

VOICES PROJECT 2011

World Debate Day

The Marist Institute works defending and promoting the rights of children and teenagers and it contributes to the World Debate Day themed “Children and adolescents with incarcerated parents” by listening to them and carrying out studies on the subject.

In this report the Institution presents: the contributions of the “Centro Marista de Defesa da Infância, Marista¹” (Center for the Protection of Children) related to the Brazilian prison system, reports from students about their experiences, suggestions regarding the rights of family access and life, as well as a comparative analysis about the legal provisions of the Convention on the Rights of the Child and the Brazilian legislation, and the Child and Adolescent Constitution done by Dr. Murillo Digiácomo, a prosecutor from Curitiba, Parana state.

Situation of children and adolescents whose parents are in prison in Brazil

Discussing the issue of children and adolescents whose parents² are in prison is of great importance, since there are only a few studies on this subject in our country. The problem however, is the lack of data available on this specific population. Without data, it is not possible to obtain a real analysis of the matter. And without knowing the reality well it is not possible to work on it based on the proposal of effective public policies.

The fact is that there are many children and adolescents in this situation because the population in the prison system³ in Brazil has reached 473,626, taking into account the provisional prisoners.

In the case of a maximum and a minimum security prison (semi-open regime), the number of detainees and prisoners is 258,026. Approximately 6% of the prison population is female and 94% male. From this we can infer that the women hold more weight and responsibility to raise their children alone, without having a partner.

¹ Centro Marista de Defesa da Infância aims at contributing effectively to the rights of children and adolescents, monitoring government and civil actions.

² Hereby understood as father and/or mother, just father or just mother.

³ Data from March 2010, supplied by Sistema de Informações Penitenciárias – INFOPEN.

If we analyze men and women in the prison system separately, there is an alteration in the data. The states that have the most women in prison are the Federal District (7.65%), São Paulo (41.28%) and Rio Grande do Sul (7.73%). The states which have the most men imprisoned are Rio de Janeiro (6.63%), São Paulo (41.8%), and Rio Grande do Sul (8.0%).

Through the view of sex distinction, the states that have the fewest women in prison are Sergipe, Piauí (0.16%) and Amapá (0.20%). Those with the lowest number of male prisoners are Roraima (0.25%), Piauí (0.26%) and Amapá (0.35%). Although the number of female prisoners is small in percentage terms, this is a large population of 16,362 women. This impacts the lives of children and adolescents and therefore society.

Children and adolescents who have parents in prison suffer great prejudice and are socially stigmatized. According to Schilling and Miyashiro (2008) the stigma associated to these children and adolescents has emerged in the nineteenth century, on account of criminal theories, modeled on hygienist and eugenicist theories. This negative stigma, goes beyond the individual arrested, affecting their families. So people often omit the fact that there is a family member in this condition.

Beyond a simplistic analysis, which notes the difficulty of access to information, one must understand how this demonstrates the fragility of basic rights assurance in this population, including the right to dignity. Dignity that is set from the moment that a healthy relationship between parents in custody and their children is established, giving them a possibility to visits. Thus, it's time to ask: How are these children and adolescents welcomed by the prison institution? Are they searched just like an adult is searched? Are their bodies and intimacy exposed to strangers, developing bodies, bodies that are violated, naked, analyzed, because the law so requires? Concerning these children, individuals who have rights, does the law weigh just like the Latin brocade "dura lex, sed lex"⁴

According to Santos (2006), the state's position over the child or adolescent's visit generates many possible questions:

Is it fair that the child, a developing and desiring individual should have a childhood characterized by the absence of policies that attend directly and indirectly whoever is under State protection? (...) How can the State promote changes in this sense, welcoming the children as individuals of rights? (SANTOS, 2006, p. 598).

⁴ The law is tough, but it is the law

Regarding the early childhood, attitudes that are against the proper development of children have been adopted in prisons throughout the country. “In almost 60% of cases children live in unsanitary prison cells”⁵.

Children who live with their mother in prison are in a condition that does not attend childhood needs, lacking recreational activities and professionals to stimulate the learning process, besides abrupt separation from the parents from a certain age, without the appropriate psychological monitoring.

Each state sets its own criteria for prisons. In Pará, for example, the child is taken away from the mother at birth, in São Paulo, the child stays with the mother for four months, in Rio de Janeiro and Rio Grande do Sul up to three years old, in Paraná the children stay with their mothers full-time until they are six months old in a separate wing, after this the children are taken to a nursery during the night and are attended to by their mothers during the day time. The mothers look after the children in shifts, one group of mothers in the morning and another group in the afternoon. During the night the children are away from their mother.

It is clear that in this context the relationship between mother and child, in an environment that allows the educational development of the child is violated, since the prison is not the ideal setting for this interaction. These children are deprived of contact with the world beyond the prison walls and socialize in a detention atmosphere, which becomes the reference to home, family and society for them. It is appropriate to think about the consequences of childbirth and living through early childhood in a penitentiary because only a nursery does not guarantee their rights.

Understanding these issues is an essential condition to further discussions on guaranteeing the rights of children and adolescents, so that generations to come have their rights respected in this country.

Children, adolescents and youth reports

The “Listening to children and adolescents with relatives in deprivation of freedom” Project was conducted in 13 units of the Marista Solidarity Network in the counties of

⁵ Reported by the coordinator of education support at Departamento Penitenciário Nacional – DEPEN, Rosângela Peixoto Santa Rita, author of the work entitled “Mothers and children behind bars: questioning the dignatry principles of the human being”.

Chapecó, Criciúma, Florianópolis and São José in Santa Catarina state; Almirante Tamandaré, Curitiba, Fazenda Rio Grande, Itapejara d'Oeste, Londrina and Maringá in Paraná state; Campinas and Santos in São Paulo state.

Here are some reports from students in these counties :

“It’s awful having to go there, being searched. It’s awful having someone there that you can see only once a month. It’s very bad... I think it’s when it’s time to leave. You can stay there only for two hours. I wish it was better (the security search to go into the penitentiary). The women (the prison wards) sometimes cursed us, got angry. When you go in, I think it should be one at a time, because one woman can see the other.” A. F. – female, 13 years old.

“Rights, essential to people’s lives, a child, adolescent or adults. The right to housing, to food, to life itself. Thus, every child or teenager kept away from their parents who are in prison for some reason, needs special care and protection. It is important to have contact, to visit so that the Bond is not lost, but this visit must be in na appropriate place and not exposed.” G.S. – female, 15 years old.

“The child or teenager who has father or mother imprisoned must have a grant or income, because only one person working at home makes it hard to support the household depending on the number of children. I think children younger than nine should not visit inside the prison, it could be somewhere else, not exactly in the visiting room or elsewhere (an adequate place). And also there should be a program or help to distract the children. The inspection of the people who are visiting should be done by people of the same sex.” B.A.S. - female, 15 years old.

“I think every child and teenager has the right to see their father or mother in prison, I also think this should not be exposed, only going into a room with a ward and for a set time. This should happen three times a week, this child should have psychological attendance and the family should get a salary according to the financial condition.” P.J.S. – female, 14 years old.

“My mother is imprisoned and I visit her once a month. I’d like to see her more. We have to arrive at the queue very early, about 7 in the morning. It’s boring. Then we line up for the inspection and have to take our clothes off. I am embarrassed. There’s a room with a curtain that separates the men from the women. My dad waits behind the other curtain while a woman tells me to take clothes off and looks at everything. I go into the prison and stay with my mother. We have lunch. Other women who are imprisoned are there as well, each one of them on their beds.” C – female, 10 years old. .

“I’ve never visited my father in prison because my mother doesn’t take me there, but I’d like to. My father separated from my mother and married another woman”. M. – male, 8 years old.

“I think children and teenagers have to go with their mother or father and have a private visit so they don’t have contact with other prisoners. I also think that there should be an area outside the prison for the children and teenagers to talk to their imprisoned relatives.” G.L – male, 17 years old.

“My torment has arrived! I am 17 years old, and for 7 years I haven’t had the courage to be inspected. And so I haven’t seen my dad for 7 years. My little brother is our Messenger, who takes my hugs to the inside of that place. From 10 years old the girls have inspections like grown women do. We go into the room, take the clothes off and beneath us there’s a large mirror. They tell us to crouch, four times facing the ward and with our back to her. After that

we stand under something that looks like a door, which checks IF we have any metal or forbidden thing, it is like an x-ray that goes over our naked body. Then we have to seat on a cold metal bench. At the end we are still naked and have to go through a narrow corridor with ward guards on both sides looking at us and intimidating us. Some of them wink at us, and that's to say the least! All that sacrifice was worth it. This is the inspection of the Penitentiary System in Curitiba. I believe that IF analysed by the Child and Adolescent Constitution, this could be changed." A 17 year old girl.

The visit of children and adolescents to relatives in prison.

Murillo José Digiácomo⁶

The issue of children and adolescents visiting relatives in prison is not given the appropriate attention by the authorities, who often consider it from the standpoint of public security/safety⁷, without any major concerns regarding the rules and principles of the Child and Adolescents which should be also (and mainly) considered.

Indeed, more than a simple right of the person who is imprisoned⁸, such visits are inserted in the larger context of ensuring the right to family life to all children and adolescents by law, by the Constitution and the UN Convention on the Rights of the Child of 1989, it's up to the government to provide a suitable practice in order to avoid possible resulting losses from the lack of guarantees and / or criteria to do so⁹.

If, on one hand it's necessary, without doubt, that the authorities care for security issues (to prevent possible abuse and / or violations of the rights of the children and adolescents who are visiting¹⁰), it's essential to plan actions to be taken and to account for the condition of the children and adolescents as beholders of the rights that are to be effective¹¹, which is important on the numerous cautions and standards regarding the subject.

These cautions include emotional guiding and preparation of the child/adolescent for the visit to a prison unit (with previous evaluation and follow-up, to assess whether the visit is any harm), even the adequacy of the environment where the

⁶ District Attorney from Curitiba/PR (murilojd@mp.pr.gov.br).

⁷ The visits are usually governed by rules (ordinances or resolutions) issued solely by the governing body of the penitentiary system, as a rule without prison guards, technicians with expertise in childhood and youth taking part in it.

⁸ This goes for prisoners in the Penitentiary System and for adolescents/youth submitted to detention units.

⁹ Observed, in any case, the provisions of articles 3rd, 4th, 5th and 9th^o, of the referred International Convention.

¹⁰ As would be the case in using them for introducing prohibited objects into the prison units.

¹¹ Worth noting the related principle on art. 100, unique item in I, of Law 8.069/90

visit is held, should be prepared to welcome children and adolescents in a better and more inviting conditions than the usual ones at these places.

Caution should also comprise the form which the personal inspections are carried out, which should be done in a reserved place, done by people specifically qualified for this activity, and in the presence of an adult relation to prevent that the children/adolescents inspected undergo excessive round up and/or unnecessary embarrassment¹².

It is important to keep in mind that even regarding the right to visiting imprisoned relatives, the constitutional principle of absolute priority to children and adolescents remains¹³, so that, in these occasions, children and adolescents must have preferential access before others (adults) who attend with the same aim.

Ideally children and adolescents would visit the prisoner on a different date to the other visitants, and this would facilitate the achievement of a special attendance, lowering the visitants would allow visiting to happen in more favorable conditions to everyone.

In fact, more than simply “opening the doors” of the prisons to visitants, it would be responsibility of the managers of the Prison and Socio-educational System, in partnerships with the leaders of public policies for children and adolescents (cf. article 86, of Law 8.069/90), the making of a specific public policy, to regulate, in a healthy manner, the exercise of the right to family life effective to “rehabilitation” the imprisoned, along with diverse action planning, specially regarding the relationship between parents/tutors and their children/pupils (in strict compliance with the principles listed in the art. 100, *caput* and unique items IX and X, of Law n° 8.069/90), covering activities even outside the units, like monitoring aspects of development and life of the children/adolescents, such as school performance, reading encouragement (in the exchange of letters) and so on.

The planning of actions to be developed should be made (and executed) under the interdisciplinary point of view, and although it should include general aspects, it must take into account the peculiarities of each case, from the “qualified hearing” of each child/adolescent and attended in respect of individual opinions.

¹² In violating, including the provisions of articles 5th, 17th and 18th, of Law 8.069/90.

¹³ In art. 227, *caput*, of the Federal Constitution, better explained by art. 4th, *caput* e unique item of Law 8.069/90.

From this broader approach, it is possible to detect problems and potentially traumatic situations at their origin, neutralizing the risk factor before they even harm the children/adolescents, thus contributing to the proper exercise of the rights to visits and also improving social and family relations and therefore living conditions in general.

Recommendation

States should develop a specific public policy to guarantee the right to family life and the effective rehabilitation of prisoners, especially regarding the relationship between parents/guardians with their children/pupils (in strict compliance to the principles listed in Article 100, *caput* and unique items IX e X, of Law 8.069/90), covering activities even outside the units, as well as monitoring the aspects of the development and life of children/ adolescents.