



Parental imprisonment and alternative care

Introduction

Children in alternative care are one of the world's most left behind groups. They lack representation, face various forms of discrimination (from bullying to the lack of access to socio-economic resources to stigmatisation and marginalisation), and quite often one of their most basic and vital rights – the right to family life¹ – is denied. Children who have a parent in prison are also a hard-to-reach group. They often can't express their views or voice their interests; their specific needs are not systematically acknowledged; their fundamental right to family life is seldom regarded. It is hard to imagine what it would be like for a child to be at the intersection of both groups – to have a parent in prison and to be placed into care. Yet in many cases, the imprisonment of a parent results in the removal of the child from his or her home. Indeed, it is suggested that thousands of children go into care as a consequence of their parent's imprisonment – though the data gap concerning this specific, intersected group of children does not enable accurate estimates.

What is alternative care and what are the risk factors?

The UN Convention on the Rights of the Child (UNCRC) states that "every child should grow up in a family environment, in an atmosphere of happiness, love and understanding".² When the conditions for a nurturing family environment are not met, the option of placing children into care must be considered, to foster the healthy development and the well-being of the child. Alternative care refers to all forms of formal or informal care for children lacking parental care.³ It should only occur if the child is the victim of physical and psychological violence, abuse or neglect, or at risk of being so, in their familial environment. It is unclear how many children are in alternative care worldwide. The UN Global Study on Children Deprived of Liberty suggests that every year, an estimated 5.4 million children live

¹ UN General Assembly, "Convention on the Rights of the Child" [UN Doc. 27531] (1989), preamble, Article 9, available from https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf.

² UN General Assembly, "Convention on the Rights of the Child" [UN Doc. 27531] (1989), preamble, available from https://www.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf.

³ Nowak, M. (2019) *The United Nations Global Study on Children Deprived of Liberty*, chapter 12, p. 504, available from <https://omnibook.com/view/e0623280-5656-42f8-9edf-5872f8f08562/page/2>.

in institutions across the globe.⁴ This figure is a conservative one and it does not account for the children lacking parental care who are removed from their family and live in other forms of alternative care, such as foster families or kinship care. In Council of Europe countries alone, it is estimated that 1.5 million children are in alternative care of all sorts⁵.

The removal of a child from his or her family is a heavy decision with potentially heavy consequences – the best interests of the child principle⁶ should at all times be applied and justify such a decision. If after thorough assessments, social services decide that it is in the child's best interests to remove him or her from their family, there exist several alternatives to parental care:

- Kinship carers: usually an extended family member (e.g., a grandparent, an uncle);
- Foster families;
- Independent living arrangements;
- Institutions: any residential care where children are isolated from the community and/or forced to live together; where they do not have enough control over decisions that affect them; where requirements of the institution itself tend to take precedence over the children's individual needs.⁷

Though institutions tend to be the norm, practices have moved away from the institutionalisation of children in recent years, and family- and community-based alternatives are now preferred.⁸ For children, this comes with the hope that they can continue growing up in a friendlier environment, rooted in the core family unit.

There are several main drivers of a necessary family-child separation. They go from socio-economic reasons to substance use to mental health issues. Poverty in particular, as well as its associated stigma, has an important role to play in the placement of children into care. Financial adversities can lead to the marginalisation of the parent and can thereby increase the potential abandonment or relinquishment of the child.⁹ The lack of access to social services is another risk factor to outline. Parents may not know how to seek support for their family or may be afraid or ashamed to come forward. This is a dilemma faced by families as well as social services. Indeed, preventive support is fundamental to avoid a potential removal of the child from his or her family and the subsequent consequences this may have.

⁴ Nowak, M. (2019) *The United Nations Global Study on Children Deprived of Liberty*, chapter 12, p. 504, available from <https://omnibook.com/view/e0623280-5656-42f8-9edf-5872f8f08562/page/2>. p. 501.

⁵ <https://www.coe.int/en/web/children/alternative-care>

⁶ <https://rm.coe.int/16806da95d>

⁷ As defined by the European Expert Group on the transition from institutional to community-based support (EEG).

⁸ Nowak, M. (2019), *op. cit.*, p. 504.

⁹ *Ibid.*, p. 520-521.

The UN Day of General Discussion on Child Rights and Alternative Care is scheduled to take place on 16-17 September 2021. A key objective of the event is to make progress regarding policies and practices in relation to children in alternative care. It thereby provides an opportunity to shed light on the very specific situation of a non-negligible part of these children who were removed from their family due to their parent's imprisonment. As abovementioned, the lack of data, especially of disaggregated data, concerning children impacted by parental imprisonment in alternative care hampers our ability to give an exhaustive overview of the needs, feelings and experiences of these children. However, research shows clear similarities between the challenges faced by children in alternative care and children who have a parent in prison, as well as between the existing schemes of support. The question of family contact remains central.

Parental imprisonment and alternative care

Parental imprisonment can be disruptive and undermine the family unit, and can thus be a driver of familial separation. The imprisonment of a parent is a very traumatic event for the household, particularly for children. Materially speaking, the arrest and imprisonment of a parent often lead to a loss of income and increased financial stress on the remaining caregiver. In some cases, families are forced to relocate for financial reasons. Relocation alone can be very traumatic for children as it can force them to leave their school and lose their friends. Adding to the material difficulties, the psychological impacts of the imprisonment of a parent on the members of the household are significant. Parental imprisonment has been recognised as one of eleven Adverse Childhood Experiences (ACEs) – a traumatic event that occurs in childhood. Other ACEs include abuse, neglect and drug use by a household member, among others. ACEs can be highly disruptive and associated with behavioural dysfunctions. In the case of parental imprisonment, attachment disruption and uncertainty often trigger such behavioural reactions in children, further leading to school adversities or higher involvement in criminal activities.

For the remaining caregiver and the child, the period of imprisonment can be a very uncertain and stressful time. As mothers tend to be the primary caregiver of their children, children of female prisoners are five times more likely to be taken into care than children of male prisoners.¹⁰ In England and Wales, research has shown that out of the estimated 17,000 children affected by maternal imprisonment, 95 per cent are taken into care or forced to leave their homes, while only 9 per cent of them are cared for by their fathers.¹¹ In the United States, one in eight imprisoned parents lose their parental rights before the term of their sentence.¹²

¹⁰ Nowak, M. (2019), *op. cit.*, p. 520-521.

¹¹ Caddle, D., Crisp, D. (1997). *Imprisoned women and mothers: Home Office Research Study 162*. London: Home Office, in Minson, S. (2018). *Safeguarding Children when Sentencing Parents Information for primary carers facing sentencing in a criminal court*, briefing realised with the support of Oxford University and the Prison Reform Trust.

¹² Hager, E., and Flagg, A. (February, 12, 2018). How Incarcerated Parents Are Losing Their Children Forever. *The Marshall Project*, <https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-are-losing-their-children-forever>.

From a child rights perspective, however, the forced family-child separation is not only not always appropriate, but can be harmful. The UNCRC highlights that “the family [is] the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children [...]”¹³ To the greatest extent possible, children should remain with their primary caregivers, unless it is not found to be in their best interests. Uncertainty is already very high for children when a parent is imprisoned – not knowing whether their parent is okay, not being able to share simple daily updates with them, not knowing how long the situation will endure. The COVID-19 pandemic and the related measures to stop the spread of the virus have only exacerbated these feelings of uncertainty. The suspension of prison visits for over a year in some places, the forced distancing and concerns over health became part of the daily life of children impacted by parental imprisonment. Of course, not all children are the same, and children who have a parent in prison do not form a homogenous group. In that regard, their needs, wishes and feelings might differ. However, and keeping the best interests of the child principle in mind, one may suggest that the last thing children affected by parental imprisonment would need is to be separated from their non-imprisoned parent. If the child is not in danger or at risk of being in danger, it seems unnecessary to add to the existing trauma of having a parent in prison by completely removing the child from his or her direct family. Strong and cohesive familial support can help the child better cope with the situation. The rights of children impacted by parental imprisonment are no different from that of any other children. Forcefully removing a child from the family unit in the name of parental imprisonment should not be an option.

Challenges faced by children with imprisoned parents in alternative care and violation of their right to family life

For a child, having a parent in prison is an obstacle to fully enjoy his or her right to family life. The right to family life is enshrined in the UNCRC, articles 5, 8-1, 9-3, and 20-1, as well as in the European Convention of Human Rights (ECHR), Article 8-1. Both conventions outline the right of children to be cared for by their families, and, if it is not in the child’s best interests to be in the care of their family, to maintain regular contacts with their family members, siblings included. Yet, children in alternative care and children with imprisoned parents alike are often denied this fundamental right – let alone children in alternative care who have a parent in prison. The COVID-19 pandemic and the ad hoc containment measures showed that keeping children and their imprisoned parent connected can be very challenging. In some Council of Europe countries, it was impossible for children to physically meet with their parent in prison for over a year, as prisons had completely locked down. This is notably the case of Poland, where prison visits still have not resumed.¹⁴ Likewise, children in alternative care can meet difficulties in trying to keep in touch with their parents. Dace Beināre, a family-based care

¹³ UNCRC, preamble.

¹⁴ As of December 2020.

advisor for SOS Children's Villages Latvia, outlined that in some instances, foster families are fearful of the imprisoned parent of the child they care for. Likewise, Probacja Foundation in Poland observed that some foster families fail to facilitate contact between Roma children and their parents in prison. This can lead to the breakdown of the child-parent relationship as it is no longer encouraged nor facilitated by a third party. This situation is mitigated when the child lives with his or her non-imprisoned parent, because they tend to foster contacts between the imprisoned parent and the child. Sometimes, however, contact is not fostered due to conflictual relationships between the child's parents or because it is not in the child's best interests to have regular contact with his or her imprisoned parent. On the other hand, children living in institutions often completely lose contact with their birth family. Indeed, it has been noted that in many institutions, the child-parent relationship is neither encouraged nor facilitated, leading to the child's total isolation from his or her familial environment¹⁵.

Children who have a parent in prison, regardless of whether they live with extended family members, a foster family or in an institution, should be able to maintain contact with their parent if it is in their best interests. Maintaining contact with their family is a right as much as it is a need. If children are upset after visiting their parent in prison, it does not mean that they should stop going to prison visits. Their frustration can be over the new separation that occurred from having to leave prison and their parent behind. Children who have a parent in prison need enhanced support, designed on a case-by-case basis.

Providing support to mitigate harm

Support for these children can take various forms. According to UNCRC article 20-1, it is the State's responsibility to protect and provide assistance to all children who are "temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment". Therefore, States should:

1. Strengthen protective factors. Adult bonds, primary attachments – with extended family members for example – and the effective participation of children in matters that affect them are some of these factors. Enhanced community support is a fundamental preventive tool for at-risk families. Regarding child participation, it is encouraging that the UN Day of General Discussion will provide a space for children in alternative care to fully participate in the debates and discussion, touching on a subject that directly affects them.
2. Integrate the rights and needs of at-risk families into its policies, strengthen its child protection system, and reform the child care and protection systems in order to develop an overarching child protection strategy. Children who

¹⁵ Manfred, N. (2019), *op. cit.*, p. 532.

are in alternative care as a result of their parent's imprisonment should be one of the primary targets of such policies.

3. Provide direct support to kinship caregivers, foster families, and all forms of family- or community-based care. Better supporting caregivers will have a direct consequence on the quality of support received by children. Moreover, social services accompanying children with imprisoned parents living in alternative care should receive appropriate training.
4. Systematically flag up children with an imprisoned parent who are in alternative care. The identification of these children will lead to enhanced support. The most significant challenge in providing appropriate support to children impacted by parental imprisonment who are in alternative care is the data gap. Though progress has been made in data collection, both concerning children who have a parent in prison and children in alternative care,¹⁶ statistics are still based on conservative estimates. On top of this, the collection of disaggregated data concerning children who are at the intersection of being in alternative care and having a parent in prison is insufficient. Many social services do not know whether some of the children they support are in care due to their parent's imprisonment.
5. Systematise and organise research on children in alternative care, children who have a parent in prison, and the impacts of parental imprisonment on children's family life, including their potential removal from the home.
6. At the European level, facilitate dialogue and coordinate actions between EU members to develop an EU strategy on child protection, with a focus on children who are in care as a result of the imprisonment of their parent. The EU Strategy on the Rights of the Child and the EU Child Guarantee, which define children with an imprisoned parent as a "vulnerable group" and provide specific measures in their regard, look promising for the implementation of an enhanced, integrated EU child protection strategy in the near future.

When considering the statistics of parental imprisonment, it is striking the extent to which the rights, needs, and best interests of the defendants' children are overlooked. In Belgium, where judges have significant discretionary power, an interview conducted with seventeen Flemish judges showed that the best interests and the potential consequences of a parent's sentencing on a child are not a central concern. Five of the seventeen judges interviewed called the best interests of the child "irrelevant" in the sentencing process, maintaining that they would not consider them.¹⁷ In addition, the case of maternal imprisonment is of particular

¹⁶ In particular, see the DataCare project, an initiative launched by Eurochild along with UNICEF ECARO to map how EU member States and the UK collect data on children in alternative care.

¹⁷ Children of Prisoners Europe (2019). *Keeping Children in Mind: moving from a 'child-blind' justice to a child-friendly justice during a parent's criminal sentencing*, p. 25, available from https://childrenofprisoners.eu/sentencing-toolkit_2019/.

importance, as mothers, it was said, are usually the child's primary caregiver. It would therefore appear crucial to avoid sentencing mothers to custodial sentences as much as possible. Despite the numerous international treaties calling for the limitation of custodial sentences among female defendants,¹⁸ half of all women sent to prison in England and Wales are sentenced to less than three months of imprisonment, while 75 per cent are sentenced to less than twelve months, and will spend half of their sentence outside prison.¹⁹ Keeping in mind that the children of these women and mothers will be taken into care 95 per cent of the time, reforming the sentencing process is vital. Similarly, efforts need to be made in reforming pre-trial detention procedures. Primary caregivers are all too frequently held on remand in custody in the phase preceding their trial. The absence of a parent due to pre-trial detention can be very disruptive for children. In that regard, the UN Committee on the Rights of the Child has been pushing for a shift in practice. It has called on judges to prioritise the use of non-custodial sentences for defendants who are also primary caregivers.²⁰ There is no short sentence for anyone, and even less so for a parent and their child. Parental imprisonment is a traumatic experience for the family unit – and that in many cases could very well be avoided.

Conclusion

Both removing children from their family due to a lack of parental care and sentencing a primary caregiver to a custodial sentence are and should always be applied as measures of last resort. The primacy of the child's best interests must, under all circumstances, be considered – and respected. Out of the estimated 2.1 million children who have a parent in prison in Council of Europe countries, how many have been placed in an attempt to provide them a more stable environment? As of today, this question remains unanswered. The correlative links between parental imprisonment and placement in alternative care should be brought to light.

¹⁸ United Nations, "United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)" (2010), available from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/BangkokRules.aspx>.

¹⁹ Prison Reform Trust, "Why focus on reducing women's imprisonment?: England and Wales Fact Sheet," (2019), available from

<http://www.prisonreformtrust.org.uk/Portals/0/Why%20Women%20England%20and%20Wales.pdf>

²⁰ Committee on the Rights of the Child (2011), *Report and Recommendations of the Day of General Discussion on "Children of Incarcerated Parents"*, para. 30.



Children of Prisoners Europe (COPE) is a pan-European network of non-profit organisations working on behalf of children separated from an imprisoned parent. The network encourages innovative perspectives and practices to ensure that children with an imprisoned parent fully enjoy their rights under the United Nations Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union, and that action is taken to enable their well-being and development.

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