



THE IMPORTANCE OF CONTACT BETWEEN CHILDREN AND INCARCERATED PARENTS THROUGH VISITS AND/OR TELEPHONE ACCESS

BEARING IN MIND that punishments consisting of deprivation of liberty shall have as an essential aim the reform, social readaptation and personal rehabilitation of those convicted; the reintegration into society and family life; as well as the protection of both the victims and society.¹

The reality of parents in prison and their children is one of suffering and distance. When one considers the welfare of the child, it is difficult to consider what is best for the child, when in reality we are considering what is “least bad” for the child - because staying with a parent in prison past early years is not ideal; nor is living far from parents with little or no contact.

When a mother goes to prison, it is her children who suffer most. Studies link parental incarceration with problems including poor school performance, aggression, emotional problems, and post-traumatic stress. Young children may be severely traumatized by the sudden separation from their mothers, resulting in developmental delays and later problems. Children commonly experience sadness, anger, confusion, grief or depression due to the separation.²

Cristina was at home when the police invaded their house and arrested her mother. At the door of Cristina's primary school, there is often a police officer to guarantee the safety of the children, but now, Cristina does not want to go to school, because she associates the police officer with the men who took her mother away.³

For the well-being of children, as well as their mothers, the first priority is non-custodial care. When this is not possible or not available, it is extremely important that children maintain contact with parents while in prison. Small children cannot understand why their mother or father has “abandoned” them, and children who are older or more aware, need the reassurance, guidance and attention of their parents.

In most countries around the world, statistics show that 80% or more of women in prison are mothers, and many are single mothers.

Rosimeire borrowed money for a neighbor to buy food for her four children. When the neighbor demanded that she return the money and Rosimeire did not have any means to return the money, she felt trapped into “paying back” in another way- and was coerced into trying to carry drugs inside her body into a men's prison

¹ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS- ORGANIZATION OF AMERICAN STATES; RESOLUTION 1/08; Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas

² Fact Sheet: CLAIM - CHICAGO LEGAL ADVOCACY FOR INCARCERATED MOTHERS, <http://www.claim-il.org/>, accessed 03/08/2011

³ Testimony of a Prison Pastoral Ministry volunteer, as told to her by the Cristina's mother during a prison visit.

to pay off her debt. She was caught, and is now in prison for "drug trafficking." At this point, Rosimeire is trying to maintain contact with her 4 children.

When a man goes to prison, he often knows that his children and his wife or girlfriend are at home- a home to which he will return when he leaves prison. When a woman is sent to prison, her home is often dismantled - because there is no one to maintain it, and her children might go to shelters or be split up among family and in-laws.

This can make contact with children and visits much more difficult. Because women, on average, compose 5-6% of the prison population, there are far fewer prison units. This means that they are often far from their homes and families making prison visits more difficult.

Children outside prison are a cause of great distress to their mothers, who worry about the separation, whether the child will be taken away from them or not and how they are being cared for. If there are a number of children and they are being looked after by different persons or institutions, this will be an additional cause for concern.⁴

I worry about my twins- are they eating? Are they being held and hugged by the "substitute parents" who took them from me?⁵

What is clear is that children need their parents, and when this is not possible in day-to-day existence, children need contact with their parents (except on occasions when a parent is detained for negligence or abuse, when contact might not be best for the child).

It is urgent that the trauma for children of incarcerated parents be reduced, and contact increased - which will also diminish the difficulty of re-entry when a parent leaves prison. Contact between parents and children cannot be seen as a privilege- because privileges can be revoked. It should be seen as the right of the child as well as his/her parent.

If the best interests of the child are always considered- then "no contact visits" would rarely exist. If the parent is in prison for an infraction related to the child, then a visit will probably be denied. Otherwise, the best interest of the child is to be able to sit with or on the lap of his or her parent. The State must guarantee that children have appropriate access to their parents.

A pane of thick glass separates the mother and child, which can be yet another trauma. Gail Smith, executive director of Chicago Legal Advocacy for Incarcerated Mothers, described an infant's wrenching visit. "When he saw his mother come out, his little hand went to the glass," Smith says. "But when he realized he couldn't touch her, he just started screaming."⁶

Contact Visits without Invasive Body Searches

Whenever possible, family visits should include contact between children and their parents. Children, especially small children, cannot understand why they are not allowed to touch or embrace their parents, and unfortunately, can end up feeling responsible for the separation (as if they are being punished themselves). However, it is also extremely important that children visiting parents not be subject to invasive body searches or procedures that intimidate or humiliate.

⁴ ibid

⁵ Letter from Andrea, an 18-year pretrial inmate (supposedly not found guilty yet) to a Prison Pastoral Ministry volunteer

⁶ Mothers In Prison, By TAMMERLIN DRUMMOND/MIAMI , <http://www.time.com/time/magazine/article/0,9171,998404,00.html#ixzz1U3niPVNa> , accessed 03/08/2011

*Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.*⁷

*3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.*⁸

Unfortunately, in some countries, children are still subject to invasive body searches as a regular practice before being allowed to see mothers and fathers in prison.

The Bangkok Rules and the Inter-American Commission on Human Rights (IAHCR) still recognize that manual body searches may be admissible under very clear circumstances, but only as a last resort and not as a standard practice.

*Bodily searches of persons deprived of liberty and visitors to places of deprivation of liberty shall be carried out under adequate sanitary conditions by qualified personnel of the same sex, and shall be compatible with human dignity and respect for fundamental rights. In line with the foregoing, **Member States shall employ alternative means through technological equipment and procedures, or other appropriate methods. Intrusive vaginal or anal searches shall be forbidden by law.***⁹

*68. The Commission would like to underline the fact that a visitor or a family member who seeks to exercise his or her rights to family life should not be automatically suspected of committing an illegal act and cannot be considered, on principle, to pose a grave threat to security. Although the measure in question may be exceptionally adopted to guarantee security in certain specific cases, it cannot be maintained that its systematic application to all visitors is a necessary measure in order to ensure public safety.*¹⁰

Bangkok Rules- Rule 21

Prison staff shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners.

The UN convention on the rights of the Child also recognizes that

Article 16 *1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.*

Article 19 *1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*

It is difficult to imagine how requiring a child to remove clothing in front of strangers, and at times, to squat and prove that he or she has nothing hidden inside body cavities could not be a violation against his or her honor, and could not be considered mental violence and maltreatment.

⁷ UN Standard Minimum Rules for the Treatment of Prisoners, article 37, 1955

⁸ Office of the United Nations High Commissioner for Human Rights: Convention on the Rights of the Child, resolution 44/25 of 20 November 1989.

⁹ Inter-American Commission On Human Rights; Organization Of American States; RESOLUTION 1/08; Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas; Article XXI

¹⁰ Inter-American Commission on Human Rights: **REPORT N° 38/96** - CASE 10.506 - ARGENTINA10[1] - October 15, 1996; <http://www.cidh.oas.org/annualrep/96eng/Argentina11506.htm> , accessed 03/08/2011

States must guarantee that families have the right to visits to preserve family integrity, and not subject the family members visiting to degrading and humiliating searches, extending suspicion and judgment to the family of the person accused or sentenced.

*The World Medical Association issued a statement on body searches of prisoners in 1993 for the guidance of prison doctors. The statement recognises that body searches may sometimes be necessary on security grounds but urges that all governments and public officials with responsibility for public safety to recognize that **such invasive search procedures are serious assaults on a person's privacy and dignity, and they also carry some risk of physical and psychological injury.** (Adopted in Budapest in 1993, revised in may 2005)¹¹*

If in fact, this is the World Medical Association's evaluation of body searches of prisoners, then the same principle applies and more urgently to those who visit people in prison, and even more so children that are visiting family members in prison.

It is imperative that children not be subjected to body searches in order to visit their parents, and especially because the visit is to support the child-parent relationship. If a child, especially an adolescent child, is forced to regularly be subjected to this violation, he or she might choose not to visit his or her parent, thus discouraging family contact instead of encouraging it.

Telephone/Internet Access For Those Who Cannot Have Direct Visits

Mindful also of its resolution 63/241 of 24 December 2008, in which it called upon all States to give attention to the impact of parental detention and imprisonment on children and, in particular, to identify and promote good practices in relation to the needs and physical, emotional, social and psychological development of babies and children affected by parental detention and Imprisonment¹²

Whenever possible, public phones should be available for inmates to be able to contact their families. In the women's prison in Lima, Peru, there is a public phone center which women can access during the day. Phone calls can be recorded if necessary to avoid misuse; or staff can dial for inmates and record the number. In one prison unit - inmates can receive calls from their families, but cannot make calls- thus avoiding any need for phone cards. Where possible the option for calling via the internet is less expensive and at times can offer the possibility of a visual contact.

BEST PRACTICES: *the women's prison in Bangkok makes possible "virtual visits" between mothers and their children when an actual physical visit is not possible, including the use of webcams for children to actually see their mothers.*

In Brazil, where public phones are not available in the majority of prisons, many women and men resort to using illegal mobile phones to speak with their families, thus risking punishment and an extended sentence.

Family contact for foreign prisoners is extremely important. In São Paulo, Brazil, the foreign female prison population grew from 40 (2000) to more than 500 in 2011. The vast majority have children, and are imprisoned for long periods of time thousands of kilometers from home. Some do not have addresses to send letters (one woman was from a nomadic tribe in Africa that does not have postal addresses), and even when they do, letters can take weeks to arrive, if at all. Access to a telephone or contact via internet are the only reliable ways for foreign nationals in prison to maintain contact with their children.

¹¹ WMA Statement on Body Searches of Prisoners; <http://www.wma.net/en/30publications/10policies/b5/index.html> , accessed 03/08/2011

¹² *Bangkok Rules, UN General Assembly, December 2010, 65/229.*

Mothers (and fathers) do not stop being mothers, and do not stop worrying about their children and wanting to accompany their education and their lives simply because they have been arrested. However- letters are not sufficient- small children do not know how to read or write, and a conversation between parent and child is far different than a letter.

.[22] Indeed, and particularly because of the exceptional circumstances of imprisonment, the state must establish positive provisions to effectively guarantee the right to maintain and develop family relations. Thus, the necessity of any measures restricting this right must adjust themselves to the ordinary and reasonable requirements of imprisonment.¹³

During a church visit to a police lockup in São Paulo, Brazil, the jail was so overcrowded and unstaffed, that there were no family visits allowed, no letters, and by rule, no access to the telephone. An inmate informed the visiting team that when he was arrested, his wife was 8 months pregnant. He was now 90 days in the jail, and he said, “I think I am a father. I don’t know because I have no news.”

A prison sentence technically removes a person’s right to come and go, to transit in free society. Unfortunately, it is generally accompanied by other restrictions- sometimes via lack of resources (no hygiene products, uniforms, mattresses, etc) and sometimes by punitive State policies. Family contact- be it through visits or through telephone calls is extremely important for diminishing the emotional distance between a child and his/her parent, as well as for making the post-prison reinsertion into the family less traumatic and more positive.

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¹³ Inter-American Commission on Human Rights: **REPORT Nº 38/96** - CASE 10.506 - ARGENTINA13[1], 98 - October 15, 1996; <http://www.cidh.oas.org/annualrep/96eng/Argentina11506.htm> , accessed 03/08/2011