in playing with other unknown children. A real worry is that through her baby the mother becomes a hostage in the repressive prison system and even that a mother and child in a way become each other's hostage and develop an unhealthy symbiosis.²⁵ Life in prison is infantilised. When the mother has problems or disagrees with a certain policy she will be seen as 'nasty.' On the other hand, mothers can use their baby or toddler as a doll. The authorities can (ab)use their power by threatening to take the child away, and the mother can demand facilities and use her child, for instance, by taking it to the court to influence the judge. The child has its own ups and downs. Getting teeth is normally often painful and frustrating, but inside prison even worse to handle. So, even in the 'normal' behaviour and illnesses of a child lies a great source for irritation between the warders, the mothers and the other inmates. Even in a separate mother-child unit the mothers did not choose each other to live together. If one child does not feel well and cries a lot, it has its effect on the other children and their mothers. In prison there is not much privacy and not much intimacy, so mother and child in a way are in their loneliness condemned to each other.

In the international fora the stay of babies and young children in prison is more and more criticised.²⁶ In the Summary Report *Mothers and Babies in Prison* it is said:²⁷

'Prisons do not provide an appropriate environment for babies and young children, often causing long term developmental retardation. Yet, if babies and children are forcibly separated from their mothers they suffer permanent emotional and social damage. Most European prison systems provide some places for babies to stay with mothers but many hundreds of babies are nevertheless separated from their imprisoned mothers. This report argues that a new approach is needed for those few mothers of young children who commit serious offences and who represent a danger to the community, and that the overwhelming majority of female offenders with young children should be managed in the community.'

I believe that even in a modern prison system with good intentions on the part of the management and rather good facilities for children, there is a danger of overestimating the possibilities of creating a child-friendly climate in prison. In essence, prison in itself is incompatible with raising children. But it can happen that, sometimes, there is no alternative for a child but to stay, and in that situation the best environment must be created. Cultural backgrounds may lead to different solutions, and a lot of creativity of the prison management is required. The pedagogic conditions under which the child is detained must be assessed. Relevant factors are the length of the stay at the detention centre, the personality, age, development and mobility of the child and the possibility of contact with peers and the world on the outside, also in a spacial sense. As Biondi says:²⁸

'Attendance at an external crèche allows a child to move outside prison, to obtain reassurance for his early fears of separation from the mother figure, to play, to interact with other children who do not live in his same situation, with less fear of new situations or of the unknown. It is worth repeating that to be kept continuously confined in prison strengthens the symbiosis between child and mother and reduces urges and stimuli, which gradually become weaker and poorer in terms of content, novelty and unpredictability.'

The raising of the child has to be part of a rehabilitation programme that fits into the situation of the specific prisoner, her background and plans for the future. In social reality not only the position of very young children, but of all children is narrowly linked with that of women. Children's rights can be (ab)used to coerce women into taking up their traditional and often isolated mother role. Protecting children can mean controlling mothers, both in the private and public sphere. Children are often used as hostages to bind mothers in bad home situations and bad marriages. And women, as primary caretakers, are often economically dependent, poor and/or oppressed.²⁹ Both children and women, however, benefit from their own social networks. For this reason, the autonomous position of women in relation to 'the best interests of the child' is important. Good child care facilities, for instance, can benefit both mother and child. This is the case for both children in and outside prison. In the Report *Social and Family Effects of Detention* it is stated:³⁰

'The need to maintain contacts must not expose the child to the ill-effects of the prison experience or prevent the mother from receiving vital training for her return to work. Responsibility towards children of imprisoned parents cannot be one-sided.'

4. CHILDREN OUTSIDE PRISON

en cipier van het gezin; Over moeders en detentie,' in: *Gevangen vrouwen; Over criminaliteit en detentie*, Nemesis Essays, Amsterdam, 1995, 129.)

²⁵ WOLLESWINKEL, *o.c.*, 326-330; BIONDI, *o.c.*, 121. See also the Havana Rules on the protection of imprisoned minors, Article 93 and Article 102.

²⁶ Parliamentary Assembly of the Council of Europe, Recommendation 1469 (2000), *Mothers and Babies in Prison*; Report *Mothers and Babies in Prison*, Social Health and Family Affairs Committee, Doc. 8762, 9 June 2000; Report *Social and Family Effects of Detention*, Social Health and Family Affairs Committee, Doc. 7816, 15 May 1997, 13-14.

²⁷ Summary Report *Mothers and Babies in Prison*, *ibid.* (see note 26).

²⁸ BIONDI, *o.c.*, 121.

²⁹ F. OLSEN, 'Children's rights: Some feminist approaches to the United Nations Convention on the Rights of the Child,' *International Journal of Law and the Family* 1992, no. 6, 193.

³⁰ Report *Social and Family Effects of Detention*, *o.c.*, 14.

Children show a variety of reactions after the imprisonment of one or both parents, depending on the age of the child, the reactions in the neighbourhood or the social network, the kind of crime, the length of the imprisonment and the place. Just to raise some awareness of the kind of situations, I will give some examples.³¹ As mentioned above mothers are often the primary caretaker and so, when a mother is imprisoned, family life most of the time is heavily disturbed. Most of the imprisoned mothers were single mothers before or they are left alone by their partner soon after their imprisonment. Sometimes the children are looked after for a few days, but in the long run, lasting arrangements have to be made. For a mother it is not easy to arrange things when she is in a police cell or on remand. Especially if she is arrested far from home or in a foreign country this is very hard. Sometimes older children try to replace the imprisoned mother and they try to keep the family together. When a father is imprisoned, quite often the eldest son is going to fulfil the role of the father. Younger children are sometimes kept in the dark. They suffer from not knowing what really happened. As Van Nijnatten says: relationships with siblings last longest in people's lives.³² Siblings usually build up a kind of solidarity, but they also have reason to compete for parental favour. This relationship might come under particular pressure if some children in the family know about the imprisonment of a parent but have orders not to tell to their younger sister or brother. So the child's place in the family system plays a role. And the fact whether the imprisonment of the parent is kept secret.

When a father is arrested, most of the time the mother stays behind with her children, often in poor circumstances. Women seem to be much more loyal to their imprisoned partner than is the case the other way around. This also means that, for example, for fathers it might be easier to use leave facilities than for mothers.

Bertrand observes:³³

'In Germany, as expected and according to the country's prison law, prisoners are allowed to spend two or three weeks in their family per year; however, that proved unhelpful for the majority of women inmates who, after a short period inside, no longer had a waiting spouse, had no home to go, and, in fact, no more family.'

In The United Kingdom recently, research was done amongst young people, aged between 12 and 18, with a mother, father, sister, brother (step- or half-relatives included) in prison.³⁴ Many young people did not want to participate in the research. According to the researchers:³⁵

'(...) the issue of trust and not knowing "who can be told what" is a significant one in many of these young people's lives. Some young people needed to be reassured during the interview that all information was and would remain strictly confidential and anonymous.'

Interviewed children describe the first days and weeks after the arrest as the worst period. One example is of a fifteen years old girl who at the time of the arrest just had been placed out of home and then in the local newspaper read about her father's imprisonment.³⁶ If a parent is arrested in the presence of a child, this for the relatives is often unexpected and traumatic. There are sad stories about tracing activities in the home, where for example cuddles were destroyed by police officers while they tried to find drugs. All participants in the UK study identified visiting as a main issue, especially to ensure the welfare and mental well-being of the prisoner.³⁷ The lack of privacy during visits is of more of a concern than the issue of being searched. In a Danish study, young children said especially the first visit had been important to them to be able to see that the parent was alive.³⁸ Beside issues round visiting, the lack of information is a major concern. And the concern for the prisoner as well as the family on the outside. 'Shame, a sense of "missing out" uncertainty and feeling like they were treated as criminals themselves were all expressed by the young people.'³⁹ In the Report *Social and Family Effects of Detention* it is observed:⁴⁰

'In general the stigma afflicting persons sentenced to a custodial penalty is passed on to the family. A number of labels and stereotypes materialise in the day-to-day life of close relatives. This branding takes various forms including isolation, distrust and suspicion, with rejection and exploitation at either extreme. Neighbourhood and school are an ideal setting for the disparaging attitudes adopted by other people, for example the scathing reactions of schoolmates: "Your father's a jailbird." The female convict is found to be both subjectively and objectively still more persistent and represents a sometimes insuperable handicap.'

Apparently a distinction is made by teenagers between primary school and secondary school on the issue of informing teachers.⁴¹

³¹ For more information, see R. SHAW, *Prisoner's Children; What are the Issues?* Routledge, London, New York, 1992.

³² VAN NIJNATTEN, *o.c.*, 79.

³³ M.A. BERTRAND, 'Comparing women's prisons: Epistemological and methodological issues,' in: D. NELKEN (ed.), *Contrasting Criminal Justice; Getting from here to there*, Ashgate, Dartmouth, Aldershot, 2000, 128.

³⁴ K. BROWN (ed.), *No-one's Ever Asked Me; Young People with a Prisoner in the Family*, Federation of Prisoners' Families Support Groups, Young People's Project, London, 2001.

³⁵ BROWN, *o.c.*, 11.

³⁶ CHRISTENSEN, *o.c.*, 88.

³⁷ BROWN, *o.c.*, 32.

³⁸ CHRISTENSEN, *o.c.*, 87.

³⁹ BROWN, *o.c.*, 22.

⁴⁰ Report *Social and Family Effects of Detention*, *o.c.*, 12.

⁴¹ BROWN, *o.c.*, 23.

On the issue of support, about what helped them:⁴²

‘(...) all of the young people said that the person they most wanted support from was their mum. They did not want to talk to anyone outside the family or get support from anyone else, particularly at the beginning. Their biggest concern, however, was that their mums needed support themselves and couldn’t necessarily offer support to them if they were themselves upset and distressed.’

This connects to a Danish study, where the imprisoned parent wanted the visits more often than the partners outside prison could manage. As Christensen says:⁴³

‘The partners outside prison argued they no longer had any time for leisure-time activity either alone or together with their children. If they had a job, and went to visit a prison every Saturday or Sunday, then there was only one day left for anything else, including cleaning, laundry, and other housekeeping tasks most often done during the weekends. Those partners described their life as “living in a prison without bars”.’

The worst case scenario seems to be the murdering of a parent by the other parent, sometimes in the presence of a child. In that case the child loses both parents. In a few cases it might be a relief after a history of conflicts. But it will be traumatic in any case. A parent might even be arrested because he committed a crime against the child. This may cause feelings of guilt and confusion about loyalty. Or the imprisonment of the parent brings relief, if the parent was violent, uncaring or abusing the child.⁴⁴ Most families of prisoners are distressed. For example by a decrease in finances, a decrease in treats, activities or celebrating special occasions.⁴⁵ It is important to limit the damage as much as possible. In prison, however, the parents become part of a culture that has a negative impact on their general social skills and maybe also on their parental responsibilities. This may affect the children too. So, to empower the children of imprisoned parents and to limit the damage of the separation, it is important to take care of (keep an eye on) the continuity of the relationships between the parent and the child. This continuity covers the situation before, during and after the imprisonment.

5. INTERESTS OF CHILDREN OF IMPRISONED PARENTS: THE THREE P’S

The Convention on the Rights of the Child has not yet become a living charter for children of imprisoned parents. The shift from prisoners’ rights to those of the child of the prisoner has not been made in most countries. On the other hand some signals are heard, for example of the Parliamentary Assembly of the Council of Europe and the Committee for the Prevention of Torture (CPT). Also Great Britain gave attention to these children in its reports to monitoring bodies of human rights treaties.⁴⁶ In other countries, according to family law and/or penal law some progress is made on a national level.⁴⁷ Legislation however can only be effective if it is grounded in good practice. Especially when integration with external socio-economic structures is problematic.⁴⁸

‘(...) drafting and implementing integrated programmes between “inside and outside” becomes an arduous task. These drawbacks are also variously related to cultural differences and diversities of approach, which become a source of mutual misunderstanding and rejection unless they are faced and discussed.’

Provisions in a wide range are necessary to limit the damage for children when one or both parents committed a crime. I will give some examples, some derived from existing ‘good practice.’

Limiting the damage of separation:

- By a contextual approach at any stage of the criminal process each time that decisions need to be taken with great implications for family life. The care for children at the time of arrest needs specific attention. A system of cohabitation should be discussed in the preliminary detention stage, since the first stage often determines the care facilities in case of continued detention. If possible, detention must be prevented at all stages. Sentences that can be served outside the prison should be preferred.
- By taking into account the interests of care-dependant children, for example by hearing ‘a person of trust’ and if possible by hearing the children themselves if decisions have to be made that may effect their daily lives.
- By using ‘a person of trust’ as mediator between the primary caretaker and the child(ren), especially if care-arrangements have to be made. This person could also give adequate information about facts, rules, rights and needs.
- By creating all possible information resources for the relatives, including a web site.

⁴² BROWN, *o.c.*, 23.

⁴³ CHRISTENSEN, *o.c.*, 85.

⁴⁴ SHAW, *o.c.*, xvi; BROWN, *o.c.*, 21.

⁴⁵ BROWN, *o.c.*, 46.

⁴⁶ CCPR/C/95.Add. 3; CRDU/94, 39. ‘Lack of money for visits, distress experienced during visits, the frequency and unsatisfactory nature of contact all add up to a picture of a very clear failure to acknowledge the rights of children whose parents are imprisoned. The current arrangements fail to take account of children’s best interests (Article 3), of children’s rights to maintain contact with both parents (Article 9) and of their right not to be discriminated against because of the status of a parent (Article 2),’ in: E. LLOYD, *Prisoner’s Children; Policy and Practice*, Save the Children, London, 1995, 13.

⁴⁷ European Action Research Committee, *o.c.*

⁴⁸ BIONDI, *o.c.*, 37.

The improvement of visiting facilities inside prisons:

- By setting up child-friendly visiting areas and waiting rooms in all prisons.
- By facilitating visits for children which enable them to see where the parent lives when possible (the cell).
- By creating the possibility to visit a parent a very short time after the arrest.

The improvement of all communication between the child and his or her parents:

- By providing telephone cards and all other modern means of communication, especially to overcome physical obstacles to contact between imprisoned parent in foreign countries and their children at home.
- By covering travelling costs for the child.

Parental responsibilities:

- By taking into account the parental responsibilities of the prisoner at the time of arrest and in any subsequent proceedings.
- By offering a rehabilitation programme, including knowledge and skills on parental responsibilities.
- By raising awareness and knowledge of family issues with prison staff.
- By counseling prisoners' partners, especially on how to inform and help children. This could be done by anonymous telephone.

In case of an imprisoned former primary caretaker:

- By arranging frequent contacts with the parent, the child and the actual caregiver.
- By, before release, offering the parent, the child(ren) and the actual caregiver the opportunity to spend time together with each other (triangulation).

In my view 'participation' is an underestimated issue, but one difficult to handle, because of the mistrust and isolation of the target group. Prisoners and their children have to be put into a real context that allows them to speak for themselves. It is a pity if research and assistance is only based on romanticising or demonising the family life of prisoners and their children.⁴⁹ In the UK study, the young people stated it would be beneficial to them to have someone available to talk to who is independent of the prison system and their family. Brown:⁵⁰

'A number of young people said they would like to see the development of resources such as a book of stories, a web site aimed at teenagers or a young people's forum for debate on issues concerning them about the prison system. Other ideas included: support for mums, help with holidays/excursions, development of self-help groups for young people and family rooms to be available within prisons for private time with relatives.'

Successful projects are those in which ex-detainees and their families are involved. That is also often a guarantee for the continuity of projects. The work of Hoffman in Israel is a good example. For instance, the hostel is run in co-operation with ex-detainees and the project works with student-volunteers as buddies of the children of imprisoned parents:⁵¹

'The main idea is that, although I am orthodox in religion, in every other thing we have to be irreligious, unorthodox, because we have to think every time if what we do is good and stands in the examination of the daily life (...).'

Also in the Report on social and family effects of detention by a Committee of the Parliamentary Assembly of the Council of Europe examples are given: 'A vital element in APAC and in Kairos is the active involvement of inmates, their families and Christian "partners" both inside the gaol and where the families live.'⁵² The UK researchers on young people (aged 12-18) complained several times that adult gatekeepers, also professionals, were often concerned about the distress that might be caused to the young people if they took part in the interviews:⁵³

'Adults deciding on behalf of young people, or not allowing them to decide for themselves whether to participate in a research project, is both patronising and dis-empowering for young people.'

On the other hand some mothers especially encouraged their children, or accompanied them, to take part in interviews although many found it extremely difficult to talk about how they felt. It is also important to raise awareness of the situation of children and families of prisoners in professional workers in the home environment of the children, such as teachers, social workers, sports coaches, police-officers:⁵⁴

'Many young people mentioned that they had lost friends and family, that school teachers had acted differently towards them, as had their

⁴⁹ T. PÖSÖ, 'Family relations of women in detention,' in: *Proceedings of the International Seminar on Women in Detention; Perspectives for Change*, Noordwijk, 1992, 104-108; S. BARNHILL, 'AIM: Aid to children of imprisoned mothers,' *Family and Corrections Network Report*, Issue 27, Special on the Jerusalem 2000 Seminar: Rehabilitation of Female Offenders: Mothers with their Children, 8-9.

⁵⁰ BROWN, *o.c.*, 52.

⁵¹ AVRAHAM HOFFMAN (Prison Rehabilitation Authority) at the Jerusalem 2000 Conference, in: *Family Corrections Network Report*, Issue 27, 3.

⁵² Report *Social and Family Effects of Detention*, 8.

⁵³ BROWN, *o.c.*, 16.

⁵⁴ BROWN, *o.c.*, 71.

neighbours and communities. Police and prison officers were also mentioned in this context.’

It is also important to pay attention to the impact on teenagers of the imprisonment of a brother or a sister. Adults often don't recognise the needs and difficulties of the siblings.⁵⁵ One should not overestimate professional assistance. Lots of families have a profound distrust against government related 'help.' In The Netherlands, for example, the generation from the sixties and seventies especially may have been confronted in their own lives with separation of their families as a kind of 'pedagogic policy' under supervision of the Board of Child Protection. It will not be easy to find 'support persons' for children of imprisoned parents, but the work with volunteers in the home environment (as in France, Israel and The Netherlands) has given hopeful results.⁵⁶

6. EUROCHIPS

The European Action Research Committee on Children of Imprisoned Parents (EUROCHIPS) was set up in 1993 to provide a voice for the children of prisoners and to explore innovative, child centred approaches to maintaining the child-parent bond in different European countries. The French organisation Relais Enfant-Parents and The Bernard van Leer Foundation took the initiative in creating a multidisciplinary team of experts working in prison-related or child welfare fields. This task force organised workshops in several countries to draw attention to the issue of prisoners' children and to underscore the need for quality contact between these children and their parents. Not only for the well being of the child or a parent's rehabilitation but also as an early prevention of crime. From that perspective the need to take into consideration socio-economic conditions and difficulties was underlined in the report on the situation in eight European countries when it was presented in 1997 at an international conference in Brussels.⁵⁷ In this report a list of recommendations was handed over to the Member States of the European Union and relevant European Commissions.

Since the 1997 conference, EUROCHIPS pursued its efforts to consolidate its infrastructure and establish legal grounding. Committee meetings were held to draft committee statutes, define major goals and develop various campaigns and activities. In February 2000, a new phase of EUROCHIPS started by formalising the association, followed by a press conference in Paris. In the association both organisations and individuals may take part.⁵⁸ In their practical work they have to be related to children of imprisoned parent. The Bernard van Leer Foundation supports a new three year period, in which EUROCHIPS has planned to constitute a truly European structure that will work to promote the 1997 recommendations by developing contacts, working on relationships and on projects in countries where there is little or no awareness of the issue of children of imprisoned parents, or where certain initiatives exist, but in isolation with respect to other national or international initiatives.

⁵⁵ BROWN, *o.c.*, 72.

⁵⁶ E. AYRE, *They won't take no for an answer: The Relais Enfants-Parents*, Early Childhood Development: Practice and Reflections, Number 11, Bernard van Leer Foundation, The Hague, 1996; VAN NIJNATTEN, *o.c.*, 136-141.

⁵⁷ European Research Action Committee on Children of Imprisoned Parents, *ibid.*

⁵⁸ At the moment, participating organisations are: the Federation Relais Enfants-Parents from France, ASBL Relais Enfants-Parents Belge and the Federation of Prisoners' Families Support Groups from the United Kingdom. Active participating individual members and local initiatives also come from The Netherlands and Italy. The association is connected to a rather broad network. Two part time paid coordinators work for the association in Paris.